Period Covered by Contract: June 27, 2007 through June 26, 2027.
Pricelist current through Modification #PO-4819, dated August 16, 2022.
Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service – which is categorized under a different SIN (54151).

FSC Class 7030..............................Information Technology Software

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

SIN 511210 - PERPETUAL SOFTWARE LICENSES

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

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

FSC Class 7030..............................Information Technology Software

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

SIN 54151 - MAINTENANCE OF SOFTWARE AS A SERVICE

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

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

SIN 518210C – CLOUD COMPUTING SERVICES

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

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

• Cloud Computing Services
SIN 541519CDM – CONTINUOUS DIAGNOSTICS AND MITIGATION (CDM) TOOLS

Includes Continuous Diagnostics and Mitigation (CDM) Approved Products List (APL) hardware and software products/tools and associated services. The full complement of CDM subcategories includes tools, associated maintenance, and other related activities such as training.

SIN 611420 - TRAINING COURSES (FPDS Code U012)

SIN 54151S - IT PROFESSIONAL SERVICES

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

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

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

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

SIN 54151ECOM - ELECTRONIC COMMERCE (EC) SERVICES

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

CONTRACTOR

Contract Number: GS-35F-0511T

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

Pricelist current through Modification #PO-4819, dated Aug 16, 2022.

EC America, Inc.
8444 Westpark Drive, Suite 200
McLean, VA 22102
Phone: 703.792-0610
Email: ECA_Contracts@immixgroup.com
Website: https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/

Business Size: Other than Small Business

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CUSTOMER INFORMATION

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

<table>
<thead>
<tr>
<th>SIN</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>532420L</td>
<td>Leasing of Product</td>
</tr>
<tr>
<td>33411</td>
<td>Purchase of New Equipment</td>
</tr>
<tr>
<td>811212</td>
<td>Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts</td>
</tr>
<tr>
<td>511210</td>
<td>Term Software Licenses</td>
</tr>
<tr>
<td>511210</td>
<td>Perpetual Software Licenses</td>
</tr>
<tr>
<td>54151</td>
<td>Maintenance of Software, as a Service</td>
</tr>
<tr>
<td>541519CDM</td>
<td>Continuous Diagnostics and Mitigation (CDM) Tools</td>
</tr>
<tr>
<td>611420</td>
<td>Training Courses</td>
</tr>
<tr>
<td>54151S</td>
<td>IT Professional Services</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>Electronic Commerce (EC) Services</td>
</tr>
<tr>
<td>OLM</td>
<td>Order Level Materials (OLM)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>SIN</th>
<th>Part Number</th>
<th>GSA Catalog Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>33411</td>
<td>EM0330-06 P</td>
<td>$0.01</td>
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<tr>
<td>811212</td>
<td>13265-S2Y-813-6967-29</td>
<td>$0.01</td>
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<tr>
<td>511210</td>
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<td>$0.01</td>
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<tr>
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<tr>
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<td>CPOS-ASN-S200-Y1-CDM</td>
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<td>611420</td>
<td>CE-CORTC0001</td>
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<tr>
<td>54151S</td>
<td>System Analyst II</td>
<td>$196.47</td>
</tr>
<tr>
<td>54151ECOM</td>
<td>SAAA298</td>
<td>$0.01</td>
</tr>
</tbody>
</table>

1c. See SIN specific Terms and Conditions as well as the terms in Attachment A.

2. Maximum Order:

The Maximum Order value for the following Special Item Numbers (SINs) is $500,000:
- Special Item Number 532420L - Leasing of Product
- Special Item Number 33411 - Purchase of Equipment
- Special Item Number 811212 - Equipment Maintenance
- Special Item Number 511210 - Term Software Licenses
- Special Item Number 511210 - Perpetual Software Licenses
- Special Item Number 54151 - Maintenance of Software as a Service
- Special Item Number 541519CDM - Continuous Diagnostics and Mitigation (CDM) Tools
- Special Item Number 541519CDM - Continuous Diagnostics and Mitigation (CDM) Tools
- Special Item Number 54151S - IT Professional Services
- Special Item Number 54151S - IT Professional Services
- Special Item Number 54151ECOM - Electronic Commerce (EC) Services

The Maximum Order value for the following Special Item Numbers (SINs) is $25,000:
- Special Item Number 611420 - Training Courses

3. Minimum Order: $100.00

4. Geographic coverage (delivery area):
   - Domestic and overseas delivery

5. Point(s) of production:

For a current list of all Authorized Service and Distribution points by Manufacturer, go to: http://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/

6. Discount from List Prices:
   Prices shown herein are Net (discounts deducted)

7. Quantity Discount:
   None unless otherwise specified in the pricelist.

8. Prompt Payment Terms:
   0% - Net 30 days from receipt of invoice or date of acceptance, whichever is later.

9a. Government purchase cards are accepted at or below the micro-purchase threshold.

9b. Government purchase cards are accepted above the micro-purchase threshold.

10. Foreign items:
    Country of Origin is identified in the Schedule Contract Pricelist.

11a. Time of Delivery:
    The Contractor shall deliver to destination within thirty (30) calendar days after receipt of order (ARO), unless set forth otherwise on the Schedule Contract Pricelist to this schedule pricelist appended hereto and incorporated herein.

11b. Expedited Delivery:
    Quicker delivery times than those set forth in the Schedule Contract Pricelist are available from the Contractor based on the availability of product inventory. Improved delivery times in the number of days after receipt of an order (ARO) if available, are as negotiated between the ordering activity and the Contractor or its Authorized Government Resellers.

11c. Overnight and 2-Day Delivery:
    Unless otherwise specified by Manufacturer in the Schedule Contract Pricelist, when ordering activities require overnight or 2-day delivery, ordering activities are encouraged to contact the Contractor for the purpose of obtaining accelerated delivery. Overnight and 2-day delivery times are subject to the availability of product inventory.

11d. Urgent Requirements:
    When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the Ordering Activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

12. F.O.B. Point(s): Destination

13a. Ordering address(es):
    EC America, Inc.
    8444 Westpark Drive, Suite 200
    McLean, VA 22102

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

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

Or

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

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

16. Export packing charges, if applicable:
Not Applicable

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

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

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

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

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

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

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

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

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

25. DUNS Number:
017573259

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

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

28. Glossary of Definitions:

a. “Contractor” means EC America, Inc.

b. “Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

c. “Manufacturer” shall mean a manufacturer, supplier or producer of Equipment (as defined below) or a publisher or developer of Software or related Training Materials (as defined below) provided to Contractor through a letter of supply to be licensed or sold to Ordering Activities under this contract.

d. “Ordering Activity” shall mean, 1) any entity authorized to use GSA sources of supply and services as set forth in GSA Directive OGP 4800.21 or such later issued version, and 2) any entity acting on behalf of an Ordering Activity pursuant to a properly issued letter of authorization per Section 24 above – “Prime Contractor Ordering from Federal Supply Schedules” under Information for Ordering Activities applicable to All Special Item Numbers.

d. “Prime Contractors” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

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

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

2. **LEASE TYPES**

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

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

Orders for leased Products must specify the leasing type.

3. **OPTION 1**

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

b. **FUNDING AND PERIODS OF LEASING ARRANGEMENTS**
   i. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:
      1. The base period of an order for any lease executed by the Ordering Activity shall be for the duration of the fiscal year. All Ordering Activity renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the Ordering Activity exercises its rights hereunder to acquire title to the Product prior to the planned expiration date or unless the Ordering Activity exercises its right to terminate under FAR 52.212-4.

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

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

c. **DISCONTINUANCE AND TERMINATION**

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

4. **OPTION 2**

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

a. **LEASING PRICE LIST NOTICE:**

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

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

b. **STATEMENT OF ORDERING ACTIVITY INTENT:**
c. LEASE TERM:

i. The date on which the Ordering Activity accepts the Products is the Commencement Date of the lease.

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

iii. Any lease is executed by the Ordering Activity on the basis that the known requirement for such Product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12-month period. Defense agencies must also consider DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.

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

d. LEASE TERMINATION:

i. The Ordering Activity must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the Ordering Activity's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.

1. The Ordering Activity may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Acquisition as defined herein (see paragraph iv below). In any other event, the Ordering Activity's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).

2. The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph iv below). In the event of termination for the convenience of the Ordering Activity, the Ordering Activity may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.

ii. Termination for Convenience of the Ordering Activity: Leases entered into under this option may not be terminated except by the Ordering Activity's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), Termination for Convenience
a. When an Ordering Activity expresses an interest in leasing a Product(s), the Ordering Activity will provide the following information to the prospective Contractor:
   (i) Which Product(s) is (are) required.
   (ii) The required delivery date.
   (iii) The proposed lease plan and term of the lease.
   (iv) Where the Product will be located.
   (v) Description of the intended use of the Product.
   (vi) Source and type of appropriations to be used.

b. The Contractor will respond with:
   (i) Whether the Contractor can provide the required Product.
   (ii) The estimated residual value of the Product (Lease with Option to Own and Step Lease only).
   (iii) The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
   (iv) The confirmed availability of the Product on the required delivery date.
   (v) Extent of warranty coverage, if any, of the leased Products.
   (vi) The amount of funds in the appropriation and the term of the appropriation.
   (vii) The length of time the quote is valid.

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

2. ASSIGNMENT OF CLAIMS:

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

3. PEACEFUL POSSESSION AND UNRESTRICTED USE:

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

4. COMMENCEMENT OF LEASE:

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

5. INSTALLATION AND MAINTENANCE:

a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the Ordering Activity to obtain installation and maintenance services from a qualified source. The Ordering Activity may obtain installation and/or maintenance on the open market, from the Contractor’s schedule contract, or from other sources. The Ordering Activity may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the Ordering Activity to ensure that maintenance is in effect for the Lease term for all Products leased.

b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The
rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

6. MONTHLY PAYMENTS:

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

b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value: 500 basis points.

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

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

c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The Ordering Activity and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

d. The purchase option price will be the fair market value of the Product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

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

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

7. LEASE END/DISCONTINUANCE OPTIONS:

a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the Ordering Activity will return the Product to the Contractor unless the Ordering Activity by 30 days written notice elects either:

(i) to purchase the Product for the residual value of the Product, or

(ii) to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased Product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

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

c. Returns:

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

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

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

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

(1) deleted or disabled all files and copies of the software from the equipment on which it was installed;

(2) returned all software Documentation, training manuals, and physical media on which the software was delivered; and

(3) has no ability to use the returned software.

8. UPGRDES AND ADDITIONS:

a. The Ordering Activity may affix or install any accessory, addition, upgrade, product or device on the Product ("additions") provided that such additions:

(1) can be removed without causing material damage to the Product;

(2) do not reduce the value of the Product; and

(3) have been obtained from or approved by the Contractor, and are not subject to the interest of any third-party other than the Contractor.

b. Any other additions may not be installed without the Contractor’s prior written consent. At the end of the lease term, the Ordering Activity shall remove any additions which:

(1) were not leased from the Contractor, and

(2) are readily removable without causing material damage or impairment of the intended function, use, or value of the Product, and restore the Product to its original configuration.

c. Any additions that are not so removable will become the Contractor’s property (lien free).

d. Leases of additions and upgrades must be co-terminus with that of the Product.
9. RISK OF LOSS OR DAMAGE:

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

10. TITLE:

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

11. TAXES:

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

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

a. The Ordering Activity may purchase the Product provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

b. Except for final payment and transfer of title to the Ordering Activity, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.

c. The purchase conversion cost of the Product shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the Product under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental.”
TERMS AND CONDITIONS APPLICABLE TO
PURCHASE OF GENERAL PURPOSE
COMMERCIAL INFORMATION TECHNOLOGY
NEW EQUIPMENT (SPECIAL ITEM NUMBER
33411)

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

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

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

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

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

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

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

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

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

9. **RESPONSIBILITIES OF THE CONTRACTOR**

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

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

When an Ordering Activity determines that Information Technology Equipment will be replaced, the Ordering Activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).
1. GLOSSARY OF DEFINITIONS
   a. “Documentation” shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
   b. “Maintenance Services” shall mean the services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
   c. “Maintenance Services Policy” shall mean the commercial terms describing a Manufacturer’s standard maintenance and support offerings, policies and procedures for its Equipment, a copy of which is set forth in Attachment A to this schedule pricelist.
   d. “Equipment” shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

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

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

4. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS
   Repair service and repair parts/spare parts orders are not available under the scope of this schedule contract.

5. LOSS OR DAMAGE
   a. When the Contractor, through the Manufacturer, or its authorized service provider removes equipment to its establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the Equipment is removed to the Manufacturer’s or authorized service provider’s facility and while the Equipment is at the Contractor’s or its authorized service provider’s facility and while the Equipment is on the Contractor’s plant(s). In exchange for the applicable fees, the Contractor, through the Manufacturer, or its authorized service provider shall provide Maintenance Services for all Equipment listed herein, as requested by the Ordering Activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the Equipment types/models within the scope of this Information Technology Schedule.

b. Equipment placed under Maintenance Service shall be in good operating condition.

   (1) In order to determine that the Equipment is in good operating condition, the Equipment shall be subject to inspection by the Contractor through the Manufacturer or its authorized service provider without charge to the Ordering Activity.

   (2) Costs of any repairs performed for the purpose of placing the Equipment in good operating condition shall be borne by the Contractor, provided the Equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.

   (3) If the Equipment was not under the Contractor's responsibility, the costs necessary to place the Equipment in proper operating condition shall be borne by the Ordering Activity, in accordance with the provisions of Special Item Number 811212 (or outside the scope of this contract).

   (4) Contractor shall have no obligation to provide Maintenance Services for Equipment that has been modified by Ordering Activity, is in disrepair or subject to any other exclusions as set out in Manufacturer's Maintenance Services Policy.

7. RESPONSIBILITIES OF THE ORDERING ACTIVITY
a. Ordering Activity personnel shall not perform maintenance or attempt repairs to Equipment while such Equipment is under the purview of a maintenance order, unless agreed to by the Contractor. The Ordering Activity will follow Contractor's designated procedures when returning Equipment to Contractor's, Manufacturer's or its authorized service provider’s facility for repairs.

b. Subject to security regulations, the Ordering Activity shall permit access to the Equipment, which is to be maintained or repaired by Contractor, Manufacturer or its authorized service provider.

c. If the Ordering Activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

8. RESPONSIBILITIES OF THE CONTRACTOR
a. For Equipment not covered by a maintenance contract or warranty, the Contractor, through the Manufacturer’s or its authorized service provider’s repair service personnel shall complete repairs as soon as reasonably possible after notification by the Ordering Activity that service is required.

b. If the Ordering Activity task or delivery order specifies factory authorized/certified service personnel then the Contractor is obligated to provide such factory authorized/certified service personnel for the Equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

9. MAINTENANCE RATE PROVISIONS
a. For Equipment under monthly Maintenance Services, the Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the Equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the Ordering Activity.
TERMS AND CONDITIONS APPLICABLE TO SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210), AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 54151) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

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

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

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

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

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

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

   b. Limitation of Liability.
      i) Exclusion of Consequential Damages. EXCEPT FOR A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN (b)(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES provided, however, that in the event Ordering Activity makes unauthorized copies of the Software, Contractor shall be entitled to recover the full amount of any license fees that would relate to such copies.

      ii) Limitation of Direct Damages. Except for a) a claim of IP infringement hereunder, or b) as provided in (b)(iii) below, the aggregate and cumulative liability of Contractor and licensors for damages hereunder shall in no event exceed the amount of fees paid by Ordering Activity under the order giving rise to such liability, and if such damages relate to particular Software or Maintenance Services, such liability shall be limited to fees paid for the relevant Software or Maintenance Services giving rise to the liability.

      iii) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government’s right (a) to recover for fraud or crimes arising out of or relating to this contract under any Federal fraud statute, including without limitation the False Claims Act (31 USC §3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

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

5. SOFTWARE MAINTENANCE
   a. Software maintenance as it is defined:

      1. Software Maintenance as a Product (SIN 511210 or SIN 511210)
         Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user’s self diagnostics.

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

      2. Software Maintenance as a Service (SIN 54151)
Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed in accordance with 31 U.S.C. 3324.

b. If purchased by Ordering Activity, Contractor, through the applicable Manufacturer, shall provide Maintenance Services for the Software pursuant to the applicable Manufacturer’s then current Maintenance Services Policy. Fees or rates for such Maintenance Services are set forth in the Schedule Contract Pricelist.

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

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

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses and/or maintenance may be discontinued by the Ordering Activity on thirty (30) calendar day’s written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an Ordering Activity’s specific appropriation authority provides for funds in excess of a 12-month (fiscal year) period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

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

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

8. TERM LICENSE CESSION

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

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

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the Ordering Activity, commercial computer Software and related Documentation shall be subject to the following:

(1) Title to and ownership of the Software and Documentation shall remain with the Contractor or its Manufacturer or licensors, unless otherwise specified. Contractor and its Manufacturers reserve all rights in and to the Software and Documentation not expressly granted to Ordering Activity herein.

(2) United States Government Legends. The Software, Documentation and any other technical data provided hereunder is commercial in nature and developed solely at private expense. The Software is delivered as “Commercial Computer Software” as defined in DFARS 252.227-7014 (June 1995) or as a “Commercial Item” as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Manufacturer’s standard commercial license for the Software. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

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

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

(3) Except as is provided in paragraph 8.b(2) above, the Ordering Activity shall not provide or otherwise make available the Software or Documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Ordering Activity who have the Ordering Activity’s permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed Software and Documentation only in accordance with these restrictions. This provision does not limit the right of the Ordering activity to use Software, Documentation, or information therein, which the Ordering Activity may already have or obtains without restrictions.
(4) The Ordering Activity shall have the right to use the computer Software and Documentation with the computer for which it is acquired or at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the Ordering Activity has the right to transfer the Software to another site if the Ordering Activity site for which it is acquired is deemed to be unsafe for Ordering Activity personnel; to use the computer Software and Documentation with a backup computer when the primary computer is inoperative; and to copy computer Software for safekeeping (archive) or backup purposes; to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersedes any different or additional terms and conditions included in the standard commercial legend.

(6) The Software and Documentation hereunder is offered by the Contractor under licenses customarily provided to the public. The Contractor does not furnish technical information related to commercial computer Software (or commercial computer software Documentation) that is not customarily provided to the public. Further, the Contractor does not relinquish rights to use, modify, reproduce, release, perform, display, or disclose commercial computer Software (or commercial computer Software Documentation) except as mutually agreed to by the parties. See 48 CFR 12.212.

(7) Nondisclosure. Ordering Activity may have access to information that is confidential to Contractor or its Manufacturers ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Contractor's Confidential Information shall include, but not be limited to, the Software, Documentation, all materials provided to Ordering Activity in the course of performing Maintenance Services hereunder, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing hereunder, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that Contractor is obligated to treat as confidential.

Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Ordering Activity recommends to Contractor additional features, functionality, or performance or if Contractor retains generalized information hereunder that Contractor or its Manufacturer subsequently incorporates into a product or service offerings, then with respect to such recommendations and information, Ordering Activity hereby (a) grants Contractor a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations and such information into such offerings, and (b) acknowledges that all right and title to such offerings incorporating such recommendations and information shall be the sole and exclusive property of Contractor or its Manufacturer and all such recommendations and information shall be free from any confidentiality restrictions that might otherwise be imposed upon Contractor pursuant to this section.

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

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

(8) Verification. At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements), Contractor reserves the right to audit Ordering Activity's use of the Software more than once annually at Contractor's expense. Ordering Activity shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hour at Ordering Activity's facilities and shall not unreasonably interfere with Ordering Activity's business.

(9) Intellectual Property Infringement. If a third party makes a claim against Ordering Activity that the Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that (i) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (ii) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use
of a current unaltered release of the Software, (b) the modification of the Software, (c) the use of the Software other than in accordance with the Documentation or this contract, or (d) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

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

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

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

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

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

11. **DESCRIPTIONS AND EQUIPMENT COMPATIBILITY**

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

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

Right-to-copy license pricing is not available under the scope of this contract unless specifically specified in the pricelist. The Ordering Activity must contact the Manufacturer directly to discuss the applicability and associated costs of right-to-copy pricing.
TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF CLOUD COMPUTING SERVICES (SPECIAL ITEM NUMBER 518210C)

1. SCOPE

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

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

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

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

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

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

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

Table 1: Cloud Computing Services SIN

<table>
<thead>
<tr>
<th>SIN Description</th>
<th>Sub-Categories†</th>
</tr>
</thead>
<tbody>
<tr>
<td>● Commercially available cloud computing services</td>
<td>1. Software as a Service (SaaS): Consumer uses provider’s applications on cloud infrastructure. Does not manage/control platform or infrastructure. Limited application level configuration may be available.</td>
</tr>
<tr>
<td>● Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing essential characteristics</td>
<td>2. Platform as a Service (PaaS): Consumer deploys applications onto cloud platform service using provider-supplied tools. Has control over deployed applications and some limited platform configuration but does not manage the platform or infrastructure.</td>
</tr>
<tr>
<td>● Open to all deployment models (private, public, community or hybrid), vendors specify deployment models</td>
<td>3. Infrastructure as a Service (IaaS): Consumer provisions computing resources. Has control over OS, storage, platform, deployed applications and some limited infrastructure configuration, but does not manage the infrastructure.</td>
</tr>
</tbody>
</table>

† Offerors may optionally select the single sub-category that best fits each cloud service offering, per Service Model Guidance, or select no sub-category if the offering does not fit an existing NIST service model.

2. DESCRIPTION OF CLOUD COMPUTING SERVICES AND PRICING

a. Service Description Requirements for Listing Contractors

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

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

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

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

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

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

Table 2: Cloud Service Description Requirements

<table>
<thead>
<tr>
<th>#</th>
<th>Descriptions Requirement</th>
<th>Reporting Type</th>
<th>Instructions</th>
</tr>
</thead>
</table>
| 1 | Provide a brief written description of how the proposed cloud computing services satisfies each individual essential NIST Characteristic | Mandatory | The cloud service must be capable of satisfying each of the five NIST essential Characteristics as outlined in NIST Special Publication 800-145. See ‘GUIDANCE FOR CONTRACTORS: NIST..."
### Requirements to accommodate rapid cloud price fluctuations.

No provision for reducing or eliminating standard price list posting characteristics. At agency discretion, pursuant to the guidance on NIST Essential Service, while allowing alternate variations at the task order level.

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

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Reporting Type</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Select NIST deployment models for the cloud computing service proposed.</td>
<td>Mandatory</td>
<td>Contractors must select at least one NIST deployment model as outlined in NIST Special Publication 800-145 describing how the proposed cloud computing service is deployed. Select multiple deployment models if the service is offered in more than one deployment model. See ‘GUIDANCE FOR CONTRACTORS: NIST Deployment Model’ below in this document for detailed direction on how to best categorize a service for the NIST deployment models.</td>
</tr>
<tr>
<td>3. Optionally select the most appropriate NIST service model that will be the designated sub-category or may select no sub-category.</td>
<td>Optional</td>
<td>Contractor may select a single NIST Service model to sub-categorize the service as outlined in NIST Special Publication 800-145. Sub-category selection is optional but recommended. See ‘GUIDANCE FOR CONTRACTORS: NIST Service Model’ below in this document for detailed direction on how to best categorize a service for the NIST IaaS, PaaS, and SaaS service models.</td>
</tr>
</tbody>
</table>

**b. Pricing of Cloud Computing Services**

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

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

### 3. Responsibilities of the Contractor

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

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

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

- **c. Information Assurance/Security Requirements**
  The contractor shall meet information assurance/security requirements in accordance with the Ordering Activity requirements at the Task Order level.

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

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

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

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

### 4. Responsibilities of the Ordering Activity

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

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

a. Ordering Activity Information Assurance/Security Requirements Guidance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

j. Data Ownership and Retrieval and Intellectual Property
Intellectual property rights are not typically transferred in a cloud model. In general, CSPs retain ownership of the Intellectual Property (IP) underlying their services and the customer retains ownership of its intellectual property. The CSP gives the customer a license to use the cloud services for the duration of the contract without transferring rights. The government retains ownership of the IP and data they bring to the customized use of the service as spelled out in the FAR and related materials. General considerations of data ownership and retrieval are covered under the terms of Schedule 70 and the FAR and other laws, ordinances, and regulations (Federal, State, City, or otherwise). Because of considerations arising from cloud shared responsibility models, ordering activities should engage with the Contractor to develop more cloud-specific understandings of the boundaries between data owned by the government and that owned by the cloud service provider, and the specific terms of data retrieval.

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

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

³ NIST SP 800-122, “Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)”
any time, and in all cases when the service or order is terminated for any reason, by means, in formats and within a scope clearly understood at the initiation of the service. Example cases that might require clarification include status and mode of delivery for:

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

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

k. Service Location Distribution

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

1. Physical locations underlying the cloud are numerous enough to provide continuity of operations and geographically separate enough to avoid an anticipated single point of failure within the scope of anticipated emergency events.

2. Service endpoints for the cloud are able to meet anticipated performance requirements in terms of geographic proximity to service requestors.

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

l. Related Professional Services

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

5. GUIDANCE FOR CONTRACTORS

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

Contractor-specific definitions of cloud computing characteristics and models or significant variances from the NIST essential characteristics or models are discouraged and will not be considered in the scope of this SIN or accepted in response to Factors for Evaluation. The only applicable cloud characteristics, service model/subcategories and deployment models for this SIN will be drawn from the NIST 800-145 special publication. Services qualifying for listing as cloud computing services under this SIN must substantially satisfy the essential characteristics of cloud computing as documented in the NIST Definition of Cloud Computing SP 800-145.6

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

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

a. NIST Essential Characteristics

### General Guidance

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

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

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Capability</th>
<th>Guidance</th>
</tr>
</thead>
</table>
| On-demand self-service| • Ordering activities can directly provision services without requiring Contractor intervention.  
• This characteristic is typically implemented via a service console or programming interface for provisioning | Government procurement guidance varies on how to implement on-demand provisioning at this time.  
Ordering activities may approach on-demand in a variety of ways, including “not-to-exceed” limits, or imposing monthly or annual payments on what are essentially on demand services.  
Services under this SIN must be capable of true on-demand self-service, and ordering activities and Contractors must negotiate how they implement on demand capabilities in practice at the task order level:  
• Ordering activities must specify their procurement approach and requirements for on-demand service  
• Contractors must |

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### Broad Network Access
- Ordering activities are able to access services over standard agency networks.
- Service can be accessed and consumed using standard devices such as browsers, tablets and mobile phones.
- Broad network access must be available without significant qualification and in relation to the deployment model and security domain of the service.
- Contractors must specify any ancillary activities, services or equipment required to access cloud services or integrate cloud with other cloud or non-cloud networks and services. For example, a private cloud might require an Ordering Activity to purchase or provide a dedicated router, etc., which is acceptable but should be indicated by the Contractor.

### Resource Pooling
- Pooling distinguishes cloud services from offsite hosting.
- Ordering activities draw resources from a common pool maintained by the Contractor.
- Resources may have general characteristics such as regional location.
- The cloud service must draw from a pool of resources and provide an automated means for the Ordering Activity to dynamically allocate them.
- Manual allocation, e.g. manual operations at a physical server farm where Contractor staff configure servers in response to Ordering Activity requests, does not meet this requirement.
- Similar concerns apply to software and platform models; automated provisioning from a pool is required.
- Ordering activities may request dedicated physical hardware, software or platform resources to access a private cloud deployment service. However, the provisioned cloud resources must be drawn from a common pool and automatically allocated on request.

### Rapid Elasticity
- Rapid provisioning and de-provisioning commensurate.
- Rapid elasticity is a specific demand-driven case of self-service.
- Procurement guidance for on-demand self-service.

### Measured Service
- Measured service should be understood as a reporting requirement that enables an Ordering Activity to control their use in cooperation with self-service.
- Procurement guidance for on-demand self-service applies to measured service as well, i.e. rapid elasticity must be technically available but ordering activities and Contractors may mutually negotiate other contractual arrangements. "Rapid" should be understood as measured in minutes and hours, not days or weeks.
- Elastic capabilities by manual request, e.g. via a console operation or programming interface call, are required.
- Automated elasticity which is driven dynamically by system load, etc. is optional.
- Contractors must specify whether automated demand-driven elasticity is available and the general mechanisms that drive the capability.

### Inheriting Essential Characteristics
Cloud services may depend on other cloud services, and cloud service models such as PaaS and SaaS are able to inherit essential characteristics from other cloud services that support them. For example, a PaaS platform service can inherit the broad network access made available by the IaaS service it runs on, and in such a situation would be fully compliant with the broad network access essential characteristic. Services inheriting essential characteristics must make the inherited characteristic fully available at their level of delivery to claim the relevant characteristic by inheritance.
Inheriting characteristics does not require the inheriting provider to directly bundle or integrate the inherited service, but it does require a reasonable measure of support and identification. For example, the Ordering Activity may acquire an IaaS service from “Provider A” and a PaaS service from “Provider B”. The PaaS service may inherit broad network access from “Provider A” but must identify and support the inherited service as an acceptable IaaS provider.

Assessing Broad Network Access

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

Resource Pooling and Private Cloud

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

b. NIST Service Model

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

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

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

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

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

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

(1) Visibility to the Ordering Activity. Service model sub-categories in this SIN exist to help Ordering Activities match their requirements with service characteristics. Contractors should select the most intuitive and appropriate service model from the point of view of an Ordering Activity.

(2) Primary Focus of the Service. Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage, along with some PaaS capabilities for application deployment, or SaaS capabilities for specific applications. In a service mix situation, the Contractor should select the service model that is their primary focus. Alternatively, contractors may choose to submit multiple service offerings for the SIN, each optionally and separately subcategorized.

(3) Ordering Activity Role. Contractors should consider the operational role of the Ordering Activity’s primary actual consumer or operator of the service. For example, services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by application deployers or developers as PaaS, and services most often consumed by business users as SaaS.

(4) Lowest Level of Configurability. Contractors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Ordering Activity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Ordering Activity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Ordering Activity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS service.

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

Table 3: Guidance on Mapping to NIST Service Models

<table>
<thead>
<tr>
<th>Service Model</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>IaaS Infrastructure as a Service</td>
<td>Select an IaaS model for service-based equivalents of hardware appliances such as virtual machines, storage devices, routers and other physical devices.</td>
</tr>
<tr>
<td>IaaS as a Service</td>
<td></td>
</tr>
<tr>
<td>PaaS Infrastructure as a Service</td>
<td></td>
</tr>
<tr>
<td>SaaS as a Service</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>Service Model</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The principal customer interaction with an IaaS service is provisioning then configuration, equivalent to procuring and then configuring a physical device.</td>
<td></td>
</tr>
<tr>
<td>Examples of IaaS services include virtual machines, object storage, disk block storage, network routers and firewalls, software defined networks. Gray areas include services that emulate or act as dedicated appliances and are directly used by applications, such as search appliances, security appliances, etc. To the extent that these services or their emulated devices provide direct capability to an application they might be better classified as Platform services (PaaS). To the extent that they resemble raw hardware and are consumed by other platform services they are better classified as IaaS.</td>
<td></td>
</tr>
<tr>
<td>PaaS Platform as a Service</td>
<td>Select a PaaS model for service-based equivalents of complete or partial software platforms. For the purposes of this classification, consider a platform as a set of software services capable of deploying all or part of an application.</td>
</tr>
<tr>
<td>• A complete platform can deploy an entire application. Complete platforms can be proprietary or open source</td>
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</tr>
<tr>
<td>• Partial platforms can deploy a component of an application which combined with other components make up the entire deployment</td>
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</tr>
<tr>
<td>• PaaS services are typically consumed by application deployment staff whose responsibility is to take a completed agency application and cause it to run on the designated complete or partial platform service</td>
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</tr>
<tr>
<td>• The principal customer interaction with a PaaS service is deployment, equivalent to deploying an application or portion of an application on a software platform service.</td>
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</tr>
<tr>
<td>• A limited range of configuration options for the platform service may be available.</td>
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</tr>
<tr>
<td>Examples of complete PaaS services include:</td>
<td></td>
</tr>
<tr>
<td>• A Linux/Apache/MySQL/PHP (LAMP) platform ready to deploy a customer PHP application,</td>
<td></td>
</tr>
<tr>
<td>• a Windows .Net platform ready to deploy a .Net application,</td>
<td></td>
</tr>
<tr>
<td>• A custom complete platform ready to develop and deploy a customer application in a proprietary language</td>
<td></td>
</tr>
<tr>
<td>• A multiple capability platform ready to deploy an arbitrary customer application on a range of underlying software services.</td>
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</tr>
<tr>
<td>The essential characteristic of a complete PaaS is defined by the customer’s ability to deploy a complete custom application directly on the platform. PaaS includes partial services as well as complete platform services. Illustrative examples of individual platform enablers or components include:</td>
<td></td>
</tr>
<tr>
<td>• A database service ready to deploy a customer’s tables, views and procedures.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Guidance</td>
</tr>
<tr>
<td>• A queuing service ready to deploy a customer’s message definitions</td>
<td></td>
</tr>
<tr>
<td>• A security service ready to deploy a customer’s constraints and target applications for continuous monitoring</td>
<td></td>
</tr>
<tr>
<td>The essential characteristic of an individual PaaS component is the customer’s ability to deploy their unique structures and/or data onto the component for a partial platform function.</td>
<td></td>
</tr>
<tr>
<td>Note that both the partial and complete PaaS examples all have two things in common:</td>
<td></td>
</tr>
<tr>
<td>• They are software services, which offer significant core functionality out of the box</td>
<td></td>
</tr>
<tr>
<td>• They must be configured with customer data and structures to deliver results</td>
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</tr>
<tr>
<td>As noted in IaaS, operating systems represent a grey area in that OS is definitely a platform service but is typically bundled with IaaS infrastructure. If your service provides an OS but allows for interaction with infrastructure, please sub-categorize it as IaaS. If your service “hides” underlying infrastructure, consider it as PaaS.</td>
<td></td>
</tr>
<tr>
<td>SaaS Software as a Service</td>
<td>Select a SaaS model for service-based equivalents of software applications.</td>
</tr>
<tr>
<td>• SaaS services are typically consumed by business or subject-matter staff who would interact directly with the application in a non-cloud setting</td>
<td></td>
</tr>
<tr>
<td>• The principal customer interaction with a SaaS service is actual operation and consumption of the application services the SaaS service provides.</td>
<td></td>
</tr>
<tr>
<td>Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example, an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically, only the Contractor would be permitted to configure aspects of the software for all users.</td>
<td></td>
</tr>
<tr>
<td>Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki’s, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.</td>
<td></td>
</tr>
<tr>
<td>Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general, these sorts of systems should be considered SaaS, per guidance in this document.</td>
<td></td>
</tr>
</tbody>
</table>

### Deployment Model

- **SaaS Software as a Service**
  - Select a SaaS model for service-based equivalents of software applications.
  - SaaS services are typically consumed by business or subject-matter staff who would interact directly with the application in a non-cloud setting.
  - The principal customer interaction with a SaaS service is actual operation and consumption of the application services the SaaS service provides.
  - Some minor configuration may be available, but the scope of the configuration is limited to the scope and then the permissions of the configuring user. For example, an agency manager might be able to configure some aspects of the application for their agency but not all agencies. An agency user might be able to configure some aspects for themselves but not everyone in their agency. Typically, only the Contractor would be permitted to configure aspects of the software for all users.
  - Examples of SaaS services include email systems, business systems of all sorts such as travel systems, inventory systems, etc., wiki’s, websites or content management systems, management applications that allow a customer to manage other cloud or non-cloud services, and in general any system where customers interact directly for a business purpose.
  - Gray areas include services that customers use to configure other cloud services, such as cloud management software, cloud brokers, etc. In general, these sorts of systems should be considered SaaS, per guidance in this document.
Deployment models (e.g. private, public, community, or hybrid) are not restricted at the SIN level and any specifications for a deployment model are the responsibility of the Ordering Activity. Multiple deployment model selection is permitted, but at least one model must be selected. The guidance in Table 4 offers examples of how services might be properly mapped to NIST deployment models and how the Contractor should interpret the deployment model characteristics. Contractors should take care to select the range of NIST deployment models most closely corresponding to each service offered.

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

Table 4: Guidance for Selecting a Deployment Model

<table>
<thead>
<tr>
<th>Deployment Model</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Cloud</td>
<td>The service is provided exclusively for the benefit of a definable organization and its components; access from outside the organization is prohibited. The actual services may be provided by third parties, and may be physically located as required, but access is strictly defined by membership in the owning organization.</td>
</tr>
<tr>
<td>Public Cloud</td>
<td>The service is provided for general public use and can be accessed by any entity or organization willing to contract for it.</td>
</tr>
<tr>
<td>Community Cloud</td>
<td>The service is provided for the exclusive use of a community with a definable shared boundary such as a mission or interest. As with private cloud, the service may be in any suitable location and administered by a community member or a third party.</td>
</tr>
<tr>
<td>Hybrid Cloud</td>
<td>The service is composed of one or more of the other models. Typically, hybrid models include some aspect of transition between the models that make them up, for example a private and public cloud might be designed as a hybrid cloud where events like increased load permit certain specified services in the private cloud to run in a public cloud for extra capacity, e.g. bursting.</td>
</tr>
</tbody>
</table>
1. GLOSSARY OF DEFINITIONS
   a. "Documentation" shall mean Manufacturer’s then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment and/or Software whether on-line or in hard copy.
   b. “Equipment” shall mean the computer hardware identified on Attachment B to this schedule pricelist.
   c. “Equipment Maintenance Services” shall mean the Equipment maintenance services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then-current Maintenance Services Policy.
   d. “Software Maintenance Services” shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer’s then current Maintenance Services Policy.
   e. “Maintenance Services Policy” shall mean the commercial terms describing a Manufacturer’s standard Equipment or Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
   f. “Services” shall mean services associated with products, other than Software Maintenance Services, Equipment Maintenance Services, and training.
   g. “Software” shall mean (i) the version of the computer program identified on Attachment B and (ii) updates to such programs.

2. SCOPE
   a. Special Item Number (SIN) 541519CDM Continuous Diagnostics and Mitigation (CDM) Tools is a solutions SIN. This SIN includes both Equipment and Software products and any associated services for the products to include installation, maintenance, and training.
   b. In addition to the terms and conditions of this CDM SIN: the terms and conditions of SIN 33411 shall apply to the purchase of Equipment provided under the CDM SIN; the terms and conditions of SIN 811212 shall apply to Equipment Maintenance Services provided under the CDM SIN; and the terms and conditions of SIN 54151 shall apply to Software and Software Maintenance Services provided under the CDM SIN; and the terms and conditions of SIN 611420 shall apply to the purchase of training courses provided under the CDM SIN.
   c. 541519CDM - Continuous Diagnostics and Mitigation Tools - SUBJECT TO COOPERATIVE PURCHASING - Includes Continuous Diagnostics and Mitigation (CDM) Approved Products List (APL) Equipment and Software products/tools and associated Services and Maintenance Services. The full complement of CDM subcategories includes tools, associated Maintenance Services, and other related activities such as training.
   d. The 5 subcategories CDM capabilities specified under this SIN are:
      1) Manage “What is on the network?”: Identifies the existence of hardware, software, configuration characteristics and known security vulnerabilities.
      2) Manage “Who is on the network?”: Identifies and determines the users or systems with access authorization, authenticated permissions and granted resource rights.
      3) Manage “How is the network protected?”: Determines the user/system actions and behavior at the network boundaries and within the computing infrastructure.
      4) Manage “What is happening on the network?”: Prepares for events/incidents, gathers data from appropriate sources; and identifies incidents through analysis of data.
      5) Emerging Tools and Technology: Includes CDM cybersecurity tools and technology not in any other subcategory.

5 subcategories represent the scope of the CDM program and reflect widely exercised functional and operational scenarios that CDM is interested in identifying, monitoring and addressing from a security perspective.

To provide a holistic security approach, these capabilities adhere to the National Institute of Science and Technology (NIST) Cybersecurity Framework security functions to identify, protect, detect, respond and recover. CDM also supports and can be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

As shown in Table 1, the 5 CDM Tools SIN subcategories cover the previous CDM BPA 15 CDM Tool Functional Areas (TFAs) and allow for future innovation.

<table>
<thead>
<tr>
<th>5 SIN Subcategories</th>
<th>15 CDM BPA TFAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Manage “What is on the network?”</td>
<td>● TFA 1 – Hardware Asset Management</td>
</tr>
<tr>
<td></td>
<td>● TFA 2 – Software Asset Management</td>
</tr>
<tr>
<td></td>
<td>● TFA 3 – Configuration Settings Management</td>
</tr>
<tr>
<td></td>
<td>● TFA 4 – Vulnerability Management</td>
</tr>
<tr>
<td>2. Manage “Who is on the network?”</td>
<td>● TFA 6 – Manage Trust in People Granted Access</td>
</tr>
<tr>
<td></td>
<td>● TFA 7 – Manage Security-Related Behavior</td>
</tr>
<tr>
<td></td>
<td>● TFA 8 – Manage Credential and Authentication</td>
</tr>
<tr>
<td></td>
<td>● TFA 9 – Manage Account/Access/Manage Privileges</td>
</tr>
<tr>
<td>3. Manage “How is the boundary protected?” for BOUND</td>
<td>● TFA 5 – Manage Network Access Controls</td>
</tr>
<tr>
<td>4. Manage “What is happening on the network?” for MNGEVT</td>
<td>● TFA 10 – Prepare for Contingencies and Incidents</td>
</tr>
<tr>
<td></td>
<td>● TFA 11 – Respond to Contingencies and Incidents</td>
</tr>
<tr>
<td>4. Manage “What is happening on the”</td>
<td>● TFA 12 – Design and Build in Requirements</td>
</tr>
</tbody>
</table>
Hardware and software configurations are based on Phase 1 Software Asset Management (SWAM) requirements that require based on Phase 1 Hardware Asset Management (HWAM) and Manage hardware and software baseline system inventory is to identify the existence of hardware, software, configuration characteristics and known security vulnerabilities.

Manage hardware and software baseline system inventory is based on Phase 1 Hardware Asset Management (HWAM) and Software Asset Management (SWAM) requirements that require the discovery and identification of devices to define a baseline of inventory hardware and software assets to establish the Agency’s span of control.

Hardware and software configurations are based on Phase 1 Configuration Settings Management (CSM) requirements to ensure that hardware and software (specifically the operating system and installed applications) assets are securely configured and hardened.

Manage vulnerabilities is based on Phase 1 Vulnerability Management (VUL) requirements to identify and manage vulnerabilities in software installed on network devices to minimize exploitation of known software weaknesses.

These CDM capabilities cover verification and validation for the existence of hardware infrastructure devices; the accurate identification of approved software components; verification and validation that hardware devices have the correct security configuration settings, and system platform is hardened to reduce the platform attack surface; and the identification and management of risks presented by known software weaknesses that are subject to exploitation.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(1) Manage “What is on the network?”

Focus: The primary focus of Manage Assets is to identify “What is on the network?”; that is, to identify the existence of hardware, software, configuration characteristics and known security vulnerabilities.

Manage hardware and software baseline system inventory is based on Phase 1 Hardware Asset Management (HWAM) and Software Asset Management (SWAM) requirements that require the discovery and identification of devices to define a baseline of inventory hardware and software assets to establish the Agency’s span of control.

Manage hardware and software configurations are based on Phase 1 Configuration Settings Management (CSM) requirements to ensure that hardware and software (specifically the operating system and installed applications) assets are securely configured and hardened.

Manage vulnerabilities is based on Phase 1 Vulnerability Management (VUL) requirements to identify and manage vulnerabilities in software installed on network devices to minimize exploitation of known software weaknesses.

These CDM capabilities cover verification and validation for the existence of hardware infrastructure devices; the accurate identification of approved software components; verification and validation that hardware devices have the correct security configuration settings, and system platform is hardened to reduce the platform attack surface; and the identification and management of risks presented by known software weaknesses that are subject to exploitation.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(2) Manage “Who is on the network?”

Focus: The primary focus of Manage People is to determine “Who is on the network?”; that is, identify and determine the users or systems with authorized access.

Manage People is based on Phase 2 PRIV, CRED, TRUST and BEHAVE requirements that require the management of users/accounts as an asset to assure the appropriate individual has the right access to the right resource.

This CDM capability covers the verification and validation of allowed user privileges, issuance and management of user owned credentials, appropriate user security behavior training, trustworthiness, authenticated permissions, and management of resource access rights granted to users.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(3) Manage “How is the boundary protected?”

Focus: The primary focus of Manage Boundary Protection is to determine “How is the boundary protected?”; that is, to determine the user/system actions and behavior at the physical/logical network boundaries and within the computing infrastructure.

“How is the boundary protected?” is based on Phase 3 BOUND requirements to defend physical and logical network boundaries and identify abnormal behavior (of networks and users) that may identify that an incident has occurred.

This CDM capability covers verification and validation of logical and physical network interfaces to reduce intrusive, malicious, and disruptive attacks; cryptographic mechanisms ensure confidentiality and integrity of data on the network; and methods to identify security incidents.

These CDM capabilities support the Cybersecurity Framework functions of: identify, protect and detect.

(4) Manage “What is happening on the network?”

Due to the complexity to manage “What is happening on the network?”, this area is covered by three focus areas:

a. Manage Events (MNGEVT)
   b. Operate, Monitor and Improve (OMI)
   c. Design and Build in Security (DBS)

Manage Events

Focus: Manage Events is responsible for preparing for events/incidents, gathering appropriate audit data from appropriate sources, identifying incidents through analysis of data, and performing ongoing assessment.

Manage Events is based on the Phase 3 MNGEVT requirements to prepare for incidents/events (through processes, policies, and procedures), gather appropriate audit/log data from appropriate sources, and identify events/incidents (network and user abnormal behavior) through the analysis of audit/log data.

Manage Events supports the runtime collection of attributes (actual state) and continuous monitoring of the policies related to attributes for Ongoing Assessment (actual state vs. desired state) to enhance current or apply new security and privacy controls and countermeasures. The results of the Ongoing Assessment will be used as inputs to OMI Ongoing Authorization risk assessment processes to determine if the level of risk remains acceptable for a given information system to support continued authorization and operation.

Ongoing Assessment is the continuous process of comparing security related attributes between the Actual State and the Desired State. This comparison is performed by the CDM Policy Decision Point (PDP). The discrepancy between Actual State and Desired state impacts the security posture of the implementation of NIST SP 800-53 controls and countermeasures. The results of the Ongoing Assessment are used to evaluate the changes in risk posture associated with the discrepancy. Ideally, the Ongoing Assessment process is fully automated with the Desired State being encoded in the CDM PDP and the Actual State being measured using CDM sensors.

This CDM capability covers verification and validation of processes, policies, and procedures supporting cybersecurity preparation, audit and log data collection, security analysis of audit/log data, incident reporting to provide forensic evidence of malicious or suspicious behavior, and ongoing assessment.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover CDM also supports and can
be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

Operate, Monitor and Improve

Focus: Operate, Monitor and Improve is responsible for audit data aggregation, correlation, and analysis, incident prioritization and response, and post-incident activities (e.g., information sharing).

Operate, Monitor and Improve is based on Phase 3 OMI requirements for audit data aggregation, correlation and analysis, incident prioritization and response, and post-incident activities (e.g., information sharing).

Ongoing Authorization is the continuous evaluation of the change in risk level related to changes in security policies concerning static object attributes (i.e., actual state and desired state) for threat behaviors that impact the security posture. This impact to security is measured by capturing changes in existing safeguards (e.g., NIST SP 800-53 controls and countermeasures) and identification of new component weaknesses and vulnerabilities.

This CDM capability covers verification and validation of processes/procedures to aggregate, correlate, and analyze audit/log data, to prioritize incidents and associated response actions, to quickly mitigate the impact of an incidents, to take appropriate remediation actions to eliminate the impact (restore normal operations) of the same incident, to support information sharing and collaboration (both internal and external) to minimize or prevent impact of future incidents, and ongoing authorization.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover. CDM also supports and can be used in the NIST Risk Management Framework (RMF) to achieve ongoing assessment and authorization.

Design and Build in Security

Focus: Design and Build in Security is responsible for preventing exploitable vulnerabilities from being effective in the software/system while in development or deployment. The Design and Build in Security process is focused on identifying, controlling and removing weaknesses/vulnerabilities from the software/system. Exploitable vulnerabilities may include software/system design, coding errors, software/system designs that leave a large and complex attack surface that cannot be defended, and weaknesses that can only be exploited during system/software execution.

Design and Build in Security is based on the Phase 3 DBS requirements that extend the focus of Phase 1 Software Asset Management and Vulnerability Management to achieve a level of confidence that software is free from vulnerabilities, either intentionally designed into the software or accidentally inserted at any time during its life cycle and that the software functions in the intended manner.

The U.S. government and critical infrastructure sectors are increasingly dependent on commercial products and systems, which present significant benefits including low cost, interoperability, rapid innovation, a variety of product features, and choice among competing vendors. However, with some of these benefits there is an increase in the risk of a threat event which can directly or indirectly affect the supply chain, which often go undetected, and may result in risks to the acquirer. The purpose of Supply Chain Risk Management (SCRM) is to enable the provisioning of the least vulnerable solutions to agencies, through a robust assessment of supply chain risks, communication about those risks to the agencies, and appropriate response and monitoring of those risks throughout the entire system lifespan.

This CDM capability covers verification and validation of processes/procedures to prevent and detect software vulnerabilities, to determine the provenance of system components, and to measure software assurance for built and acquired software components.

To provide a holistic security approach, this capability adheres to the Cybersecurity Framework security functions to identify, protect, detect, respond and recover security infractions due to malicious behavior and unintentional user actions during normal operations.

(5) Emerging Tools and Technologies

Focus: Innovative capabilities to cybersecurity not currently encompassed by the other capability areas.

3. STANDARDS COMPLIANCE

Contractors providing offerings through the CDM Tools SIN must provide compliant products and services in accordance with the laws and standards cited herein. Additional laws and standards may be applicable to specific orders and Blanket Purchase Agreements.

4. ORDER

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

b. All delivery or task orders are subject to the terms and conditions of the contract. In the event of conflict between an order and the contract, the contract will take precedence.

5. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)/COMMERCIAL SUPPLIER AGREEMENTS (CSAs)

The Contractor shall provide all Commercial Supplier Agreements (CSAs) to include End User License Agreements (EULAs) or Terms of Service (ToS) in an editable Microsoft Office (Word) format.

6. TECHNICAL SERVICES

a. A hotline technical support number for the purpose of providing user assistance and guidance in the implementation of any software provided as part of Equipment Maintenance Services or Software Maintenance Services.

7. PERFORMANCE OF SERVICES ASSOCIATED WITH PRODUCTS

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

b. The Contractor agrees to render Services during normal working hours, unless otherwise agreed to by the Contractor and the Ordering Activity.
c. The Ordering Activity should include the criteria for satisfactory completion of each order. Services shall be completed in a good and workmanlike manner.

d. Any Contractor travel required in the performance of the CDM Tools SIN for a specific requirement at the order level must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts. All travel will be agreed upon with the Ordering Activity prior to the Contractor’s travel.

8. RESPONSIBILITIES OF THE CONTRACTOR

a. The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of an order is custom-developed software, FAR 52.227-14 Rights in Data may apply.

b. The Contractor shall comply with contract clause (FAR 52.204-21) for the basic safeguarding of contractor information systems that process, store, or transmit Federal contract information (as defined in the contract clause) received by the Contractor in performance of the contract.

9. INVOICES FOR SERVICES

The Contractor, upon completion of the Services ordered, shall submit invoices. FAR 52.212-4 in the contract contains terms for commercial items. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring Services performed during the preceding month.

10. DESCRIPTION OF PRODUCTS AND SERVICES AND PRICING

The Contractor shall provide a description of offerings under CDM Tools SIN in the same manner as the Contractor sells to its commercial and Ordering Activity customers. The Contractor shall provide pricing and a description with part numbers for products and the associated services that have been approved as part of the Product Qualification Requirements of the SIN. Any applicable delivery and licensing terms should be included.

11. TOTAL SOLUTION

a. Labor categories/qualifications are not included in this SIN; however, ordering activities may acquire a total solution to meet a specific requirement for an order or BPA involving multiple IT Schedule 70 SINs. Contractors report the sales to GSA under the SINs the items are sold. For example, an agency may post an RFQ requesting a total solution anticipating offerings from multiple SINs, such as IT Professional Services 54151S or Highly Adaptive Cybersecurity Services (HACS) 54151HACS along with CDM Tools 541519CDM for products and product associated services.
1. GLOSSARY OF DEFINITIONS
a. “Training Materials” shall mean the, manuals, handbooks, texts, handouts, etc. normally provided with course offerings.
b. “Training Catalog” shall mean the document setting out a description of the training services and courses offered along with the related policies and procedures in regard to such training.

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

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

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

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

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

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

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

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

10. “NO CHARGE” TRAINING
“No charge” training is not available under the scope of this schedule contract.
b. All task orders are subject to the terms and conditions of the GS-35F-0511T https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/ contract.

5. PERFORMANCE OF SERVICES

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

b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the Ordering Activity.

c. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be provided in a good and workmanlike manner.

d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

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

a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(1) Cancel the stop-work order; or
(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order in arriving at the termination settlement.

d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

7. INSPECTION OF SERVICES

8. RESPONSIBILITIES OF THE CONTRACTOR
The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of the nature of the work to be performed under a proposed Ordering Activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

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

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST
a. Definitions.

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

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

12. INVOICES
The Contractor, upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the Ordering Activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones as set forth in a Statement of Work or task order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.221-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour

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

a. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

b. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
   (1) The offeror;
   (2) Subcontractors; and/or
   (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

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

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

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

17. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING
a. A description of each type of IT Service offered under Special Item Numbers 54151S IT Professional Services is set forth in Attachment A and/or the Schedule Contract Pricelist. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.

b. Pricing for all IT Professional Services shall be in accordance with the Contractor’s customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices, minimum general experience and minimum education.

Functional Responsibilities & Education Requirements

Project Administration

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

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

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

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

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

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

Implementation and Integration Consultant I

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

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

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

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

Implementation and Integration Consultant

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

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

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

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

Systems Analyst I

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

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

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

Systems Analyst II

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

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

**Minimum Education:** Bachelor’s Degree (Information Technology or Business) or equivalent professional experience
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<tr>
<th>Labor Category</th>
<th>Contract Year 2019</th>
<th>Contract Year 2020</th>
<th>Contract Year 2021</th>
<th>Contract Year 2022</th>
<th>Contract Year 2023</th>
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<td>$316.33</td>
<td>$323.61</td>
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<td>$114.81</td>
<td>$117.34</td>
<td>$119.92</td>
<td></td>
</tr>
</tbody>
</table>
b. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Ordering Activity.

5. PERFORMANCE OF SERVICES

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

b. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

c. Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

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

a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

i) Cancel the stop-work order; or

ii) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly.

c. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

d. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer receive and act upon the claim submitted at any time before final payment under this contract.

e. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

7. INSPECTION OF SERVICES

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

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product (i.e., deliverable) of a Statement of Work is custom developed software, then FAR 52.227-14:
9. RESPONSIBILITIES OF THE ORDERING ACTIVITY
Subject to security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

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

11. ORGANIZATIONAL CONFLICTS OF INTEREST
a. Definitions.

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

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

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

13. PAYMENTS
a. For firm-fixed price orders the Ordering Activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
   i) The offeror;
   ii) Subcontractors; and/or
   iii) Divisions, subsidiaries, or affiliates of the offeror under a common control.

b. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

c. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
   i) The offeror;
   ii) Subcontractors; and/or
   iii) Divisions, subsidiaries, or affiliates of the offeror under a common control.

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

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

16. DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING
a. A description of each type of EC Service offered under Special Item Numbers 54151ECOM E-Commerce is set forth in Attachment A. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other Ordering Activity customers.

b. Pricing for all EC Services shall be in accordance with the Contractor’s customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.
USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS

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

COMMITMENT
To actively seek and partner with small businesses.

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

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

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

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

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

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

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

SUGGESTED FORMATS FOR BLANKET PURCHASE AGREEMENTS

BEST VALUE BLANKET PURCHASE AGREEMENT FEDERAL SUPPLY SCHEDULE

(Insert Customer Name)

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

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

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

Signatures

Ordering Activity Date

Contractor Date

BPA NUMBER____________

(CUSTOMER NAME) BLANKET PURCHASE AGREEMENT

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

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

 MODEL NUMBER/PART NUMBER

*SPECIAL BPA DISCOUNT/PRICE

(2) Delivery:

DESTINATION

DELIVERY SCHEDULES / DATES

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

(4) This BPA does not obligate any funds.

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

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

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

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:
   (a) Name of Contractor;
   (b) Contract Number;
   (c) BPA Number;
   (d) Model Number or National Stock Number (NSN);
   (e) Purchase Order Number;
   (f) Date of Purchase;
   (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
   (h) Date of Shipment.

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

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

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

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

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

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

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

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

Here is a general outline on how it works:

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

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

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

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<tr>
<th>Manufacturer Name</th>
<th>Manufacturer Name</th>
</tr>
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<td>A10 Networks, Inc.</td>
<td>MariaDB Corporation</td>
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<td>Active Navigation, Inc.</td>
<td>Micro Focus Government Solutions</td>
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<td>Adobe Systems, Inc.</td>
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<td>AINS, Inc.</td>
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<td>Allied Telecom Group, LLC</td>
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<td>Blue Light, LLC</td>
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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached A10 Networks, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (See, FAR 12.212(a)), the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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

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

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

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

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

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

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

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

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

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

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

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

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

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

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

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

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

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A10 NETWORKS

A10 NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

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

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

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

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

OTHER PROVISIONS OF THIS ATTACHMENT A:

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

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

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

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

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

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

Phone Support - 90 days from date of purchase

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

Contact Contractor through A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.
Software Updates - 90 days from date of purchase

Software Updates for system software and Software Products released by Contractor through A10 Networks within 90 days of Ordering Activity's purchase of an A10 product are available by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.0.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

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

Advanced Hardware Replacement Service - 30 days from date of purchase

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

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

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

BASIC SUPPORT SERVICE PROGRAM

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

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

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

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

Software Updates for system software and Software Products released by Contractor through A10 Networks are provided for the duration of the Basic Support Service Program purchased by contacting A10 Networks Technical Support. System Software Updates include applicable minor releases (e.g. Release 1.0.0 to 1.2.0) to the A10 Networks family of products as well as major feature releases (e.g. Release 1.x to 2.0). Ordering Activity must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support.

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

Advanced Hardware Replacement Service – 30 days from date of purchase

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

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

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

GOLD SUPPORT SERVICE PROGRAM

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

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

For the duration of the term purchased, phone support is offered 7 days per week 24 hours a day. Access to Technical Support under the Gold Support Service Program period is on a commercially reasonable basis and Contractor through A10 Networks will make every reasonable effort to provide fast and efficient service.
Ordering Activities MUST register their A10 products and support programs to obtain technical support from Contractor through A10 Networks. Contact A10 Networks Technical Support at +1 (408) 325-8676 or +1 (888) TACS-A10 for North America toll free access.

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

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

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

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

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

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

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

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

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

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

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

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

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

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

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

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRICTIONS. Customer may not:

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

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

PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.

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

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

Confidential Information means all information that is disclosed to the recipient (Recipient) by the discloser (Discloser), and includes, among other things:
any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, and software roadmap;
as to Active Navigation the Software and the terms of this agreement, including without limitation, all pricing information.

Confidential Information excludes information that:
was rightfully in Recipient’s possession without any obligation of confidentiality before receipt from the Discloser;
is or becomes a matter of public knowledge through no fault of Recipient;
is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or is independently developed by or for Recipient without use or access to the Confidential Information.
Recipient may disclose Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party may seek immediate injunctive relief in such event.

WARRANTY.

SOFTWARE PERFORMANCE WARRANTY. Active Navigation warrants that the Software will perform in substantial accordance with its accompanying technical documentation for a period of 90 days from the date of the order. This warranty will not apply to any problems caused by software not licensed to Customer by Active Navigation, use other than in accordance with the technical documentation, or misuse of the Software. The warranty only covers problems reported to Active Navigation during the warranty period or 30 days after. Customer will cooperate with Active Navigation in resolving any warranty claim. Active Navigation will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the Software, or if
Active Navigation cannot do so it will refund to Customer the license fee paid. **THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND ACTIVE NAVIGATION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.**

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

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

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

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

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

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

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

**OTHER TERMS.**

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

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

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

**Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
Survival of Terms and Force Majeure. All terms that by their nature survive termination of this agreement for each party to receive the benefits and protections of this agreement, will survive. Neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

Compliance Audit. No more than once in any 12-month period and upon at least 30 days advance notice, Active Navigation (or its representative) may audit Customer's usage of the Software at any Customer facility, subject to Government security requirements.
Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification receipt date any fees applicable to Customer’s use of the Software in excess of the license.

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

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

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

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Address: 11720 Plaza America Drive, Suite 150, Reston, Virginia 20190
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

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

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

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

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

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

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

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

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

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

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3301 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

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

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

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

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

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

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

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

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

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
This Universal Amendment to Software License Agreements for all Adobe Systems Incorporated Software License Agreements ("Amendment") is effective as of the date that it is fully executed ("Effective Date") and is between Adobe Systems Incorporated ("Adobe"), and the U.S. General Services Administration ("GSA"). In consideration of the mutual promises and covenants contained in this Amendment, the parties agree as follows:

Applicability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

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

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

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

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

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

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

AINS, Inc.

AINS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

HELP DESK POLICY

The AINS Help Desk is available to AINS Customers as the primary method of resolving and reporting technical issues with AINS’ products and services and for the provision of Maintenance and Support Services. Use of the AINS’ Help Desk is contingent upon an existing Services Agreement and payment of all applicable fees.

Contact Information

The AINS Help Desk is available from Monday through Friday 8:30 a.m. to 5:30 p.m. ET. (Extended Help Desk and Services hours are available for an additional fee)

The AINS Help Desk can be reached by:

Email: support@ains.com; or
Telephone: (301) 670-2333

Help Desk Escalation Procedure

The AINS Help Desk will manage service requests through the following escalation procedures and staffing:

Level 1 – Help Desk Staff (“First Line of Support”) – Help Desk Staff receives request via telephone, email, or web and produces a ticket for each request. If Help Desk Staff cannot resolve the problem immediately it will be escalated to Level 2 informing the user of the need to escalate the problem.

Level 2 – Subject Matter Expert (Requests on Functionality) (SME) – SME will work with the user to resolve the problem. If the problem cannot be resolved, it will be escalated to Level 3 technology specialist support. The user submitting the request will be informed of the need to escalate the problem.

Level 3 – Technology Specialist (Requests of a Technical Nature) – Technology Specialist will attempt to duplicate the problem on our test system so that a solution may be identified. If the problem persists and a solution cannot be identified within one working day after it has been escalated to level 3, it will be escalated to the product development team for further review and resolution.

AINS will conduct ongoing evaluation at each Level to determine whether the problem is a system issue that may need to be resolved by a patch, bug fix, new release, or other Maintenance Services.

Response Times

AINS will provide an appropriate response according to the Help Desk procedures for most inquiries within four (4) hours.

AINS will provide an appropriate response according to the Help Desk Procedures for Time Critical inquiries as early as practicable, but at least within two (2) hours. A request for support is “Time Critical” because it impacts customer productivity. Time Critical inquiries will be escalated immediately to the appropriate level, with AINS management being informed of the problem. Customer management will be kept informed on the assessment/nature of the problem, time estimated to fix the problem, and progress in identifying a solution should it go beyond the estimated time.

On Site Support

On site support may be provided on an as-needed basis for an additional cost.

Legal Notices

This Help Desk Policy is for informational purposes only. Neither this policy nor Customer’s use of the AINS Help Desk shall create nor be deemed to create any legal obligations for either party.

Customer’s use of the AINS Help Desk is contingent upon Customer’s execution of a valid agreement to purchase AINS’ Services, and payment of all fees due and owing as set forth therein, or as otherwise authorized in writing by AINS. This Help Desk Policy and Customer’s use of the Help Desk are subject to the terms and conditions of any other agreements between AINS and the Customer. Customer’s use of the AINS Help Desk shall be limited as agreed-upon by the Parties. Excessive use, or use contrary to the Parties’ agreements, may incur additional fees.

AINS retains the right to modify this Help Desk policy as it deems appropriate in its sole and exclusive discretion.

SERVICE LEVEL AGREEMENT
This SERVICE LEVEL AGREEMENT (“SLA”) applies to the Licensee’s use of AINS’ Software-as-a-Service (“SaaS”) and hosted software services (collectively with SaaS, “Hosted Software”).

This SLA is subject to the terms and conditions of the Licensee’s and AINS’ (collectively the “Parties”) Software License Agreement.

AINS’S MAXIMUM LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING FROM ANY BREACH OF ANY PROMISE HEREIN SHALL BE A SERVICE CREDIT AS SET FORTH BELOW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

System Availability

Service Level Goals. AINS shall use commercially reasonable efforts to provide Licensee with a Service Level of at least 99.9% uptime of the Hosted Software on a 24 hours per day, 7 days per week, 365 days per year basis (“Service Level Goal”). The Service Level is determined by subtracting from 100% the percentage of minutes during the month in which the Hosted Software was unavailable or inaccessible to Licensee. Service Levels below 99.9% will trigger a response to the Licensee and the beginning of an investigation within 1 hour. As deemed appropriate in AINS’ sole discretion, AINS will provide Licensee with a corrective action plan to restore Service Levels to at least 99.9%.

Service Level Exclusions. AINS is not liable for any Hosted Software downtime or inaccessibility caused in whole or in part by any of the following:

Scheduled Downtime for Preventative Maintenance;

Licensee’s: (i) use of any hardware, software, or services not provided by AINS as part of its Hosted Software; (ii) use of the Hosted Software in a manner inconsistent with AINS’ direction, instruction or guidance; (iii) faulty input, instructions, or arguments (such as requests to files that do not exist); (iv) actual or threatened breach of any agreement(s) between AINS and Licensee, including Licensee’s excessive and unauthorized use and/or failure to pay associated fees and costs; or (v) failure, negligent or otherwise, to follow appropriate security practices;

Any person gaining access to AINS’ data center and/or Hosted Software by means of the Licensee’s passwords, equipment, or other means of access without AINS’ express written approval; or

Factors outside AINS’ reasonable control, including, but not limited to: (a) network or device failure external to AINS’ data center, at the Licensee’s site, or between AINS’ data center and the Licensee’s site; or (b) failure or defects in infrastructure software (such as operating system software, database software, and content management software).

System Stability

Routine System Monitoring. AINS utilizes monitoring tools to monitor software (applications, operating system, databases, etc.) and hardware (routers, switches, servers, etc.) performance and integrity. These tools are configured to send prioritized alerts to designated engineers in case of any downtime or failure of any infrastructure or application. The AINS System Administrator and/or Technical Manager also regularly monitor the AINS data center for Preventative Maintenance issues, such as the availability of updates, patches, and/or other changes to the operating system of the Hosted Software.

Routine System Reporting. AINS’ monitoring tools provide AINS and Licensees with weekly reports of Licensee’s system usage including Service Levels, response times, and CPU, memory, disk, and bandwidth utilizations.

Redundancy, Backups, and Disaster Recovery.

Power Redundancy. AINS utilizes battery backups and a natural gas powered generator to provide a continuous power supply to AINS’ data center in case of power outages. AINS’ electronic building entry system is also powered by a backup generator for continuous security.

Redundant Cloud Infrastructure. AINS utilizes multiple Internet Service Providers (“ISP”), switches, and servers to provide for automatic failover with minimum downtime in case of any interruptions to AINS’ cloud-based Hosted Software.

Backup and Recovery. AINS utilizes mirrored databases to avoid any catastrophic data loss caused by hardware failures. AINS performs, and stores locally, daily incremental and weekly full backups of all databases. AINS also maintains a redundant disaster recovery site in a separate location and replicates all databases to that remote site every two (2) hours. Restoration of data will first be attempted from local backups to minimize downtime. AINS conducts a simulated restoration from both local and remote backups every six (6) months to test the backup procedures and quality of backup data.

Preventative Maintenance.

“Preventative Maintenance” includes installation of patches, bug fixes, upgrades to the operating system, hardware, and/or firmware upgrades, and any other measures that AINS deems necessary to ensure the proper functioning and security of its data center and Hosted Software, in its sole and exclusive discretion.

Licensee acknowledges that AINS shall have the exclusive right to schedule and implement Preventative Maintenance measures, including those resulting in system and application downtime, without AINS’ express written approval.

AINS will make every commercially reasonable effort to perform Preventative Maintenance and Scheduled Downtime so as to minimize any Licensee impact.

Updates and patches to the operating system and Hosted Software will be tested for performance and stability issues in a secure environment before they are implemented on behalf of the Licensee. Virtualized test instances are made available to the Licensee for patching, upgrades, and troubleshooting on an as-needed basis in AINS’ sole and exclusive discretion.
AINS will maintain a log that identifies: (i) the date and time of Preventative Maintenance; (ii) the individual performing the Preventative Maintenance; (iii) the individual who provided access to the data center and Services if other than the individual performing the Preventative Maintenance; (iv) the Preventative Maintenance performed; and (v) any equipment removed or replaced during Preventative Maintenance.

System Security

The AINS main data center is a Top Secret cleared facility, and FedRamp, FISMA, and FIPS compliant.

Licensee Obligations

Licensee shall at all times abide by its obligations under any and all other agreement(s) it has with AINS. AINS’ obligations herein are contingent upon Licensee’s timely payment of all fees invoiced by AINS.

Term, Termination, Duration

AINS’ obligations under this SLA shall terminate immediately upon: (a) termination of Licensee’s Software License Agreement; and/or (b) termination or temporary suspension of Licensee’s authorized use of or access to the Hosted Software, for any reason whatsoever.

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, AINS shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Service Credits/Remedies

AINS provides the following service credit program:

<table>
<thead>
<tr>
<th>Monthly Availability</th>
<th>Service Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%-99.9%</td>
<td>Customer credits AINS one (1) day service cost</td>
</tr>
<tr>
<td>99.9% to 99.5%</td>
<td>No service credits</td>
</tr>
<tr>
<td>Below 99.5%</td>
<td>AINS credits Customer for (Number of downtime hours - 3.6 hours) * one (1) day service cost</td>
</tr>
</tbody>
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Service credit shall be limited to a maximum of one (1) month of cloud service costs in a monthly reporting period. Customers are required to submit a service credit request to AINS within ten (10) days from the date the Customer receives the Monthly Report. Service credits are accrued for Customer and AINS through the life of the contract.

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made between AINS, Inc. ("Company"), a Maryland corporation having its principal place of business at 806 W. Diamond Ave., Suite 400, Gaithersburg, Maryland 20878, and you ("You" or "Licensee").

This Agreement and AINS’ provision of Services to Licensee is subject to the definitions, terms and conditions of Licensee’s Software License Agreement. Where this Agreement is silent or conflicts with the Software License Agreement, the Software License Agreement shall control.

Subject to the following terms and conditions, AINS agrees to provide the following Services to Licensee:

TERMS AND CONDITIONS

Services Licensee may purchase the following Services subject to AINS’ acceptance of a Purchase Order setting forth the agreed upon Services, terms, and prices:

Software Maintenance as a Product. Software Maintenance as a Product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the Software. Except as otherwise set forth herein, Software Maintenance as a Product does not include person-to-person communications or use of the AINS Help Desk.

Software Maintenance as a Service. Software Maintenance as a Service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems. Software Maintenance as a Service also provides the Licensee with assistance installing the Software. Software Maintenance as a Service includes person-to-person communications and use of the AINS Help Desk.

Installation Assistance. Software Maintenance as a Product and Software Maintenance as a Service both include five (5) unique technical support incidents per maintenance period in support of new major or minor release implementation. Software updates/enhancements and Software bug/defect fixes only. Each call includes up to two hours of support time. Multiple calls can be used for a single incident or case that exceeds two hours. Supplemental Maintenance or Support Services are required for further support.
2. **Exclusions and Reservations**

2.1 AINS shall have no obligation to, but may in its sole discretion, provide Services to Licensee regarding the following: a) Restricted Releases of the Software; b) Any version of the Software older than the latest version made available to Licensee and the immediately preceding release, including any patches and bug fixes; c) Hardware issues; d) Issues relating to any third party software or services; e) Issues caused solely by Licensee; f) Issues relating to the Software caused in whole or in part by Licensee's breach of this Agreement and/or the Software License Agreement, including, but not limited to, unauthorized use and/or modifications of the Software; g) Issues resulting from Licensee’s failure, negligent or otherwise, to implement all upgrades, updates, improvements or modifications to the Software within sixty (60) days of release by AINS or as may otherwise be directed; h) Software that is altered, damaged, or modified, including any modification, adjustment, change, “tuning,” “optimization,” application programming interfaces (APIs), interfaces with any other software, or any other action that in any way alters the precise structure and/or function of the database or application files as originally delivered; and/or i) Software installed in an operating environment for which the Software has not been licensed.

2.2 AINS shall have no obligation to provide Services to Licensee in excess of any Purchase Order accepted by AINS.

2.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, AINS shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

2.4 Gaps in Maintenance Services coverage are not allowed and may impair the proper functioning of the Software and AINS’ ability to provide Services. In the event of a gap in coverage, Licensee shall pay standard rates for all gap periods before they may repurchase Maintenance Services. AINS shall not be liable for any damages or issues that arise with or from the Software after the termination or expiration of this Agreement and/or during any gap in coverage.

2.5 Services shall be provided to Licensee in any form deemed appropriate by AINS.

2.6 AINS shall have no obligation to provide Services to Licensee in excess of any Purchase Order accepted by AINS.

3. **Licensee Obligations**

As a condition for receiving Services under this Agreement, Licensee agrees to:

3.1. Abide by the terms and conditions of this Agreement, the Software License Agreement, and any and all other agreements with AINS;

3.2. Promptly notify AINS of the discovery or any bugs, errors, or other Software defects;

3.3. Maintain, and make available to AINS upon request, a representative data set (“Testing Data”) so that AINS may conduct testing and maintenance of the Software in a controlled environment to ensure its continued performance. Licensee may make such alterations to the Testing Data as it deems necessary to protect Confidential Information, so long as such alterations do not affect AINS' ability to test and maintain the Software. Licensee retains all rights to the ownership of such data, and AINS agrees to return and/or destroy (at Licensee's written request) any Testing Data at the conclusion of AINS' testing;

3.4. Maintain, and make available to AINS upon request, records of any bugs and/or errors, including output, screen shots, and the operating conditions under which the error was discovered or could be reproduced;

3.5. As necessary in AINS' discretion, provide, or provide access to: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from its employees and agents, coordination of onsite, online, and telephonic meetings, and other resources as reasonably necessary for the satisfactory and timely performance of Services. AINS is not liable for any delays or claims of any nature which result, directly or indirectly, from the failure by Licensee to comply with AINS’ reasonable requests; and

3.6. Refrain from soliciting AINS’s employees. During the term of this Agreement and for a period of one (1) year after termination, for any reason, of this Agreement, Licensee shall not directly solicit or divert, or attempt to solicit or divert, any of Company’s employees who are performing Services under this Agreement, for purposes of hiring or offering to that employee employment or compensation for services or information in any form.

4. **Term and Termination**

4.1. The term of Services shall be as set forth in a Purchase Order.

4.2. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, AINS shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

4.3. This Agreement shall immediately terminate upon termination of the Software License Agreement and/or Licensee’s right to use the Software for any reason, whatsoever, and AINS’ obligations hereunder shall terminate. All other terms and conditions shall survive termination.

5. **Confidentiality, Ownership, and Proprietary Information**
This Agreement is subject to the terms and conditions regarding confidential information, ownership, and proprietary information set forth in the parties’ Software License Agreement. AINS recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

6. **Warranties and Limitations on Liability**

6.1 AINS warrants that the Services will be provided in a competent and professional manner in accordance with industry standards. Licensee agrees that AINS has not warranted preserving or recovering any data or other information contained in Licensee’s computer systems.

6.2 Licensee warrants and represents that any Licensee representative communicating directly with AINS with respect to the Services shall have sufficient authority and knowledge to assist in investigating, diagnosing, and fixing any technical issues, and will have full knowledge and understanding of Licensee’s obligations under this Agreement and the Software License Agreement.

6.3 **ALL SERVICES HEREUNDER ARE PROVIDED “AS IS” AND ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE AND/OR USE OF TRADE.**

6.4 COMPANY’S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO COMPANY FOR SERVICES IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT, PROVIDED THAT IN NO EVENT SHALL COMPANY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY LICENSEE HEREUNDER.

6.5 **IN NO EVENT SHALL COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, OR FOR EXEMPLARY DAMAGES RESULTING FROM LICENSEE’S USE OR INABILITY TO USE THE SOFTWARE OR FROM ANY SUPPORT SERVICES RENDERED WITH RESPECT THERETO, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6.6 The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Company’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7. **Independent Contractor**

All work performed by Company in connection with this Agreement shall be performed by Company as an independent contractor and not as the agent or employee of Licensee. All persons furnished by Company shall be for all purposes solely the Company’s employees or agents and shall not be deemed to be employees of Licensee for any purpose whatsoever. Company shall furnish, employ, and have exclusive control of all persons to be engaged in performing maintenance services under this Agreement and shall prescribe and control the means and methods of performing such maintenance services by providing adequate and proper supervision. Company shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages, and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from such persons when required by law.

**LICENSEE:** __________________________ 

______________________________

Signature

______________________________

Authorized Representative

______________________________

Date

**AINS, INC.**

______________________________

Signature

______________________________

Authorized Representative

______________________________

Date
SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") is made between AINS, Inc. ("Company"), a Maryland corporation having its principal place of business at 806 W. Diamond Ave., Suite 400, Gaithersburg, Maryland 20878, and you ("You" or "Licensee").

THIS IS A CONTRACT. By signing this Agreement, You accept all the terms and conditions of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity and its affiliates to these terms and conditions (in which case "You" and "Your" shall refer to such entity and its affiliates). If You do not have such authority, and/or if You do not agree to abide by the terms and conditions of this Agreement, You must not sign this Agreement and may not use the Software.

You may not access the Software if you are a direct competitor of Company, except with Company’s prior written consent. In addition, You may not access the Software for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive process.

The terms of this Agreement apply to the Software (including the media on which You received it, if any), and any Company updates, supplements, Internet-based services, and services for the Software, unless other terms accompany those items in which case those terms shall apply.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are mutually acknowledged by each party, the parties agree to the following:

TERMS AND CONDITIONS

Definitions

"Additional User" shall mean Licensee’s customer, vendor, agent, subcontractor, or consultant authorized to use the Software pursuant to a Licensee Third Party Contract.

"Agreement" shall mean this Software License Agreement, and any duly executed Purchase Orders, addenda and/or modifications attached hereto or referenced herein. "Agreement" shall also include any Services Agreement(s) between Company and Licensee that are subject to this Software License Agreement, where such Services Agreement is silent as to the term and/or condition set forth in this Agreement, including, but not limited to, those relating to ownership, confidentiality, proprietary information, limitations of liability, warranties, and remedies. "Agreement" shall also include the underlying GSA Schedule contract and Schedule Pricelist.

"Company Licensors" shall mean third parties from whom Company has licensed Software.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of an entity through the ownership of voting securities (at least fifty-one percent (51%) of its voting or equity securities or the maximum allowed by law), contract, voting trust, or otherwise.

"CPU" shall mean a processing unit utilized in Server or computer configurations.

"Developments" shall mean any ideas, know-how, or techniques (including any derivative works and modifications made to the Software or Documentation), which are developed by Company in the course of providing Services to Licensee.

"Documentation" shall mean the user manuals, policies, and guidelines relating to the use of the Software delivered by Company to Licensee in printed or electronic form.

"Licensee" shall mean the entity defined above, and shall include any affiliated entity which Controls, is Controlled by, or is under common Control with Licensee, provided all such entities ordering, installing, or using Software licensed under this Agreement have agreed to be bound by the terms and conditions of this Agreement.

"Licensee Third Party Contract" shall mean a validly executed contract between Licensee and an Additional User permitting the Additional User to use the Software.

"Platform Transfer" shall mean an operating environment supported by Company, which is different than the operating environment for which Software was originally licensed.

"Purchase Order" shall mean a valid purchase order between Company and Licensee describing the Software and/or Services purchased by Licensee, and any additional terms and conditions applicable thereto.

"Restricted Release" shall mean any version of the Software marked alpha, beta, or which is otherwise designated as a restricted release.

"SaaS" shall mean Company-hosted Software as a Service.

"Seat" shall mean a user designated by Licensee who is authorized to use the applicable Software licensed hereunder.

"Server" shall mean a device which includes one or more CPUs and enables or permits other computers electronically-linked to it to access data and software.

"Services" shall mean professional services provided by Company, including Software Maintenance as a Product, Software Maintenance as a Service, and Support Services.

“Software” shall mean a machine executable copy of the object code of the software products and applications licensed by Company to Licensee under this Agreement, including all third-party software under license embedded therein, updates, bug fixes and patches.

“User” shall mean any person having authorized access to the application, regardless of skill level, nature of use, or position/job title (e.g., system administrator), to include both routine use and software/system administration.

License

Subject to the terms and conditions of this Agreement and Company’s acceptance of a Purchase Order, Company grants Licensee a limited, personal, non-exclusive, and non-transferable license to use the Software. All Software-related materials, in whatever form, including, but not limited to Documentation, instructions, programs, charts, manuals, and code are also furnished to Licensee only under a personal non-exclusive, nontransferable license.

The Software and Documentation and all licensed materials may only be used in accordance with the appropriate policies and procedures, as defined in the Documentation (including but not limited to the installation, system, and user manuals), and applicable laws and government regulations. Licensee may use the Software, Documentation and other licensed materials solely for Licensee’s internal purposes.

The license granted hereunder is limited to the maximum number of Seats, Users, Servers, or CPUs specified in the Purchase Order (“Maximum Usage”). Licensee shall implement reasonable controls to ensure that it does not exceed the Maximum Usage. Company reserves the right to include and employ means within the Software to limit and/or monitor Licensee to the Maximum Usage. Licensee shall at all times remain responsible for Users’ compliance with this Agreement.

Company reserves the right to audit, at its expense, Licensee’s deployment and use of the Software for compliance with the terms of this Agreement and in accordance with the Licensee’s security requirements at any mutually agreeable time during Licensee’s normal business hours, and subject to applicable Government security requirements. If Licensee’s use of the Software is found to be greater than contracted for, Licensee will be invoiced for the additional Seats, Users, Servers, or CPUs and the unpaid license fees shall be payable in accordance with FAR 52.212-4(i).

For on-premises installation, Company shall provide Licensee with one (1) machine executable copy of the Software and Documentation. Licensee may make a backup copy of the Software and copies of the Documentation solely for Licensee’s internal use. Licensee must be a current Services subscriber to receive a new machine executable copy of the Software in the event one is required by a Platform Transfer by Licensee.

Unless otherwise agreed-to in advance, the use of Application Programming Interfaces (“APIs”), macros, and/or user interfaces not supported by Company that interfere with the Software and/or its data in any respect shall be deemed an unauthorized modification of the Software and are prohibited by this Agreement.

Licensee shall not permit an Additional User to use the Software without authorization from Company. Licensee, when authorized to permit such use, may do so either by allocating a portion or all of Licensee’s current license to the Additional User(s) up to the Maximum Usage, or by purchasing additional licenses, provided:

prior to any such use an Additional User shall have agreed in writing to be bound by the terms and conditions of this Agreement regarding confidentiality and use of the Software;

an Additional User is not charged a fee for such access, provided, however, that use of the Software may be a component of chargeable services rendered by Company;

an Additional User is not granted rights to use Software except as expressly set forth in this Section 2.8;

an Additional User’s use of the Software is related solely to Licensee’s internal purposes; and

upon conclusion of a Licensee Third Party Contract, any Software in the possession of an Additional User (including partial copies within modified versions) is returned to Licensee.

3. License Exclusions

3.1. Except as expressly authorized herein, Licensee shall not cause or permit any:
unauthorized access to or use of the Software;
copying or modification of the Software or Documentation;
reverse engineering, recompilation, translation, disassembly, or discovery of the source code of all or any portion of the Software;
removal, minimization, blocking, or modification of or to any logos, trademarks, copyright notices, proprietary information notices, digital watermarks, or other notices of Company or its suppliers that are affixed to or included in the Software or Documentation;
use of the Software for any illegal purpose or any purpose deemed by Company in its sole discretion to be offensive or otherwise harmful;
distribution, disclosure, marketing, rental, lending, leasing, sale, resale, or transfer of the Software or the Documentation to any third party or Company competitor, or use of the Software for any dial-up, remote access, interactive, or other on-line service except as specifically provided and licensed as an integral part of the Software;
disclosure of the results of Software performance benchmarks to any third party without Company’s prior written consent; or
export of the Software in violation of UN embargoes or US laws and regulations, including the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

4. Purchasing, Fees and Payment

Licensee shall provide Company with a Purchase Order detailing the Software to be licensed, including:
The number of Seats, Users, Servers, or CPUs to be licensed, and the Maximum Usage;
The cost per Seat, User, Server or CPU to be licensed; and
Whether the Software will be licensed on a SaaS basis or installed on-premises.

Company shall invoice Licensee accordingly within thirty (30) days. Licensee shall pay all fees when and as specified therein, but in any event no later than thirty (30) days after the date of invoice.

Company shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Licensee is responsible for providing complete and accurate billing and contact information to Company and promptly notifying Company of any changes to such information.

5. Proprietary Rights, Trademarks, and Publicity

5.1. This Agreement is not a sale and does not convey to Licensee any rights of ownership in or to the Software or Documentation.

5.2. Company (or its licensors, as applicable) shall retain all right, title, and interest in and to the Software and Documentation and any copies thereof, including any copies, suggestions, ideas, enhancement requests, feedback, recommendations, translations, modifications, adaptations, derivations, or other information provided by Licensee or any other party related to the Software and the provision of Services, including any improvement or development thereof. Licensee acknowledges and agrees that such ideas, enhancements, or other information or improvements provided to Licensee in connection with this Agreement and/or any Services Agreement(s) shall be owned exclusively by Company, and that any such improvements, developments, or other works provided by Company are not “works made for hire” under applicable copyright laws. Licensee agrees to assign any such claim of ownership, title, or other interest to Company upon Company’s request; however, Licensee may receive the right to utilize improvements or developments funded by the Licensee at no additional cost, commensurate with the then current term of the Software License Agreement and/or Services Agreement.

5.3. Except as otherwise expressly granted in this Agreement, no license, right, or interest in or to any Company trademark, copyright, trade name, or service mark is granted hereunder. The Company name and logo and the product names associated with the Software are trademarks of Company or third parties, and no right or license is granted to use them.

5.4. All rights not expressly granted to Licensee hereunder are reserved by Company and its licensors.

5.5. Licensee shall not remove any copyright and/or proprietary information or confidentiality notices as were affixed to the original Software or Documentation.

5.6. Licensee shall not use AINS’ name, logo or other identifying information in any marketing, advertising or other publication without AINS’ express written approval. AINS may advertise Licensee’s use of its Software and/or Services to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71- RESTRICTION IN ADVERTISING.

6. Defense and Indemnification

6.1. Company will defend Licensee at its own expense any action against Licensee that the Software directly infringes any U.S. copyright or misappropriates any trade secret recognized as such under the Uniform Trade Secret Law, and Company will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action, provided that:

Licensee notifies Company in writing within thirty (30) days of the claim;

To the extent allowed by 28 U.S.C. 516, Company has control of the defense and all related settlement negotiations; and

Licensee provides Company with the assistance, information, and authority necessary to perform the above. Reasonable expenses incurred by Licensee in providing such assistance may be reimbursed by Company.

6.2. 

6.3. Company shall have no defense or indemnification obligation or other liability for any claim of infringement based on:

Any use of the Software not in accordance with this Agreement or for purposes not intended by Company;

Use of a superseded or modified release of the Software, except for such alteration(s) or modification(s) which have been made by Company or under Company’s direction, if such infringement would have been avoided by the use of a current unaltered release of the Software that Company provided or would have provided to Licensee at no additional charge beyond applicable service fees; and/or

The combination, operation, or use of any Software furnished under this Agreement with programs, data, products or hardware not furnished by Company, if such infringement would have been avoided by the use of the Software without such items.

6.4. In the event the Software becomes, or is likely to become, the subject of an infringement or misappropriation claim, Company shall have the option, at its expense, to:

modify the Software to be non-infringing;

obtain for Licensee a license to continue using the Software;

substitute the Software with other software reasonably suitable to Licensee; or

if, in Company’s opinion, none of the foregoing remedies are commercially feasible or practicable, terminate the license for the infringing Software and refund any prepaid license fees covering the remainder of the license term for that Software after the effective date of termination.
7. Warranties

7.1. Licensee warrants that it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement constitutes a valid and binding obligation of the Licensee, enforceable against Licensee in accordance with its terms.

7.2. Company warrants that it has title to and/or the authority to grant licenses of the Software.

7.3. For SaaS Licensees, the Company will substantially perform, in accordance with AINS’ then-current Service Level Agreement, the functions described in the Documentation, when operated in accordance with Section 2.2.

7.4. The warranties in this Section shall not apply to Restricted Release(s).

7.5. The warranties in this Section shall be void as to a) the acts or omissions of non-Company personnel, b) misuse, theft, vandalism, fire, water, or other peril, c) moving or relocation not authorized by Company, d) any alterations or modifications made to any Software by Licensee, e) use of the Software other than in the operating environment specified in the technical specifications, or f) coding, information, or specifications created or provided by Licensee.

7.6. Company does not warrant that the Software will meet Licensee’s requirements, or that the Software will operate in the combinations which Licensee may select for use, or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Any claim submitted under this Section must be submitted in writing to Company within the specified warranty period. Company’s sole and exclusive obligation for warranty claims shall be to make the Software operate as warranted or to terminate the license for such Software and return the applicable license fees paid to Company for such Software, provided the claim is submitted within the specified warranty period.

7.7. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.8. UCITA. With respect to licensing and use of the Software in jurisdictions subject to the Uniform Computer Information Transactions Act (“UCITA”), Company and Licensee agree that, with respect to information and computer programs provided by one party to the other under this Agreement, and except for the express warranties set forth in this Agreement: THERE ARE NO WARRANTIES A) AGAINST INTERFERENCE WITH ENJOYMENT OF INFORMATION, B) AGAINST INFRINGEMENT, C) THAT INFORMATION, EITHER PARTY’S EFFORTS, OR SYSTEMS, AS EACH MAY BE PROVIDED UNDER THIS AGREEMENT, WILL FULLFILL ANY OF EITHER PARTY’S PARTICULAR PURPOSES OR NEEDS, AND D) WITH RESPECT TO DEFECTS IN THE INFORMATION OR SOFTWARE THAT AN EXAMINATION SHOULD HAVE REASONABLY REVEALED, THE PARTIES HEREBY EACH DISCLAIM IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AND ACCURACY. THE INFORMATION AND COMPUTER PROGRAMS PROVIDED UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE USER OF SUCH INFORMATION AND COMPUTER PROGRAMS.

8. Limitations and Disclaimers of Liability

LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, COMPANY’S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY LICENSEE TO COMPANY FOR THE SOFTWARE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER THIS AGREEMENT, PROVIDED THAT IN NO EVENT SHALL COMPANY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY LICENSEE TO COMPANY HEREUNDER.

DISCLAIMER OF LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE FOR A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS, DAMAGED HARDWARE OR EQUIPMENT, AND CLAIMS BY ANY THIRD PARTIES, OR FOR EXEMPLARY DAMAGES, ARISING FROM, RELATING TO, OR RESULTING FROM THIS AGREEMENT, LICENSEE’S USE OF OR INABILITY TO USE THE SOFTWARE, OR ANY SUPPORT SERVICES RENDERED WITH RESPECT THERETO, HOWEVER ARISING, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY COMPANY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND COMPANY’S LEGAL CONTROL, AND/OR C) CLAIMS MADE SUBJECT OF A LEGAL PROCEEDING AGAINST COMPANY MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

This Section 8 shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

9. Confidentiality

9.1. “Confidential Information” is defined as any and all information that the disclosing Party considers to be confidential, proprietary, non-public business information or a trade secret, in any form whatsoever, including, but not limited to, discoveries, concepts and ideas, regarding: (i) Product or service information, including designs and specifications, development plans, patent applications, and strategy; (ii) Marketing information, including lists of potential or existing customers or suppliers, marketing plans, and surveys; (iii) Computer software, including codes, flowcharts, algorithms, architectures, menu layouts, routines, report formats, data compilers, and assemblers; (iv) Financial information, including sales, and revenue information; and (v) Any other information identified as Confidential by either Party.
9.2. “Confidential Information” does not include any information that: (i) is in the public domain at the time of disclosure without any breach of this agreement by the receiving Party; (ii) is already known to the receiving Party at the time of disclosure without any breach of this agreement by the receiving Party; or (iii) becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party which the receiving Party has no reasonable basis to believe is prohibited from disclosing such information to the receiving Party. Company recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

9.3. The receiving Party shall be responsible as set forth herein for all Confidential Information: (a) Identified in writing at the time of the disclosure by an appropriate legend, marking, stamp or other positive written identification; (b) Identified as confidential to the receiving Party orally at the time of disclosure and in writing within ten (10) business days after such disclosure; (c) Identified as confidential or proprietary in writing at any time regardless of oral notice (however, in this instance, the receiving Party shall not be liable for disclosures of confidential information prior to receiving such notice, except as set forth in the following subsection (d)); or (d) Apparent to a reasonable person familiar with the disclosing Party’s business and the industry in which it operates that such information is of a confidential or proprietary nature.

9.4. Duty of Care. Each Party agrees that it will treat the disclosing Party’s Confidential Information with at least the same degree of care that it uses in protecting its own confidential and proprietary information, but in no event less than a reasonable degree of care.

9.5. Use of Confidential Information. Each Party agrees that Confidential Information disclosed to it shall be used solely in furtherance of this agreement, any other agreements between or amongst the Parties, and in the best interests of the disclosing Party. Confidential Information shall not be used by the receiving Party to invent, create, modify, adopt, or manufacture any hardware or software or other products, services, or processes that would or could compete with or be used in lieu of the disclosing Party’s hardware or software or other products, services, or processes. The receiving Party shall not copy or reproduce, in whole or in part, any Confidential Information without written consent of the disclosing Party.

9.6. Disclosure of Confidential Information. Each Party agrees that it will not disclose any Confidential Information to any individuals, including employees, except on a need-to-know basis as is necessary for performance under this agreement and any other agreement between the Parties. Each Party agrees that it will not disclose any Confidential Information to any third parties without the express written consent of the disclosing Party. Each Party agrees to advise any individual and/or entity receiving Confidential Information of the limitations on its use and disclosure set forth herein, and to require such individual and/or entity to execute a confidentiality and non-disclosure agreement at least as restrictive as this agreement. The receiving Party shall ensure that all disclosures to its employees or to third parties hereunder are marked with appropriate legends, as required or permitted under Government regulations, in order to preserve the proprietary nature of the information and the initial disclosing Party’s rights therein. The receiving Party shall be responsible for any unauthorized use and disclosure of Confidential Information by any individual or entity to whom the receiving Party provides the disclosing Party’s Confidential Information, as if committed by the receiving Party.

9.7. Compelled Disclosures. The receiving Party may disclose Confidential Information as required by any law, regulation, court order, subpoena, or other administrative or legal process, provided that: (i) Upon becoming aware of such an actual or potential obligation, the receiving Party immediately notifies the disclosing Party of the same; (ii) The receiving Party fully cooperates with any efforts by the disclosing Party to protect against any such disclosure and/or obtain a protective order preventing or narrowing the scope of such disclosure; (iii) The receiving Party limits any compelled disclosure of Confidential Information to the minimum extent necessary to comply with such obligations; and (iv) The receiving Party utilizes statutory sealing and other privacy measures to the fullest extent to protect the Confidential Information. This exception does not apply to, and the receiving Party remains fully liable for, any disclosure of Confidential Information caused in whole or in part by the receiving Party’s unauthorized conduct.

9.8. Unauthorized Disclosures. The receiving Party shall promptly notify the disclosing Party of any unauthorized use or disclosure of Confidential Information, and cooperate with and assist the disclosing Party in taking any and all lawful actions deemed necessary by the disclosing Party to stop and/or minimize any actual or perceived harm resulting from such unauthorized use or disclosure.

9.9. Upon written request by the disclosing Party, the receiving Party shall promptly: (a) Cease and desist from any use or disclosure of the disclosing Party’s Confidential Information; (b) Return any of the disclosing Party’s Confidential Information in its possession or under its control to the disclosing Party; and (c) Upon the disclosing Party’s express direction, destroy any of the disclosing Party’s Confidential Information in its possession or under its control and certify its destruction in a manner agreeable to the disclosing Party.

9.10. The Parties’ obligations set forth in this Section shall remain binding upon the Parties for five (5) years following the termination of this Agreement for any reason.

9.11. LIMITATION OF LIABILITY. IN THE EVENT OF ANY ACTUAL OR THREATENED BREACH OF THIS SECTION, THE BREACHING PARTY MAY BE LIABLE FOR DIRECT DAMAGES SUFFERED BY THE OTHER PARTY WHICH ARE CAUSED BY SUCH BREACH. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE IN THE ABSENCE OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY THE BREACHING PARTY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

10. Maintenance and Support Services

10.1. Maintenance and Support Services may be ordered by Licensee by Purchase Order and will be provided subject to the terms and conditions of this Agreement and a separate Services Agreement.

10.2. Maintenance Services as a Product as defined in the Services Agreement are included in the cost of a SaaS License.


11.1. Company conducts ongoing security assessments in connection with its SaaS and hosted offerings, and maintains a secure, FEDRAMP, FISMA, and FIPS, compliant, datacenter at its headquarters in Gaithersburg, Maryland.
11.2. Company hosted data is backed up incrementally on a daily basis and a full back up is performed weekly. Backups are stored locally in redundant hard disk NAS storages. Backup data is also replicated to a DR (remote) site every two (2) hours. In addition to these routine back up procedures, backups are performed before and after any major technical or business related change to a system or application. Company maintains an audit trail of all backup activities. The restoration processes from local and remote sites are simulated every six (6) months to test for quality.

12. Restricted Release

12.1. If Licensee is selected for participation and elects to participate in a Restricted Release program, Licensee agrees: Company shall have no obligation to correct errors in, deliver updates to, or otherwise support a Restricted Release;

Licensee will promptly report to Company any error discovered in the Restricted Release and provide Company with appropriate test data for the Restricted Release if necessary to resolve problems in the Restricted Release encountered by Licensee;

the Restricted Release is for evaluation only, not to be used in a production environment, may contain problems and/or errors, and is being provided to Licensee on an as-is basis with no warranty of any kind, express or implied;

neither party will be responsible or liable to the other for any losses, claims, or damages of any nature, arising out of or in connection with the Restricted Release.

13. Notices

All notices shall be in writing and (a)(1) delivered by hand, (a)(2) sent by Untied States mail or commercial courier, return receipt requested, and (b) transmitted electronically. Notice to Licensee shall be sent to the last Licensee address known to Company, or as otherwise directed by Licensee upon ten (10) days’ written notice. Unless otherwise directed in writing, notices to Company shall be sent to:

AINS, Inc.
806 W. Diamond Ave., Suite 400
Gaithersburg, MD 20878 USA
ATTN: Benjamin Leftin, Esq., General Counsel bleftin@ains.com

Notice shall be deemed to have been given upon receipt of a hard copy notice.

14. Governing Law

The validity, enforceability, construction, and interpretation of this Agreement shall be governed by the Federal laws of the United States, without regard to the conflicts of law rules thereof. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. To the extent this Agreement or entails the delivery of Software or related products or Services, such items shall be deemed “goods” within the meaning of Article 2 of the Uniform Commercial Code (“UCC”), except when deeming services as “goods” would cause an unreasonable result. This Agreement shall control where there is a conflict with the UCC.

15. Term and Termination

15.1. This Agreement shall become effective upon the execution of this document in writing.

15.2. This Agreement shall automatically terminate upon expiration of the license term set forth in any accepted Purchase Order.

15.3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, [vendor] shall proceed diligently with decision of the Contracting Officer.

15.4. Licensee may terminate this Agreement for any reason upon ninety (90) days written notice.

15.5. Except with regard to perpetual on-premises Software licenses, Licensee’s lawful right to use and access the Software as set forth herein shall immediately terminate upon termination of this Agreement. All other terms and conditions shall survive termination for any reason.

15.6. Upon termination for any reason, Licensee shall remain liable to AINS for all fees accrued and/or payable to Company prior to the effective date of termination, including the outstanding balance for the current license term. Licensee shall not be entitled to a refund of any license fees in the event of termination of this Agreement for any reason.

15.7. Licensee acknowledges and agrees that following termination of this Agreement for any reason, Licensee shall return all AINS property to AINS and AINS may immediately deactivate Licensee’s account, as applicable. Furthermore, as applicable, unless otherwise agreed-upon by the Parties in writing, Licensee shall remove or overwrite all applicable Licensee content, data, and information from Licensee’s systems following the effective date of termination or cancellation, in accordance with Licensee’s standard procedures. As necessary, Licensee shall provide Company with reasonable and prompt access to Licensee’s premises to allow Company to retrieve the hardware and software and/or, in accordance with Company’s instructions, return to Company all hardware and software that Company has provided to Licensee in connection with this Agreement (other than hardware and software that Licensee has purchased from Company). Prior to any such deletion or destruction, however, Company shall either a) grant Licensee reasonable access to the Software for the sole purpose of Licensee retrieving Licensee’s data, or b) transfer all Licensee data to other media for delivery to Licensee.

16. General

16.1. For purchases by agencies and representatives of the U.S. Government, the Software is a “commercial item”, as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of “commercial computer software” and “commercial computer software documentation”, as such terms are used in 48 C.F.R. 12.212 (Sept 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government end users acquire the Software with only those rights set forth herein.
16.2. For purchases made against Company’s General Services Administration (GSA) Schedule, the terms and conditions of Company’s GSA Schedule or Purchase Order(s) shall control in the event of a conflict between such terms and conditions and those contained herein (Company’s GSA Schedule is available at https://www.gsaadvantage.gov/ref_text/GS35F4747G/0OQCDU.37HKQI_GS35F4747G_GS-35F-4747G-4-21-2015-275778.PDF).

16.3. Any use of the Software and/or Services by or on behalf of the U.S. Government is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-14, as applicable.

16.4. Company shall not be precluded from providing any products or services to any other individual or entity, including Licensee’s competitor(s), even those that may be the same or similar as set forth herein or in any other agreements between Company and Licensee. Company shall not be restricted in its use of ideas, concepts, know-how, methodologies, and techniques acquired or learned in the course of activities hereunder.

16.5. Escrow. Subject to applicable terms and conditions, Licensee may purchase the right to join Company’s existing source code escrow Agreement as a licensed beneficiary.

16.6. Company and Licensee agree that, in their dealings with each other under or in connection with this Agreement, each shall act in good faith.

16.7. The parties acknowledge that the Software may include software licensed by Company from third-party Company Licensors. Company Licensors may be direct and intended third-party beneficiaries of this Agreement and may be entitled to enforce it directly against Licensee to the extent that this Agreement relates to the licensing of Company Licensor’s software products, and Company fails to enforce the terms of this Agreement on Company Licensor’s behalf.

16.8. The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

16.9. Force Majeure. Except for monetary obligations hereunder, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any such event causes a material breach of this Agreement that is not cured within sixty (60) days, the parties shall mutually agree to in writing to a reasonable suspension and/or termination of this Agreement.

16.10. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitute the entire Agreement between the parties concerning Licensee’s use of the Software. No Purchase Order, other ordering document, or any handwritten or typewritten text which purports to modify or supplement the text of this Agreement shall add to or vary the terms of this Agreement unless signed by both parties. Further, in the event of conflict between this Agreement and the terms of the Purchase Order, the terms of the Purchase Order shall govern. This Agreement replaces and supersedes all prior verbal understandings, written communications, warranties or representations regarding the contents of this Agreement and Licensee represents and acknowledges that it in entering into this Agreement it is not relying upon any representations or warranties other than those set forth herein.

16.11. Each provision of this Agreement is severable. If any provision or any portion of any provision of this Agreement is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, all other provisions shall remain in full force and effect. Any provision or any portion of any provision of this Agreement that is held to be unenforceable shall be modified only to the extent necessary so that it shall be legally enforceable to the fullest extent permitted by law, and in such a way that is consistent with the intent and economic effect of the affected provision.

16.12. This agreement does not establish a teaming, joint venture, joint employer, partnership or other business relationship between the Parties. Unless explicitly stated, nothing in this agreement grants to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

16.13. Each Party hereby covenants and warrants that it is not aware of any potential or actual conflict of interest or other legal or contractual obligation that would in any way interfere with its ability to perform and uphold its obligations under this agreement.

16.14. Except as otherwise expressly provided in this Agreement, no waiver of any covenant, condition, or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants, or conditions of this Agreement or to exercise any option set forth in this Agreement shall not be construed as a waiver or relinquishment for the future of any such provisions, covenants, or conditions. No waiver by Company of one breach of this Agreement shall be construed as or deemed to be a waiver with respect to any other subsequent breach.

16.15. This Agreement and all of the terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16.16. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

16.17. The parties agree that facsimile and/or electronic copies of this Agreement and/or signatures shall be binding to the same extent and in the same manner as if originally signed and transmitted by hand.

WHEREFORE, the undersigned having the power and authority to bind their respective Party as set forth above, AINS and Licensee agree to be so bound.

LICENSEE: _____________________              COMPANY: AINS, Inc.

Signature ___________________________     Signature ___________________________

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

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

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

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

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

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

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

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

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

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

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

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

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.219-1 and FAR 52.219-3.

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

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

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

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

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

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

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

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

ATTACHMENT A

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**ALLIED TELECOM GROUP, LLC**

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

**Service Delivery & Acceptance.** Prior to delivering Service to Ordering Activity, Contractor through ALLIED will perform test procedures to ensure that the Service conforms to the applicable technical specifications. Contractor through ALLIED shall notify Ordering Activity when the Service has been successfully installed and is available for Ordering Activity’s use (“In-Service Date”). If ALLIED makes the Service available to the Ordering Activity, but, Ordering Activity for whatever reason is not ready to accept and use the Service, billing for the installed Service shall nonetheless commence on the In-Service Date. This applies to circumstances including, but not limited to, if Ordering Activity does not have its own equipment in place to begin using the Service. Any use of a
Service, other than for verification and acceptance testing, shall constitute immediate acceptance of the Service without the formality of executing an Acceptance Notice.

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

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

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

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

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

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

Equipment

Equipment used in data services, including internet services, is defined as Data Equipment. Unless otherwise specified in writing, all Data Equipment supplied to Ordering Activity by ALLIED remains the property of ALLIED. Upon discontinuance or termination of Services, all Data Equipment must be returned to ALLIED within ten (10) days of the final day of Service to avoid replacement cost at current market price. Voice over Internet Protocol (VoIP) refers to a technology that enables the use of the internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology. Equipment used in VoIP, including but not limited to any and all end user devices and equipment, is defined as Phone Equipment. Faulty and/or defective Phone Equipment may be returned within thirty (30) days from the purchase or ship date. Returned Phone Equipment may not be deemed as returnable if a determination has been made by ALLIED that the equipment is ineligible for return (e.g., physical damage, not in substantially the same condition as when it was delivered and received). In addition, if this SA is terminated for any reason, such termination is Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.) Customer’s termination liability shall include any amounts due on the Phone Equipment which remains due to ALLIED. For equipment on an amortized payment plan, ALLIED reserves the right to include in the termination liability a processing fee.

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

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

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

AppGate Master Agreement

This AppGate Master Agreement (this "MA") is the standard Master Agreement used by Immunity Federal Services, LLC d/b/a AppGate Federal for the Products and Services covered hereunder which EC America, Inc. has adopted for purposes of the resale of such Products and Services to the Ordering Activity issuing an order under the GSA Schedule contract ("Ordering Activity" or "Customer"). All references to Immunity Federal Services, LLC d/b/a AppGate Federal or AppGate herein (other than the references in the immediately following sentence) shall be deemed references to EC America, Inc. For avoidance of doubt, nothing herein shall establish privity of contract between AppGate and the Ordering Activity. This MA is entered into by and between Immunity Federal Services, LLC d/b/a AppGate Federal ("AppGate"), and Customer, and is effective on the Effective Date for this MA. This MA provides the general terms and conditions applicable to Customer's purchase of products and services ("Products" or "Services") under a schedule(s) or service schedule(s) (each, a "Schedule" or "Service Schedule").

Services; Service Schedules. The Schedule incorporated into this Master Agreement as Exhibit A shall set forth the terms and conditions relevant to, and the process for ordering, the Products and Services covered thereby.

Term; Termination.

Term of this MA. The term of this MA will commence on the Effective Date and continue until terminated in accordance with the terms hereof.

Termination Upon Expiration or Termination of all Services. The Agreement will automatically terminate following expiration or termination of the last effective Service being provided or to be provided under a Service Schedule.

Termination for Cause. Recourse for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Contract Disputes Clause, AppGate shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Reserved.

Confidentiality. Except as set forth in the Agreement, neither receiving party will, without the prior written consent of the disclosing party, disclose or use the Confidential Information of the disclosing party. Each receiving party will protect the disclosing party's Confidential Information using at least the same efforts the receiving party uses to protect its own confidential information of a similar nature, but in no event less than commercially reasonable efforts. Each receiving party agrees to limit disclosure and access to the disclosing party's Confidential Information to those of its officers, employees, contractors, attorneys or other representatives who (a) reasonably require such access in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement, (b) are made aware of the Confidential Information's confidential nature and (c) are subject to confidentiality obligations at least as restrictive as those set forth herein. Each receiving party agrees not to use the disclosing party's Confidential Information for any purpose other than in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement. Nothing in the Agreement shall be deemed or construed to grant to the receiving party a license to sell, develop, exploit or create derivatives of the disclosing party's Confidential Information. A receiving party may disclose the disclosing party's Confidential Information to the extent required to do so by applicable law, provided, that, (i) to the extent legally permissible, the receiving party notifies the disclosing party prior to making any such disclosure so as to enable the disclosing party to seek such protection as may be available to preserve the confidentiality of such Confidential Information and (ii) the receiving party discloses only such information as its counsel advises is legally required to be disclosed. Notwithstanding the obligations in this Section 5, neither receiving party's obligations under this Section 5 shall apply to information that (1) is at the time of disclosure by the disclosing party to the receiving party in the public domain or, at any time thereafter enters the public domain through no breach of this Section 5 by the receiving party, (2) is already known to the receiving party at the time of its disclosure by the disclosing party to the receiving party, (3) is independently developed by the receiving party without use of or reference to Confidential Information of the disclosing party, or (4) is received by the receiving party from a third party who is not known to the receiving party to be subject to any restriction on disclosure. Promptly following receipt of the disclosing party's written request, the receiving party shall return to the disclosing party or destroy (at the receiving party's option) all of the disclosing party's Confidential Information. Notwithstanding the foregoing, the receiving party shall have no obligation to return or destroy any of the disclosing party's Confidential Information retained in standard archival or computer back-up systems or pursuant to the receiving party's normal document or email retention practices, provided, that, the receiving party's obligations under this Section 5 with respect thereto shall survive for two (2) years following the date such Confidential Information is no longer retained pursuant to this sentence (but no less than two (2) years following expiration or termination of the Agreement). Each party's obligations under this Section 5 shall survive for two (2) years following expiration or termination of the Agreement, provided, that, to the extent any of the disclosing party's Confidential Information constitutes a trade secret, the receiving party's obligations under this Section 5 with respect thereto shall survive until such Confidential Information ceases to so constitute a trade secret (but no less than two (2) years following expiration or termination of the Agreement). The receiving party will be responsible for any violation of the terms of this Section 5 committed by its officers, employees, contractors, attorneys or other representatives. AppGate recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which, subject to applicable exemptions, requires that certain information be released, despite being characterized as "confidential" by the vendor.

Use of Name and Marks. Notwithstanding anything in this Section 6, in the event Customer is a U.S. Federal Government Agency, the following shall only be permissible to the extent permitted by GSAR 552.203-71. Each party may reference the other party's status as a customer or vendor, as applicable, of the referencing party in marketing materials, sales presentations, on such referencing party's website and for other valid business purposes. Each party may use the other party's tradenames and domain names in connection with the foregoing, provided, that, any use thereof by Customer shall be in accordance with AppGate's tradename/trademark usage policy, a copy of which is available to Customer upon request. Neither party may issue a press release referencing the other party, directly or indirectly, without such other party's prior written consent.
DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN THE APPLICABLE SERVICE SCHEDULE OR ADDENDUM, (A) ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IS SOLELY AT ITS OWN RISK, (B) APPGATE DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, COMPATABILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM, (C) APPGATE MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY PRODUCT OR SERVICE WILL BE COMPLETELY SECURE, FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF CUSTOMER, AND (D) APPGATE DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED.

NOTwithstanding anything in the Agreement, the Underlying GSA Schedule Contract or any Purchase Order to the contrary, Ordering Activity's Infringement or Misappropriation of AppGate's Intellectual Property Rights shall not be subject to any limitation of liability in the Agreement, the Underlying GSA Schedule Contract or any Purchase Order.

Third-Party IP Claims. In the event any Product (other than Hardware) becomes the subject of a third-party claim alleging that Customer's use of a Product (other than Hardware) infringes or misappropriates such third-party's intellectual property rights (each, a "Claim") (or AppGate believes such Claim appears possible) under this Section 9, AppGate may, at its sole discretion: (i) contest the Claim, (ii) obtain permission from the third-party claimant for Customer's continued use of such Product, (iii) replace or modify such Product to make it non-infringing, or (iv) if the foregoing subclauses (i) through (iii) are not commercially reasonable, then terminate Customer's use of such Product. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. § 2401. All software products are classified as "Commercial Computer Software" and "Commercial Computer Software Documentation" developed at private expense, contain confidential information and trade secrets of AppGate and its licensors, and are subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). AppGate provides the Products and Services, including any related documentation, technical data, and/or professional services, in accordance with 48 C.F.R. § 12.211 (Technical Data) and 12.212 (Computer Software), and only those rights in technical data and software customarily provided to the public as more fully set forth in the Agreement. In addition, 48 C.F.R. § 227.7202-3 (Rights in commercial computer software or commercial computer software documentation) apply to technical data and software acquired by Department of Defense agencies. Any U.S. Federal Government Agency shall obtain only those rights in technical data and software customarily provided to the public. If any U.S. Federal Government Agency has a need for rights not conveyed under the terms described in this Section 10, it must negotiate with AppGate to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. The terms of this Section 10 regarding U.S. Federal Government Agency rights are in lieu of, and supersede, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data being provided under the Agreement. Except as set forth in the applicable Service Schedule or Addendum, nothing in the Agreement or the performance thereof shall convey, license or otherwise transfer any right, title or interest (express, implied or otherwise) in any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of a party, its Affiliates or their respective licensors to the other party. Except as set forth in the applicable Service Schedule or Addendum, AppGate's intellectual property and proprietary rights include any skills, know-how, modifications, other enhancements or derivative works developed or acquired by or on behalf of AppGate in the course of configuring, providing or managing the Service. Customer agrees that it will not, directly or indirectly, circumvent, reverse engineer, decompile, disassemble, reproduce, otherwise attempt to derive source code, trade secrets or other intellectual property, or modify or make derivative works from any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other intellectual property of AppGate, its Affiliates or their respective licensors. Customer agrees that it will not disclose or publish performance benchmark results or test results with respect to the Services.

Miscellaneous.
**Entire Agreement.** The Agreement together with the underlying GSA Schedule contract, Schedule pricelist and applicable purchase order(s) constitutes the sole and entire agreement between the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous agreements, representations, warranties and understandings, verbal and/or written, with respect thereto.

**Amendments.** Except as otherwise set forth in the Agreement, the Agreement may only be amended, modified, supplemented or revoked by an instrument in writing signed by both parties. AppGate may modify this MA and/or any Schedule from time to time by posting an updated MA or Schedule, as applicable, at this website or a successor website.

**Waiver.** No waiver by any party of any of the provisions hereof shall be (i) effective unless explicitly set forth in writing and signed by the party so waiving or (ii) construed as a waiver of the same provision at any time in the future or of any other provision. No failure to exercise or delay in exercising any right, remedy, power or privilege rising from the Agreement shall operate or be construed as a waiver thereof.

**Headings.** The headings in the Agreement are for reference only and shall not affect the interpretation of the Agreement.

**Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction and, in the jurisdiction in which such term or provision is invalid, illegal or unenforceable, such term or provision will be modified as nearly as possible to reflect the intentions of the parties so as to no longer be invalid, illegal or unenforceable in such jurisdiction.

**Governing Law.** All matters arising out of or relating to the Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

**Counterparts; Delivery.** Each document governed by, or that is incorporated by reference into, this MA or a Service Schedule, may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A signed copy of any such document delivered by facsimile or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of such document.

**Survival.** The terms of any sections of the Agreement which by their nature are intended to extend beyond expiration or termination of (i) this MA, (ii) any Service Schedule or (iii) any other document governed by, or that is incorporated by reference into, this MA or a Service Schedule, will survive expiration or termination of this MA, such Service Schedule or such other document, as applicable.

**Conflicts.** If a conflict exists among provisions within the Agreement, unless otherwise expressly stated to the contrary, the following order of precedence will apply in descending order of control:
(i) a negotiated Service Order, Statement of Work, Order Form or Quote that is executed by AppGate and Ordering Activity, (ii) this MA, (iii) a Service Schedule, (iv) an Addendum, (v) an SLA or Support Terms, and (vi) any other document governed by, or that is incorporated by reference into, this MA or any of the documents referenced in subclauses (i), (iii), (iv) or (v) hereof.

**Relationship of the Parties.** AppGate is an independent contractor and shall not be deemed an employee or agent of Customer. Nothing in the Agreement shall be construed to create a joint venture, partnership, association or other form of legal entity or business enterprise between the parties hereto. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Assignment; Successors and Assigns.** Assignments are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013).

**Intentionally Omitted.**

**No Third-party Beneficiaries.** Except as otherwise set forth in the Agreement, no person or entity, other than the parties and their respective successors and permitted assigns, shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, the Agreement.

**Indemnification Provisions.** In the event Customer is a U.S. Federal Government Agency, any indemnification obligations in the Agreement imposed on Customer shall not apply to Customer to the extent Customer is prohibited from being bound by such indemnification obligations by applicable law.

**Definitions.**

"Affiliate" means any entity controlled by, controlling, or under common control with a party, where the term "control" and its correlative terms, "controlling", "controlled by" and "under common control with", means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity.

"Agreement" means (i) this MA, (ii) all Service Schedules, Addendums, Service Orders, Statements of Work, Order Forms, Quotes, Support Terms, and SLAs, (iii) the underlying GSA schedule, and (iv) any other document governed by, or that is incorporated by
reference into, this MA or any of the documents referred to in subclauses (ii) or (iii) hereof.

“Confidential Information” means all information (including, for the avoidance of doubt, information about the disclosing party’s Affiliates) that is disclosed by or on behalf of the disclosing party to the receiving party, during the term of the Agreement, whether written, oral, visual or otherwise that (i) is identified as confidential using an appropriate legend, marking, stamp, or other clear and conspicuous written identification that unambiguously indicates the information being provided is Confidential Information (or, in the case of information provided in other than written form, is identified as confidential at the time it is first disclosed, with such identification to be confirmed in writing by the disclosing party to the receiving party promptly following disclosure) or (ii) should reasonably be understood to be confidential or proprietary based on the content of the information and/or the circumstances of its disclosure.

“Customer Data” means data, information, material or other content (but in all cases excluding AppGate’s Confidential Information and intellectual property), in any form or medium, that is submitted, posted, uploaded, transmitted, processed or stored by or on behalf of Customer to, through or in, as the case may be the Software.

“U.S. Federal Government Agency” means any agency or department that is an instrumentality of the United States under the executive, legislative, or judicial branch of the United States government, or any independent instrumentality of the United States, such as the U.S. Securities and Exchange Commission or the U.S. Federal Communications Commission.
Exhibit A

AppGate Software Schedule

This AppGate Software Schedule (this "Schedule") is the standard Software Schedule used by Immunity Federal Services, LLC d/b/a AppGate Federal for the Products and Services covered hereunder which EC America, Inc. has adopted for purposes of the resale of such Products and Services to the Ordering Activity issuing an order under the GSA Schedule contract ("Ordering Activity" or "Customer"). All references to Immunity Federal Services, LLC d/b/a AppGate Federal or AppGate herein (other than the references in the immediately following sentence) shall be deemed references to EC America, Inc. For avoidance of doubt, nothing herein shall establish privity of contract between AppGate and the Ordering Activity. This Schedule is entered into by and between Immunity Federal Services, LLC d/b/a AppGate Federal ("AppGate"), and Customer, and is effective on the Effective Date for this Schedule. This Schedule is governed by that certain AppGate Master Agreement (the "MA") entered into by and between Customer, or its Affiliate, and AppGate. In the event the MA is executed by an Affiliate of Customer, then the MA shall apply to this Schedule as if Customer was a party thereto in lieu of the Affiliate of Customer. Capitalized terms used, but not defined herein, shall have the meaning ascribed thereto in the MA.

Products; Fees.

Products. This Schedule sets forth the terms generally applicable to all Software licensed hereunder, Professional Services and Hardware purchased hereunder and Support provided hereunder (whether included as part of another Product licensed or purchased hereunder or purchased separately hereunder) (collectively, the "Products"), as well as terms applicable only to specific Products as noted herein. AppGate's Software-as-a-Service offerings are not covered under this Schedule and require a separate Schedule. Customer, or an Affiliate thereof, may license or purchase Products from AppGate pursuant to an Order Form or through the Portal.

Fees. Customer will pay all applicable fees set forth in the relevant Order Form, any online licensing/purchasing website or portal made available by AppGate for Customer's use in accordance with the GSA Schedule Pricelist (the "Portal"), or otherwise agreed to be paid by Customer to AppGate pursuant to the Schedule Agreement. Except as set forth in the applicable Order Form or on the Portal or otherwise in the Schedule Agreement, (i) Software license (non-perpetual) and Support fees will be billed annually, in advance; (ii) Software license (perpetual) fees will be billed in advance; (iii) varying or usage-based fees will be billed monthly in arrears; (iv) fees for hourly Professional Services engagements will be billed monthly in arrears; (v) fees for fixed-fee Professional Services engagements will be billed monthly in arrears, on a pro-rata basis based on the portion of Professional Services delivered to date; (vi) any expenses to which AppGate is entitled to reimbursement hereunder will be billed monthly in arrears; and (vii) fees for Hardware will be billed upon delivery.

License Grant; Grant of Right to Access and Use; Reservation of Rights; Third-Party Components.

License Grant, Grant of Right to Access and Use. With respect to Software licensed by Customer, AppGate grants Customer a non-exclusive, non-transferable and non-sublicensable license to use such Software during the Software Term with respect thereto, solely for use by Authorized Users in accordance with the Permitted Use. A license to use Software, also includes the non-exclusive, non-transferable and non-sublicensable right for Customer to use the Documentation applicable to such Software, solely in connection with Customer's use of such Software.

Reservation of Rights. AppGate reserves all rights not expressly granted to Customer in the Schedule Agreement. Except for the limited rights and licenses expressly granted under the Schedule Agreement, nothing in the Schedule Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title or interest in or to the AppGate Intellectual Property. Notwithstanding anything in the Schedule Agreement to the contrary, Software is licensed in each case for the applicable term set forth herein, and in no event is Software sold, even if for convenience AppGate makes reference to words such as sale or purchase herein.

Third-Party Components. The Products may contain or be provided with certain components subject to third-party or open source licenses. Attributions and terms relating to such components are available upon request from AppGate.

Use; Restrictions on Use; Customer Responsibilities.

Use; Restrictions on Use. Customer shall not use the Software or Documentation, as applicable, for any purposes beyond the scope of license or access, as applicable, with respect thereto granted in the Schedule Agreement. Customer shall not (and shall not allow any Authorized User to), directly or indirectly, (i) copy, modify or create derivative works of the Software or Documentation, as applicable, in whole or in part, (ii) rent, lease, lend, resell, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Products (other than Hardware), (iii) except as expressly set forth on an Order Form, reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code or software component of the Software in whole or in part, (iv) remove any proprietary notices from the Software or Documentation, as applicable, or (v) use the Software or Documentation, as applicable, in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. AppGate may deploy the Software with license key or other technology that prohibits use of the Software, as applicable, beyond the applicable Software Term, license parameters, or grant of right to access and use.

Customer Responsibilities. Customer is responsible and liable for all uses of the Software and Documentation, as applicable, resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Schedule Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Schedule Agreement if taken by Customer will be deemed a breach of the Schedule Agreement by Customer. Customer
shall make all Authorized Users aware of the Schedule Agreement's provisions as applicable to such Authorized User's use of the Software or Documentation, as applicable, and shall cause Authorized Users to comply with such provisions.

**Installation; Configuration; Instruction; Support.** Unless otherwise specified in an Order Form, AppGate has no responsibility for (a) assisting Customer in installing or configuring any of the Software, or (b) providing Customer instruction on use of any Software (except for any such instruction on use set forth in the Documentation with respect to such Software). Unless otherwise specified in an Order Form, Support is included for Software licenses (non-perpetual) in accordance with the applicable Support Terms with respect thereto. Unless otherwise specified in an Order Form, AppGate has no responsibility for providing Customer Support for a perpetual Software license.

**Professional Services.**

**Professional Services.** AppGate will provide Customer with professional services ("Professional Services") purchased on an Order Form or through the Portal.

**Reimbursement of Expenses.** Customer is responsible for reimbursing AppGate for all pre-approved reasonable, documented, out-of-pocket expenses incurred by AppGate in performing the Professional Services. Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

**Customer's Obligations.** Customer must: (i) provide AppGate personnel with such information, cooperation and support as may reasonably be required for AppGate to provide the Professional Services, (ii) subject to applicable government security requirements provided in advance to AppGate in writing, permit AppGate personnel to access such of Customer's systems, networks, premises and property as is necessary to perform the Professional Services, and ensure that AppGate is granted sufficient consents, authorizations and licenses to access and use any third party system, programs, or networks necessary to provide the Professional Services, (iii) ensure that all necessary consents, authorizations and licenses have been obtained so that AppGate's provision of the Professional Services does not breach any statutory or regulatory provisions (of whatever jurisdiction) relating to the use of and access to personal data or otherwise breach any applicable law, and (iv) ensure the health and safety of AppGate personnel engaged in providing the Professional Services at Customer's premises.

**Work Product.** Each Order Form may specify “Work Product” to be provided by AppGate. Once AppGate has received full and final payment for “Work Product”, anything specified in an Order Form as “Work Product” will become the property of Customer at the moment such item is fixed in a tangible medium, all rights, title and interest therein will vest in Customer and AppGate shall permanently assign and transfer to Customer any and all of AppGate’s right, title and interest in the Work Product; provided, that, AppGate retains all right, title and interest in any AppGate Intellectual Property incorporated into Work Product. To the extent any AppGate Intellectual Property is incorporated into Work Product, Customer is hereby granted a perpetual, worldwide, non-transferable, non-exclusive, royalty-free, fully-paid up license to use such AppGate Intellectual Property solely in conjunction with the Work Product.

**Term; Termination; Effect of Expiration or Termination.**

**Term of this Schedule.** The term of this Schedule will commence on the Effective Date and continue until terminated in accordance with the terms hereof.

**Termination Upon Expiration or Termination of all Products.** The Schedule Agreement will automatically terminate following expiration or termination of the last effective Product being provided or to be provided under this Schedule.

**Term of Order Forms and Products.** Software licenses (non-perpetual) Support services have a minimum term which begins on the billing commencement date (“BCD”) and continues for the period set forth in the relevant Order Form or in the Portal. With respect to a Software license (non-perpetual), the term of such Software license is referred to as the “Software Term”. With respect to a Software license (perpetual), the “Software Term” is perpetual. With respect to a Support service, the term of such Support service is referred to as the “Support Term”. Except as expressly set forth herein, Order Forms are non-cancellable and amounts paid thereunder are non-refundable.

**Effect of Expiration or Termination.** Upon expiration or earlier termination of a Product for any reason, the license or right to access and use, as applicable, such Product granted by AppGate to Customer will also terminate. Upon termination of the license or right to access and use, as applicable, Customer must immediately cease using the applicable Software and Documentation and, to the extent applicable, return, delete or destroy all copies thereof as well as all other AppGate Intellectual Property relating thereto (in each case, in whatever form). Upon AppGate's request, Customer will certify in writing to AppGate that Customer has performed the foregoing obligation.

**Reserved.**

**Billing Commencement Date (BCD) (Software (non- perpetual) and Support).** The BCD for a Software license (non-perpetual) or Support service, as applicable, is the earlier to occur of (a) the later to occur of (i) if applicable, the date specified in the Order Form as the date on which the Software Term or Support Term, as applicable, commences and (ii) the date the Software or Support service, as applicable, is made available to Customer for use and (b) the date that the Software or Support service, as applicable, is used by Customer. In the event an Order Form specifies a date range for the term of the Software license or Support service (e.g., January 15 of year 1 to January 14 of year 2), as applicable, as opposed to a set term (e.g., one (1) year), but the BCD for such Software license or Support service, as applicable, is a different date than the date specified in the Order Form as the date on which the Software license or Support service, as applicable, commences (e.g., the BCD is January 5 of year 1 instead of January 15), the term of such Software license or Support service, as applicable, shall commence on the BCD for such Software license or Support service, as applicable, and continue for the period of time that the term of such Software license or Support...
service, as applicable, was intended to be for (e.g., one (1) year commencing on January 5 of year 1 and ending on January 4 of year 2).

In the event Ordering Activity’s use of Software expands beyond the Permitted Use or number of permitted Authorized Users, Ordering Activity shall be charged for such expanded use at AppGate’s then-current list prices in accordance with the GSA Schedule Pricelist applicable to such expanded use and Ordering Activity shall promptly pay such amounts to AppGate. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

Warranties.

Software Warranties. AppGate warrants to Customer that Software will function materially in accordance with the Documentation for a period of sixty (60) days from commencement of the Software Term with respect thereto (the “Warranty Period”). Any failure of the Software to function materially in accordance with the Documentation during the Warranty Period for such Software shall be a “non-conformity”. In the event Customer sends written notice to AppGate during the Warranty Period notifying AppGate of any non-conformity with respect to the Software (the “Non-Conformity Notice”), AppGate will use commercially reasonable efforts to remedy such non-conformity. In the event AppGate fails to remedy such non-conformity or provide a mutually agreed work around within thirty (30) days after its receipt of the Non-Conformity Notice, either party may terminate such non-conforming Software and any Support services directly related to such non-conforming Software by providing written notice to the other party, provided, that, the terminating party exercises its right to terminate before AppGate is able to remedy such non-conformity. Notwithstanding the foregoing, Customer shall not have the right to terminate such non-conforming Software or Support services, as applicable, in the event Customer fails to provide AppGate all information reasonably requested by AppGate to resolve the non-conformity. In the event of any delay in Customer providing AppGate any such information, the thirty (30) day period for AppGate to remedy such non-conformity or provide a mutually agreed work around shall be deemed extended by the number of days of such delay. In the event of termination of a Software license or Support services, as applicable, in accordance with this Section 10.a, (i) Customer will not be liable for any “Early Termination Charge” in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Software or Support service, as applicable, and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis (the foregoing shall also apply in the event of a termination of a perpetual Software license (for which Customer is entitled to a refund of pre-paid fees relating to periods of time following termination) pursuant to AppGate’s right under the MA to terminate such perpetual Software license as a result of a Claim or potential infringement by the Software of a third party’s intellectual property rights. Notwithstanding anything in this Section 10.a the contrary, this warranty shall not apply to any non-conformity to the extent resulting from (1) any use of the Software other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software made or caused by Customer or any other party acting on behalf of Customer, (3) any customer data (including, for the avoidance of doubt, Customer Confidential Information and Customer Data), (4) use of the Software in violation of applicable law, (5) use of the Software in combination with any hardware, software, application, equipment, technology or material that was not provided by AppGate, (6) Customer’s or any Authorized User’s failure to use any new or corrected version of the Software made available by AppGate to Customer, or (7) Customer’s or any Authorized User’s negligence or willful misconduct. Except as set forth in the Support Terms with respect to the Software, if any, this Section 10.a states AppGate’s sole obligation, and Customer’s sole and exclusive remedy, in connection with any failure of the Software to function in accordance with the Documentation.

Professional Services Warranties. AppGate warrants that (i) it and the AppGate personnel performing the Professional Services have the necessary knowledge, skills, experience, and qualifications to perform the Professional Services in accordance with the applicable Order Form(s), and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

Support Warranties. AppGate warrants that (i) it and the AppGate personnel performing the Support have the necessary knowledge, skills, experience, and qualifications to perform the Support in accordance with the applicable Support Terms, and (ii) the Support will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

Hardware. AppGate is not the manufacturer of any Hardware resold by AppGate to Customer hereunder. Notwithstanding anything in the Schedule Agreement to the contrary, Hardware is resold “as is” without indemnification, support or warranties of any kind, provided, that, AppGate will assign to Customer all assignable warranties and indemnities granted to AppGate by the party that AppGate purchased such Hardware from. In no event will AppGate be liable for any losses, costs, expenses or damages whatsoever, including, without limitation, direct, incidental, special, indirect, or consequential damages, loss of business, loss of profits, loss of data, or tortious conduct relating to, or arising from the Hardware.

Intellectual Property Ownership; Feedback.

AppGate Intellectual Property. Customer acknowledges that, as between Customer and AppGate, AppGate owns all right, title and interest, including all intellectual property rights, in and to AppGate Intellectual Property.

Feedback. AppGate encourages Customer to provide suggestions, proposals, ideas, recommendations and other feedback (collectively, “Feedback”) regarding changes or improvements (including, without limitation, new features or functionality relating thereto) to AppGate Intellectual Property. To the extent Customer provides such Feedback, notwithstanding the definition of “Confidential Information” in the Schedule Agreement to the contrary, in no event shall any such Feedback be deemed to be Customer’s Confidential Information. AppGate shall have the right to make, use, sell, offer for sale, import and otherwise exploit such Feedback (including by incorporation of such Feedback into AppGate Intellectual Property) without restriction. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this
Agreement in advertising is limited by GSAR 552.203-71. Customer hereby assigns to AppGate on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title and interest in, and AppGate is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although AppGate is not required to use any Feedback.

**Intentionally Omitted.**

**Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods.** Notwithstanding anything in the Schedule Agreement to the contrary, including, for the avoidance of doubt, the “Governing Law” and “Venue” sections of the MA, in no event shall the Uniform Computer Information Transaction Act or the United Nations Convention on Contracts for the International Sale of Goods apply to the Schedule Agreement.

**Export Regulation.** The Products, the underlying software and technology and the Documentation may be subject to US export controls and sanctions laws and regulations, including, without limitation, the US Export Administration Regulations and the various economic sanctions measures administered by the US Department of the Treasury's Office of Foreign Assets Control (“OFAC”). Customer shall not, directly or indirectly, sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to, or make the Products, the underlying software or technology or the Documentation accessible from, any jurisdiction, country, person or entity without first securing all applicable U.S. government export authorizations, nor will Customer sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to, or make the Products, the underlying software or technology or the Documentation accessible from, any jurisdiction, country, person or entity, or for any end-use, that is prohibited by applicable law, rule, or regulation. Customer shall not, directly or indirectly, sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to any party named on OFAC's Specially Designated Nationals list or any other U.S. government list of prohibited parties, or to any entity owned 50% or more in the aggregate by any sanctioned party or parties, nor shall Customer use the Products, underlying software or technology, or the Documentation, directly or indirectly, in connection with any prohibited party. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, transferring, re-transferring, providing or releasing, or otherwise making the Products or the underlying software or technology or the Documentation available outside the US.

**Modifications to Support Terms.** AppGate may modify applicable Support Terms pursuant to the definition of “Support Terms” in Section 17 (“Support Terms Change”). Each modification that does not materially and adversely affect Ordering Activity’s use of the Products or Ordering Activity’s rights or obligations hereunder, shall go in to effect on the date specified by AppGate, whether such date is during the then-current term or thereafter. Any modification that materially and adversely affects Ordering Activity’s use of the Products or Ordering Activity’s rights or obligations hereunder (“Material and Adverse Changes”), shall not go into effect prior to the expiration of the then-current term. If Ordering Activity elects to enter into a new term after any such Material and Adverse Change has gone into effect, Ordering Activity shall be subject to such Material and Adverse Change during such new term. A Material and Adverse Change is defined as (1) terms that materially and adversely affect Ordering Activity’s rights; (2) terms that increase the Ordering Activity’s prices; (3) terms that materially and adversely decrease overall level of service; or (4) terms that materially and adversely limit any other Ordering Activity right addressed elsewhere in the contract. In accordance with GSAR 552.212-4(w)(4)(vii), for Material and Adverse Changes, the revised terms must be incorporated into the contract using a bilateral modification.

**Definitions.**

“Authorized User” means an employee, representative or agent of Customer who is authorized by Customer to access and use the Software licensed hereunder, as applicable, and Documentation applicable to such Software solely in connection with the use of such Software. In the event an Order Form sets forth limitations on the number and/or type of Authorized Users permitted with respect to the Software licensed thereunder, Customer shall be required to comply with all such limitations. Each Authorized User shall be required to have a unique username and password. Such username and password shall be personal to such Authorized User and Customer shall not permit an Authorized User to, and an Authorized User shall not, share its username and password with other Authorized Users.

“AppGate Intellectual Property” means the Software, Documentation, any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing and any other AppGate intellectual property.

“Customer Data” shall have the meaning set forth in the MA, provided, that, if “Customer Data” is not defined in the MA, “Customer Data” shall mean data, information, material or other content (but in all cases excluding AppGate’s Confidential Information and AppGate Intellectual Property), in any form or medium, that is submitted, posted, uploaded, transmitted, processed or stored by or on behalf of Customer to, through or in, as the case may be, the Software.

“Documentation” means AppGate’s then-current user manuals, handbooks, training materials, technical manuals and guides relating to the Software.

[Intentionally Omitted.]

“Order Form” means an order form, quote, statement of work or other ordering document that includes the types and details of the specific Products ordered by Customer and agreed to be provided by AppGate. Any Products licensed or purchased by Customer through the Portal will be deemed to be licensed or purchased pursuant to an “Order Form” notwithstanding that the Products are licensed or purchased through the Portal and neither party physically or electronically executed an actual “Order Form” document.

“Permitted Use” means use of the Software solely in accordance with the Documentation and by an Authorized User for the benefit of Customer in the ordinary course of its internal business.
operations and in accordance with all of the applicable terms and conditions of the Schedule Agreement, including, without limitation, any terms, conditions and limitations set forth in the Order Form with respect to the Software (e.g., maximum number of computers that the Software may be installed on, limitation on locations that the Software may be used at, maximum number of records that can be processed or stored at any given time).

“Schedule Agreement” means (i) the MA (but only to the extent the MA applies to this Schedule), (ii) this Schedule, (iii) all Order Forms and applicable Support Terms and Documentation, (iv) the underlying GSA schedule, and (v) any other document governed by, or that is incorporated by reference into, the MA (but only to the extent such document applies to this Schedule), this Schedule or any of the documents referred to in subclauses (iii) or (iv) hereof.

“Software” means the software, in object code format, licensed by AppGate to Customer under an Order Form, and, in the event Customer is entitled to receive Support for such Software, includes all updates, bug fixes, patches, error corrections and other minor enhancements or improvements thereto that AppGate generally makes available free of charge to all licensees of the Software during Customer’s Support Term therefor.

“Support” means the maintenance and support services specified in the Support Terms.

“Support Terms” means the support terms located at https://www.appgate.com/legal/federal/product-and-service-terms-
Schedule I

Current Versions of Support Terms

[See attached.]
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

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

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

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

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

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

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

A.  APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

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

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

“Appian” means Appian Corporation.

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

“Contractor” means EC America, Inc.

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

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

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

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

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

“Order” means a purchase order from Ordering Activity.

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

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

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

SOFTWARE LICENSE GRANT:

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

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

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

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

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

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

Third Party Hosting. Ordering Activity may operate the Appian Software at a third party co-location facility, provided Ordering Activity: (i) notifies Appian of the address and name of the entity operating the co-location facility (“Hosting
Permitted Usage. Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to the terms and conditions of this Agreement. Ordering Activity acknowledges that the Appian Software is not designed to be used in circumstances in which errors or inaccuracies in the operation of the Appian Software on a service bureau basis, or create Internet "links" to the Appian Software or "frame" or "mirror" any content available on the Appian Software on any other server or wireless Internet-based device, re-distribute or sublicense the Appian Software, or any part thereof, nor allow, permit or assist any third party to do any of the foregoing (except to the extent any of the foregoing are permitted by the licensing terms governing use of any open sourced components included with the Appian Software), Ordering Activity agrees not to modify or tamper with the License Key or to attempt to manipulate the number of licenses counted by the License Key. Ordering Activity may only install the Software on servers owned (or leased by Ordering Activity) or the servers of Ordering Activity’s third party infrastructure as a service providers (collectively referred to as “Authorised Servers”).

In addition, Ordering Activity may not: (I) re-distribute or sublicense the Appian Software, or any part thereof, to any third party, (II) create Internet “links” to the Appian Software or “frame” or “mirror” any content available on the Appian Software on any other server or wireless Internet-based device, (III) operate the Appian Software on a service bureau basis, or (IV) allow, assist or permit any third party to do any of the foregoing.

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

Deleted.

Restrictions.

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

In addition, Ordering Activity may not: (I) re-distribute or sublicense the Appian Software, or any part thereof, to any third party, (II) create Internet “links” to the Appian Software or “frame” or “mirror” any content available on the Appian Software on any other server or wireless Internet-based device, (III) operate the Appian Software on a service bureau basis, or (IV) allow, assist or permit any third party to do any of the foregoing.

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

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

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

Use by Term Users. Ordering Activity may purchase such additional User subscriptions necessary to bring Ordering Activity into compliance for the remainder of the term of Ordering Activity's current subscription. Such additional User subscriptions shall be at Contractor's current GSA Schedule list fees for Appian, irrespective of any discounts offered to Ordering Activity in any Order Form.

Rights and Obligations upon Termination. Upon the termination of Ordering Activity’s license, Ordering Activity must cease using the Appian Software and the Appian Community Website. Within five (5) business days after such termination, Ordering Activity must return to Contractor all originals and all copies of the Appian Software in Ordering Activity’s care, custody or control. Ordering Activity will use this information to develop a license key and/or enabling code (“License Key”) that will allow the Appian Software to operate only on computers matching the information supplied by the Ordering Activity, domain name, operating system and CPU cores. The License Key will allow Ordering Activity to use the Appian Software up to the number and type of licenses purchased.

Deleted.

Usage. If Ordering Activity exceeds the number of licensed Users set forth in the effective Order, Contractor will invoice Ordering Activity for the excessive use and Ordering Activity will pay the invoice within thirty (30) days of the invoice receipt date. Ordering Activity shall either discontinue the excessive use, or Ordering Activity may purchase such additional User subscriptions necessary to bring Ordering Activity into compliance for the remainder of the term of Ordering Activity's current subscription. Such additional User subscriptions shall be at Contractor's current GSA Schedule list fees for Appian, irrespective of any discounts offered to Ordering Activity in any Order Form.
Intellectual Property Rights. The Appian Software is Commercial computer software provided pursuant to FAR12.212. This includes all software minor modifications of a type typically delivered to commercial customers (enhancements). Any non software deliverables provided under this Agreement containing Appian’s copyrighted material is provided as Limited rights data specified in FAR 52.227-14. The Appian Software and other Appian copyright material provided under this Agreement is licensed to the Ordering Activity, not sold. All rights in the Appian Software or other Appian copyrighted material not provided to Ordering Activity under this Agreement are expressly retained by Appian and its licensors.

MAINTENANCE AND SUPPORT SERVICES:

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

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

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<th>Type</th>
<th>Standard Support</th>
<th>Premier Support</th>
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<tbody>
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<tr>
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<tr>
<td>Maintenance Services contacts</td>
<td>2</td>
<td>10</td>
</tr>
</tbody>
</table>
| Case severity/Response times| Priority 1: <1 business hour  
Priority 2: <2 business hours  
Priority 3: <8 business hours  
Priority 4: <12 business hours | Priority 1: <15 minutes  
Priority 2: <1 hour  
Priority 3: <4 business hours  
Priority 4: <8 business hours |  |
| Primary Contact             | ☐                | ☐               |
| Proactive guidance          | ☐                | ☐               |
| Extended Technical Support and Security Defect Corrections | ☐ | 6 months |
| New release planning        | ☐                | ☐               |
| 24/7 Support for Priority 1&2 Issues | ☐ | ☐ |

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

**Priority Definitions.**
A Priority 1 Issue occurs when the Appian Software is down in a production setting and no workaround exists, or the workaround is not feasible to implement due to the impact on Ordering Activity’s business.
Activity’s site will not exceed eight (8) students, unless additional student attendance is purchased up to a maximum of twelve (12) students per class. Travel

Ordering Activity must order one (1) Training Day for each day of Training, provided the maximum number of students for each Training class at the Ordering

contained in Schedule 1 of this Agreement, which is hereby incorporated by reference. Additional charges may apply for course development, course materials, etc. Additional terms associated with the Ordering Activity’s purchase of Training are

Course. Ordering Activities must order one (1) Training Credit for each student per day of Training. If the Ordering Activity purchases unique training,

Training at Appian Headquarters. Training offered at Appian’s headquarters is available at the times listed in Appian’s course calendar, also available on

offered at Appian’s headquarters, in Reston, Virginia or at Ordering Activity’s location.

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

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

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

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

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

For on-premise licenses to the Appian Software, malfunction of the computer system and communications network on which Ordering Activity has installed and is using the Appian Software;

Use of the Appian Software contrary to the terms of the then current Documentation;

Modifications, enhancements or customizations of the Appian Software;

Any use of the Appian Software in disregard of any known adverse consequences, including without limitation; or

Ordering Activity’s failure to make appropriate backups or to follow warning messages and other written instructions.

MAINTENANCE SERVICES FEE:

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

SERVICES:

a. TRAINING

Ordering Activity may purchase Appian’s standard training courses, as described on Appian’s website, www.appian.com/training (“Training”). Training is offered at Appian’s headquarters, in Reston, Virginia or at Ordering Activity’s location.

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

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

i. LIMITED WARRANTY AND DISCLAIMER:

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

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

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

LIMITATION OF LIABILITY

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

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

Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.21572 Price Adjustment


INTELLECTUAL PROPERTY INFRINGEMENT

If a third party makes a claim against Ordering Activity that the Appian Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will to the extent permitted by 28 U.S.C. 516 (i) assist in defending Ordering Activity against the IP Claim at Contractor’s cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (I) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity’s receipt of notification of a potential claim and (II) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity’s receipt of notification of a potential claim and (II) Ordering Activity
provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (I) the use of a superseded or altered release of the Appian Software if the infringement would have been avoided by the use of a current unaltered release of the Appian Software, (II) the modification of the Appian Software, (III) the use of the Appian Software other than in accordance with the then current Documentation or this Agreement, or (IV) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

ii.

If the Appian Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (i) replace or modify the Appian Software to be non-infringing, or (ii) obtain for Ordering Activity a license to continue using the Appian Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the license for the infringing Appian Software and refund the license fees paid for the Appian Software upon return of the Appian Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement; provided, however, if the license is for a cloud subscription described in Section B of this Agreement, then Appian shall only refund to Ordering Activity those license fees that were pre-paid and unearned at the time Appian terminates the license.

CLOUD SUBSCRIPTION AGREEMENT

DEFINITIONS

The terms defined in this Section 1 and any other capitalized terms defined in the other sections of this Cloud Subscription Agreement have the meanings stated.

‘Agreement’ means, collectively, this Cloud Subscription Agreement and any Order Forms.

“Cloud Offering” means Appian’s baseline software (including all updates and enhancements to the same that Appian provides under section 4 of this Cloud Subscription Agreement), the Documentation, and the information technology infrastructure used to make Appian’s software available to Subscriber over the Internet.

“Data” means the data, information or material that Subscriber or its Users submit to the Cloud Offering under this Agreement. Data shall not include anything initially provided to Subscriber by Appian.

“Documentation” means the contents provided under the documentation section of the Appian Community website, https://docs.appian.com, or other URL as notified to the Subscriber in writing from time to time.

“Order Form” means one or more order forms signed by the Parties or the purchase order issued by an Ordering Activity and accepted by the GSA Schedule-holder Contractor.

‘User’ means an employee, contractor or subcontractor of Subscriber who has a user account in the Cloud Offering allowing him/her to authenticate into the Cloud Offering.

SUBSCRIPTION

License. During the term of the subscriptions that Subscriber purchases, Appian grants Subscriber a non-transferable, nonexclusive license to access the Cloud Offering via a username and password over the Internet. Subscriber may use the licenses purchased under this Agreement for Subscriber’s general business purposes, unless the applicable Order Form restricts Subscriber’s use to a particular application, in which case Subscriber may only use the Cloud Offering in connection with the specified application.

Restrictions. Except to the extent expressly authorized in this Agreement or in the Documentation, Subscriber may not: (i) reverse engineer, disassemble, decompile or otherwise attempt to access or determine the source code of the Cloud Offering, (ii) operate the Cloud Offering for use by third parties or otherwise operate the Cloud Offering on a service bureau basis, (iii) modify, copy, reproduce or create a derivative from the Cloud Offering, in whole or in part, or (iv) allow, permit or assist any party to do any of the foregoing. In addition, unless expressly authorized by Appian in the applicable Order Form, Subscriber agrees not to use the Cloud Offering in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Cloud Offering or the failure of the Cloud Offering, could lead to death, personal injury, or severe physical or environmental damage.

Users Accounts. Only the identified individual associated with a particular User account can access the Cloud Offering using that account. User accounts may not be shared among individuals, or used to provide access to the Cloud Offering to individuals who are not the individual associated with the corresponding User account. Subscriber shall not activate and deactivate User accounts on a daily or other regular basis in order to circumvent license restrictions. To the extent that Subscriber configures Appian’s software to be accessed or used through a separate system or interface (e.g. “headless”), users of the Appian software through such separate system or interface must be licensed under this Agreement, regardless of whether such person has an Appian User account or authenticates into the Cloud Offering. If Subscriber exceeds the number of licensed Users set forth in the effective Order Form(s), Appian will invoice Subscriber for the excessive use and Subscriber will pay the invoice within thirty (30) days of the invoice receipt date. Subscriber shall either discontinue the excessive use, or Subscriber may purchase such additional User subscriptions necessary to bring Subscriber into compliance for the remainder of the term of Subscriber’s current subscription. Such additional User subscriptions shall be at Appian’s current GSA Schedule list fees irrespective of any discounts offered to Subscriber in any Order Form.

Subscriber Responsibilities. Subscriber must use the Cloud Offering in accordance with all applicable laws. Subscriber is responsible for the password security of User accounts and the level of access granted to an individual User by Subscriber’s Cloud Offering administrators, as well as any other security configurations set by Subscriber. Subscriber is responsible for any violation of this Agreement by its Users. Subscriber shall promptly report to Appian any copying or distribution of the Cloud Offering in violation of this Agreement that is known or suspected by Subscriber and provide Appian with reasonable assistance to stop such violation.

Security. Appian will maintain an annual Service Organization Control (SOC) Report (or other similar or replacement report as the industry adopts) in connection with the Cloud Offering (“SOC Report”). Subject to agreed upon usage terms, Appian will provide Subscriber with Appian’s then current SOC Report. During the term of this Cloud Subscription Agreement, Appian will maintain such security measures identified in the then current SOC Report or, if Appian determines that more effective measures should be implemented, apply such replacement security measures. Subscriber may perform security testing with respect to the Cloud Offering, but only with Appian’s prior written consent, not to be unreasonably withheld.

Intellectual Property Rights. The Cloud Offering and all intellectual property rights therein are licensed to Subscriber, not sold. All rights in the Cloud Offering not provided to Subscriber under this Agreement are retained by Appian and its licensors.

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DATA As between the Parties, the Data belongs to Subscriber. Subscriber is responsible for responding to any notices sent to Subscriber (or any User) by any third party claiming that the Data violates such party’s rights. Subscriber grants Appian a worldwide, irrevocable, royalty-free, nonexclusive, sublicensable, non-transferable license during the term of this Cloud Subscription Agreement to use the Data for the purposes of providing the Cloud Offering to Subscriber. Appian shall backup the Data on a nightly basis. The Data shall be retained for at least twenty-eight (28) calendar days.

MAINTENANCE SERVICES

Maintenance Services. Appian shall provide Subscriber with the following maintenance services (“Maintenance Services”) during the term of the Subscriber’s subscription to the Cloud Offering:

Updates. Appian will install the upgrades and patches to the Cloud Offering that become available.

Technical Support. Subscribers shall designate up to two (2) Subscribers employees to coordinate Subscribers’ requests for Maintenance Services. Subscribers’ Maintenance Services contacts may report problems and seek assistance regarding Subscribers’ use of the Cloud Offering using Appian’s online technical support case management system, by telephone using Appian’s authorized technical support phone line, or using any other means that Appian may authorize from time-to-time. Subscribers’ Maintenance Services contacts may track Technical Support requests using Appian’s case management system. Subscribers shall email support@appian.com with Subscribers’ Maintenance Services contacts promptly on or after the Effective Date. Subscribers may change its Maintenance Services contacts using Appian’s case management system.

Remote Maintenance Only. Maintenance Services do not include on-site or in-person assistance or consultation, or training that would normally be provided in formal training classes.

Scheduled Maintenance. Appian may specify up to a contiguous four (4) hour period during off peak hours when the Cloud Offering will not be available and during which Appian can provide any needed maintenance. Appian will use reasonable efforts to provide one week prior notice of all scheduled maintenance periods, provided that Appian may without prior notice suspend the Cloud Offering to install emergency patches or other urgent corrective measures.

RESERVED.

RESERVED.

RESERVED.

LIMITED WARRANTIES AND DISCLAIMERS

Service Level Agreement. Appian shall provide the Service Level Agreement attached to this Cloud Subscription Agreement as Schedule 1 in connection with the Cloud Offering.

Virus. Prior to delivery of the Cloud Offering to Subscriber, Appian will first scan the same using commercially available up to date virus detection software, and will remediate any issue discovered by such software.

Limited Warranty. Disclaimer. APPIAN WARRANTS THAT THE CLOUD OFFERING WILL, FOR THE TERM OF A SUBSCRIPTION PERFORM SUBSTANTIALLY IN ACCORDANCE WITH APPIAN CLOUD SERVICE LEVEL AGREEMENT. Subject to the limitations set forth below, Appian warrants that it shall perform the Maintenance Services in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty Appian shall, as Customer’s exclusive remedy, use commercially reasonable efforts to re-perform the non-conforming Professional Services as soon as reasonably practicable, and at no additional cost to Customer. Customer must notify Appian of any breach of this maintenance service warranty in writing within five (5) business days after the non-conforming services are provided to Customer.

EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES PROVIDED IN CONNECTION WITH THE CLOUD OFFERING AND MAINTENANCE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CAUSE OR ACTION (INCLUDING CONTRACT, NEGLIGENCE, TORT OR STRICT LIABILITY) ARISING FROM OR OUT OF THIS AGREEMENT FOR (a) ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND (b) AGGREGATE LIABILITY OF GREATER THAN THE FEES ACTUALLY PAID BY SUBSCRIBER UNDER THIS PURCHASE ORDER. OBLIGATIONS UNDER SECTION 10 OF THIS CLOUD SUBSCRIPTION AGREEMENT AND SUBSCRIBER’S OBLIGATION TO MAKE PAYMENTS AS DUE SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN 9(b) ABOVE. IN ADDITION, DAMAGES ASSOCIATED WITH EITHER PARTY VIOLATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY, SHALL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN SECTIONS 9(a) OR 9(b) ABOVE. THE LIMITATIONS SET FORTH IN THIS SECTION ARE INDEPENDENT OF ANY LIMITED REMEDY SET FORTH HEREIN, SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

RESERVED.

RESERVED.

GENERAL

RESERVED.

Relationship. This Agreement does not create a joint venture, partnership, employment, or agency relationship.

Marketing. To the extent permitted by GSAR 552.203-71, and with the Subscriber’s prior written consent, (a) Appian may publicly identify Subscribers as an Appian customer and uses its logo on Appian’s website and in presentations to current or prospective customers or investors; (b) Appian may issue a mutually agreed upon press release announcing Subscribers’ status as an Appian customer; (c) reserved; and (d) upon successful launch of an application in the Cloud Offering, Appian may record and produce a video concerning Subscribers’ use of Appian for such application, which may be distributed via Appian.com.

 Severability. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision’s essential purpose.

Waiver. The waiver by either Party of a breach or right under this Agreement will not constitute a waiver of any other or subsequent breach or right.
1. DEFINITIONS- The terms defined in this Section 1 as well as terms defined in the Cloud Subscription Agreement (or similar master terms and conditions) agreed to between the parties (the “Agreement”) are applicable to this Service Level Agreement. Subscriber’s level of Service (Standard or Premier) will be identified in Subscriber’s Order Form.

a. Core Functionality means the ability to use the Cloud Offering to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report.

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

c. High Availability - High Availability means that Subscriber’s production instance of the Cloud Offering will be provided simultaneously through three Availability Zones without a single point of failure. (Appian’s standard Cloud Offering provides service through a single Availability Zone only.) Each Availability Zone will be located in the Subscriber’s selected region. Appian will maintain such servers and storages necessary to keep up to date with Subscriber’s applications and data in order to operate Subscriber’s Cloud Offering in such three Availability Zones. As a part of the High Availability Offering, Appian will provide Subscriber with a Recovery Point Objective (RPO) of 1 minute and a Recovery Time Objective (RTO) of 15 minutes. RPO means that the Subscriber data restored to the High Availability Cloud Offering will be no older than 1 minute prior to the event that led to the Cloud Offering no longer writing data to the High Availability database servers. RTO means that the High Availability Cloud Offering will be unavailable for no longer than 15 minutes in the event of unscheduled unavailability of the Cloud Offering for any reason within the control of Appian or Appian’s service providers. Appian’s exclusive obligation and Subscriber sole remedy for any failure by Appian to meet the RTO or RPO in a month will be Subscriber’s right to a 100% Service Credit against the Premier Support (including High Availability for Production) fees payable for that month.

d. Issue means, collectively, a Priority 1, Priority 2, Priority 3 or Priority 4 Issue.

i. Priority 1 Issue means a User is unable to access the login page on a production instance of the Cloud Offering using the User’s then current username and password.

ii. Priority 2 Issue means a User is unable to operate the Core Functionality on a production instance of the Cloud Offering using the User’s then current username and password.

iii. Priority 3 Issue means a functional feature of the Cloud Offering is impacted, but it is feasible to continue production/development, as the issue is not critical or a workaround is feasible.

iv. Priority 4 Issue means all other issues which are not Priority 1, 2 or 3.

e. Proactive Guidance means advice from an Appian lead engineer on issues that may affect performance of Subscriber’s instance of the Cloud Offering.

2. SERVICE OBLIGATIONS - Appian’s service obligations are dependent on Subscriber’s level of Service, as set forth in the following chart:
<table>
<thead>
<tr>
<th>Type</th>
<th>Standard</th>
<th>Premier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Services contacts</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Online case management</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Phone support</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Live screen sharing</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Discussion forums</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Knowledge base</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Business hours support</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>24x7x365 support</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>High Availability for Production</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RTO: 15 minutes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>RPO: 1 minute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead engineer</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Proactive Guidance</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>New release planning</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Bring Your Own Encryption Key</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Enhanced Data Pipeline*</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Log Streaming*</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

*features are described at docs.appian.com

<table>
<thead>
<tr>
<th>Case Severity</th>
<th>Standard Response Time</th>
<th>Premier Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>&lt;1 business hour</td>
<td>&lt;15 minutes (24x7x365)</td>
</tr>
<tr>
<td>Priority 2</td>
<td>&lt;2 business hours</td>
<td>&lt;1 hour (24x7x365)</td>
</tr>
<tr>
<td>Priority 3</td>
<td>&lt;8 business hours</td>
<td>&lt;3 business hours</td>
</tr>
<tr>
<td>Priority 4</td>
<td>&lt;12 business hours</td>
<td>&lt;6 business hours</td>
</tr>
</tbody>
</table>

a. **Response Measurements** - Appian will use commercially reasonable efforts to respond to Issues within the response times listed. A Priority 1 or 2 Issue shall be deemed reported, and Appian’s response time shall commence, once Subscriber reports the issue as a Priority 1 or 2 issue using Appian’s authorized telephone support number. A Priority 3 Issue or Priority 4 Issue shall be deemed reported, and Appian’s response period shall commence, once Subscriber reports the Priority 3 Issue or Priority 4 Issue using any authorized methods for requesting Technical Support. Appian will be deemed to have responded to an Issue once it responds that it has received the Issue (an automated email response shall not count as a response). Business hours are 8:00 a.m. to 8:00 p.m. (US ET), Monday through Friday, excluding Appian holidays.

b. **Availability** - Subject to the exclusions noted below, if in any given month Subscriber reports a Priority 1 or 2 Issue, and it takes Appian longer than the percentage of time occurring in the applicable month noted below (“Aggregate Availability”) to provide a corresponding Correction in
accordance with the applicable Technical Support service hours, Appian will provide Subscriber with a credit of the percentage of the applicable monthly subscription fee in effect during the applicable month in the amount described below (each such credit is referred to as a “Service Credit”). The Aggregate Availability for Priority 1 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 1 Issues reported in a month, divided by the total number of minutes occurring in that month. Likewise, the Aggregate Availability for Priority 2 Issues is calculated as 100 percent minus the quotient of the time required by Appian to provide Corrections for all Priority 2 Issues reported in a month divided by the total number of minutes occurring in that month. The Service Credits are Appian’s exclusive obligation, and Subscriber’s sole remedy associated with any Issues. A Priority 1 Issue may not be reported both as a Priority 1 and a Priority 2 Issue.

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Monthly Availability %</th>
<th>Service Credit*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>&lt;99.95% but ≥ 99.0%</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>&lt;99.0%</td>
<td>30%</td>
</tr>
<tr>
<td>Priority 2</td>
<td>&lt;99.0%</td>
<td>15%</td>
</tr>
</tbody>
</table>

*Credit percentages are as a percentage of monthly applicable Subscription Fee. If the Subscription Fee for the Cloud Offering is paid other than monthly, the monthly subscription fee shall be calculated as the pro rata equivalent of one month of the subscription fee specified in the applicable Order Form.

c. **Requesting Service Credits** - Subscriber must request Service Credits, in writing, within 30 calendar days after Appian provides the corresponding Correction. Service Credits not requested within this time shall expire.

d. **Exclusions.** Issues caused by any of the following situations shall not trigger Appian’s obligations under this Service Level Agreement:

i. Any time the Cloud Offering is not available as a result of scheduled maintenance activities, Subscriber initiated maintenance or any other agreed-to scheduled downtime activity;

ii. Unavailability of or errors in the Cloud Offering due to the following, to the extent developed by or incorporated by Subscriber or its agents: (I) modifications or plug-ins to the Cloud Offering, or (II) unsupported programming, unsupported integrations or malicious activities;

iii. Unavailability of or errors in the Cloud Offering as a result of Subscriber using the Cloud Offering contrary to the then current Documentation;

iv. Events outside Appian’s reasonable control, not caused by Appian’s fault or negligence, or Subscriber provided infrastructure or integration being unavailable;

v. Any time the Cloud Offering is not available as a result of Subscriber exceeding the resources allocated under the applicable Order Form, as described in the configuration and associated infrastructure section of the Order Form.

e. **Termination** - Subscriber may terminate the Agreement for cause if Appian refunds to Subscriber the maximum amount of Service Credits to Subscriber for Priority 1 Issues in any two consecutive months, provided Subscriber notifies Appian of its intent to elect this remedy, in writing, within 30 calendar days after the second month.
APPIAN SUPPLEMENTAL TERMS

Infrequent user (403-17500):

Cloud Subscription - A Cloud Infrequent User is a user that accesses a single application no more than four times per month. If a Cloud Infrequent User's access extends from one day to another, each day counts as an access.

On-premises Infrequent User (402-17500):

On Premises Term License - An On Premises Infrequent User is allowed to access a single application up to four times per month. If an On-Premises Infrequent User's access extends from one day to another, each day counts as an access.

Input-Only External User (403-16500):

Cloud Subscription - A Cloud Input-Only External User is a person external to Subscriber's organization who may use the Cloud Offering to submit forms or requests only to a single Appian application. Cloud Input-Only External User may not engage in approval processes, complete tasks, or use the Cloud Offering for any purpose other than form submission.

Input-Only External User(402-16500):

On-premise License - An On-Premises Input-Only External User is a person outside of Customer's organization that may use the Appian Software to submit forms or requests only to a single Appian application. On-Premises Input-Only External Users may not engage in approval processes, complete tasks, or use the Appian Software for any purpose other than form submission.

APPIAN WORKFORCE SAFETY CLOUD TERMS (403-25203):

Subscription and Restrictions. The Appian Workforce Safety Subscription allows Subscriber to deploy, customize, configure, and maintain the Appian Workforce Safety Application (“Application”) in the Cloud Offering for use with respect to managing the processes of managing issues arising from crisis response and return-to-work after crises, including employee readiness case management, return to work screening and rules application, and readiness certification as described in the documentation for the Application. Appian will provision Subscriber with the objects and files necessary to deploy the Application. Subscriber may deploy the Application for
an unlimited number of employees and independent contractors working at the Subscriber’s facilities and offices. Subscriber’s use of the Application is subject to the same subscription terms and restrictions that apply to Subscriber’s usage of the baseline Cloud Offering under the Agreement. The Application is considered Appian confidential information as that term is defined in the Agreement. Appian will indemnify Subscriber from third party intellectual property infringement claims arising from Subscriber’s authorized use of the Application, subject to the same indemnification terms and restrictions that apply to Subscriber’s use of the Cloud Offering under the Agreement.

**Defect Correction.** If, during the Subscription Period, the Application materially fails to conform to the Application’s specific documentation at docs.appian.com (an “Application Defect”) and Appian is able to reproduce the Application Defect in the version of the Application provided to the Subscriber, Appian will use commercially reasonable efforts to provide a correction (“Corrected Application”).

**Updates.** Appian will provide Subscriber with access to any updates to the Application made generally available to Subscribers of the Application (“Application Update”) during the Subscription Period.

**Disclaimers.** Appian is not responsible for installing any Corrected Application or Application Update. Subscriber is solely responsible for any customizations that it may make to the Application (“Subscriber Customizations”). Notwithstanding the generality of the foregoing, Appian is not responsible for modifying any Subscriber Customizations to make it operate with any Corrected Application or any Application Update. The Application may contain form questionnaires or documentation rules associated with return to work eligibility. Any pre-loaded forms, rules and questionnaires are for information purposes only and provided solely to accelerate Subscriber's configuration of the Application. Subscriber is solely responsible for the determination of the appropriateness of the return to work criteria deployed in the Application, and their adherence to local and national laws and regulations. The pre-loaded forms and rules are not medical or legal advice. Appian warrants that the Application will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Application written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Other than the limited obligations stated in these terms, Appian disclaims all express or implied warranties with respect to the Application, including but not limited to the implied warranties of fitness for a specific or general purpose or merchantability.

**Google Maps API.** During the initial three months of the Subscription Period, Appian will provision Subscriber with a temporary Google Maps API key to display or verify locations using Google Maps within the Application. If Subscriber wishes to continue usage of Google Maps within the Application after the initial three months, Subscriber is responsible for obtaining and updating the Appian application with a Google Maps API key on its own account per the Documentation.
**Appian Workforce Safety Subscription Billing and Cancellation Terms.** The Appian Workforce Safety Subscription will be invoiced on a quarterly basis, in advance. The first payment is due on the Effective Date. Subscriber may cancel its Appian Workforce Safety Subscription effective ninety (90) days after written notice of cancellation to Appian. Provided further, however, that Subscriber is required to pay fees through the end of the quarter during which the effective date of the termination occurs.
**APPIAN WORKFORCE SAFETY ON-PREMISES TERMS (402-25203):**

**License and Restrictions.** The Appian Workforce Safety License allows Customer to deploy, customize, configure, and maintain the Appian Workforce Safety Application (“Application”) in the Appian Software for use with respect to managing the processes of managing issues arising from crisis response and return-to-work after crises, including employee readiness case management, return to work screening and rules application, and readiness certification as described in the documentation for the Application. Appian will provision Customer with the objects and files necessary to deploy the Application. Customer may deploy the Application for an unlimited number of employees and independent contractors working at the Customer’s facilities and offices. Customer’s use of the Application is subject to the same subscription terms and restrictions that apply to Customer’s usage of the baseline Appian Software under the Agreement. The Application is considered Appian confidential information as that term is defined in the Agreement. Appian will indemnify Customer from third party intellectual property infringement claims arising from Customer’s authorized use of the Application, subject to the same indemnification terms and restrictions that apply to Customer’s use of the Appian Software under the Agreement.

**Defect Correction.** If, during the Subscription Period, the Application materially fails to conform to the Application’s specific documentation at docs.appian.com (an “Application Defect”) and Appian is able to reproduce the Application Defect in the version of the Application provided to the Customer, Appian will use commercially reasonable efforts to provide a correction (“Corrected Application”).

**Updates.** Appian will provide Customer with access to any updates to the Application made generally available to Customers of the Application (“Application Update”) during the License Period.

**Disclaimers.** Appian is not responsible for installing any Corrected Application or Application Update. Customer is solely responsible for any customizations that it may make to the Application (“Customer Customizations”). Notwithstanding the generality of the foregoing, Appian is not responsible for modifying any Customer Customizations to make it operate with any Corrected Application or any Application Update. The Application may contain form questionnaires or documentation rules associated with return to work eligibility. Any pre-loaded forms, rules and questionnaires are for information purposes only and provided solely to accelerate Customer's configuration of the Application. Customer is solely responsible for the determination of the appropriateness of the return to work criteria deployed in the Application, and their adherence to local and national laws and regulations. The pre-loaded forms and rules are not medical or legal advice. Appian warrants that the Application will, for a period of sixty
(60) days from the date of your receipt, perform substantially in accordance with Application written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Appian disclaims all express or implied warranties with respect to the Application, including but not limited to the implied warranties of fitness for a specific or general purpose or merchantability.

**Appian Workforce Safety License Billing and Cancellation Terms.** The Appian Workforce Safety License will be invoiced on a quarterly basis, in advance. The first payment is due on the Effective Date. Customer may cancel its Appian Workforce Safety License effective ninety days after written notice of cancellation to Appian. Provided further, however, that Customer is required to pay fees through the end of the quarter during which the effective date of the termination occurs.

**Google Maps API.** During the initial three months of the License Period, Appian will provision Customer with a temporary Google Maps API key to display or verify locations using Google Maps within the Application. If Customer wishes to continue usage of Google Maps within the Application after the initial three months, Customer is responsible for obtaining and updating the Appian application with a Google Maps API key on its own account per the Documentation.

**Appian Rpa Terms (SKU 403-27000, 403-25000, 402-25000):**

**Appian RPA Subscription.** The Appian RPA Subscription grants Subscriber a license to use the Appian RPA Software pursuant to the same license terms and conditions that apply to Subscriber’s license to use the Cloud Offering, subject to the following additional terms and restrictions. The Appian RPA Software contains four components: (1) the Appian RPA Console, a cloud based application which Subscriber may use and access over the Internet to deploy new robotic processes, manage resources, review data and metrics, and configure platform settings; (2) the Appian RPA Server, a cloud based service that Subscriber can use and access over the Internet to execute robotic processes and deploy RPA code; (3) the Appian RPA integrated developer environment, which Subscriber can install on Subscriber’s computers and/or servers to develop Appian RPA robots; and (4) Appian RPA Agents, which Subscriber can download, install and deploy on Subscriber’s computers and/or servers. Subscriber may use the Appian RPA Subscription to deploy an unlimited number of Appian RPA Robots. Additional cloud infrastructure may be necessary to deploy additional Appian RPA robots, and must be purchased separately.

**Subscription and Usage Requirement.** Subscriber may only use the RPA Software in connection with applications built on the Cloud Offering and during Subscriber’s license to use the Cloud Offering.
Support. Any material non-conformity between the operation of the Appian RPA Software and Appian’s corresponding documentation is considered an Issue and subject to resolution under Appian’s Service Level Agreement. Subscriber is responsible for correcting defects in the Appian RPA robots created by Subscriber and its contractors. Notwithstanding anything to the contrary in the Service Level Agreement, Appian may, without liability to Subscriber, conduct scheduled downtime on the Appian RPA Software for up to ten (10) minutes each day. Appian will make reasonable efforts to schedule such maintenance at times that will minimize the impact on its subscribers’ authorized use of the Appian RPA Software.

Deprecated payment terms.

Appian RPA Billing and Cancellation Terms. Notwithstanding any other payment terms in this Order Form, the Appian RPA Subscription will be invoiced on a quarterly basis. The first payment is due on the Effective Date. Subscriber may cancel its Appian RPA Subscription effective ninety (90) days after written notice of cancellation to Appian. Provided further, however, that Subscriber is required to pay fees through the end of the quarter during which the effective date of the termination occurs.

Quick Start Subscription Cloud (SKU #403-28000 & #402-28000):

Quick Start Subscription. The Quick Start Subscription permits Subscriber to provision up to three Application Writer Users to write an unlimited number of applications that may be deployed to an unlimited number of Users within Subscriber’s organization, or external customers of Subscriber’s business during the Subscription Period. At the end of the Subscription Period, should Subscriber choose to continue to use the applications deployed during the Subscription Period, the Subscriber will engage in the Renewal Process described below.

Renewal Process. At the end of the Subscription Period, Subscriber shall work in good faith with Appian to identify the applications developed by Subscriber during the Subscription Period, including the functions of such applications, the identity of the user groups for such applications, and each user group’s usage of the application. The parties may then enter into a Renewal Order Form that identifies such applications and provides Subscriber with a flat application subscription (i.e., a subscription defined by application usage rather than user counts) for each such application. Appian shall not be required to provide Subscriber with a flat application subscription for any application that is in wireframe condition or not substantially completed prior to the end of the Quick Start Subscription Period. Following expiration of the Quick Start term, the Parties shall agree to an annual subscription fee based on GSA Schedule Price List. T

Application Writer Users. An Application Writer User is a User with access to the designer environment of the Cloud Offering that creates and revises applications, objects, and integrations and provisions Users and user groups. Subscriber may not activate and deactivate Application Writer User accounts for the purposes of sharing those accounts among multiple Users, although
Subscriber may re-assign Application Writer User accounts if the person assigned that account is permanently re-assigned, terminates their employment, or is similarly unable to continue in their capacity as an Application Writer User. User accounts created for testing purposes only do not count toward the Application Writer User account limit.

**Provisioning.** As a part of the Quick Start Subscription, Appian will provision and two standard Large non-production instances, each with 75 GB of storage. Subscriber is responsible for purchasing a production instance separately.
**Architect Services (SKU 411-71000 & 411-72000):**

**Architect Services.**

Architect Services equips clients and partners with the tools and resources they need to build optimal solutions. Each customer is assigned an Account Architect and has access to a team of additional Appian experts who guide the customer in five core areas:

- **Architecture Planning:** Assistance to plan their enterprise architecture with Appian.
- **How To?:** Guidance on incorporating Appian’s newest features and other technologies such as artificial intelligence, machine learning, and RPA.
- **Technical Practices:** Assistance to establish technical practices to ensure successful projects. These activities include setting up automated testing and deployment, managing concurrent development, and establishing development and UX patterns and best practices.
- **Developer Support:** Assistance with solution design, targeted application reviews, and on-demand development troubleshooting.
- **Health Monitoring:** Assistance with Health Check and performance tuning to ensure applications are running optimally. Architect Services allows a customer to ask for assistance on as many matters as they’d like during their subscription period; however, the service is available with two levels of service: 1 concurrent request and 3 concurrent requests.

Minimum period of performance is two-months (with auto-renewal) for partners or six months for clients. Includes an assigned Account Architect focused on the customer’s success. Account Architect serves as the primary contact, ensures high quality work for the account, and runs the weekly planning meeting. Includes weekly planning meetings and up to one onsite visit per year.

Services are provided remotely from Appian offices. Services are associated with a defined list of projects for a single account. This is especially important when Architect Services is sold to a partner.

Architect Services shall commence on the Order Effective Date, unless a Start Date is stated in the Order Terms above, and continue for the number of months set forth above. The Services shall be provided as described in the Architect Services General Terms and Conditions attached to this Order Form. Upon the expiration of the initial term during which the Architect Services are purchased, as described above, the Architect Services shall renew for consecutive terms of the same duration and at the same terms and pricing that applied during the initial term. The Architect Services shall not renew for an additional term if either party notifies the other party, in writing, of its desire to not renew the services at least 15 calendar days prior to the expiration of the then current term.

**Architect Services Payment.** The fees for Architect Services are due in advance for the entire term of the subscription to Architect Services, with the payment due on the Order Effective Date for the initial Subscription Period, and on the first day of each renewal Subscription Period thereafter.
1. **Scope.** This Rider and the attached *Attivo Networks, Inc.* (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

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

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

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

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

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

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

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

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

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

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

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

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

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

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

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Version 2.0, January 2004
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"Contributions" means any work of authorship, including the original version of the Work and any modifications or additions to that Work or Derivative Works thereof, that is intentionally submitted to Licensor for inclusion in the Work by the Contributor.
"Work" means the work of authorship, whether in Source or Object form, made available under the License.
"Source" form means the preferred form for making modifications, including but not limited to software source code, documentation source, and configuration files.
"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types.
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You may add your own copyright statement to your modifications and may provide additional or different license terms and conditions for use, reproduction, or distribution of your modifications, or for any such Derivative Works as a whole, provided your use, reproduction, and distribution of the Work otherwise complies with the conditions stated in this License.

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

Scope. This Rider and the attached Authentic8 ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Schedule Contract”).

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

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

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

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(f) and (m) and the Contract Disputes Act, subject to the following exceptions:

- EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

Force Majeure. Subject to FAR 52.212-4(f) Excusable delays (FEB 2012), unilateral terminations by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), are hereby deemed to be deleted.

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.

Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

GS-35F-0511T
https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

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

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
AUTHENTIC8 LICENSE, WARRANTY AND SUPPORT TERMS

Authentic8 Terms of Service as of 6 July 2012

Legalese can be tedious and heavy. Authentic8 wants to deliver a valuable service, but there are some basic ground rules, which are described below. You need to read the complete document, but basically:

When you register to use Authentic8, we store the information you give us, including any website credentials that you chose to store with us.

Should you store your credentials with us, Authentic8 will help you log in to your web-based accounts. Our servers do this automatically, and we will never access your credentials unless you tell us to.

We can't always anticipate problems with other websites or web services, and so we can't be responsible for your relationship with those third parties.

Please don't attempt to decompile or otherwise reverse engineer our software.

Likewise, we take a rather dim view of someone trying to hack or spoof Authentic8 so please don't try to attack our service.

Please don't do anything illegal using Authentic8. We reserve the right to report illegal activities to the appropriate law enforcement or civil authorities.

If you're an administrator, you agree that all your users will be bound by these terms.

We believe in rapid iteration, and so we're always updating Authentic8, including the App software you install on your computer. We do this to give you access to new features, as well as to constantly improve security. When we make changes, we'll do our best to inform you.

That is essentially it. The full legal text is below—and you should review it—but we wanted to give you some plain language up front. Thanks for reading.

Authentic8, Inc. ("Authentic8," "we" or "our") provides an internet security service through our website, accessible at www.authentic8.com and our Authentic8 App software (together the "Authentic8 Service"). Please read carefully the following terms and conditions ("Terms") and our Privacy Policy, which may be found at http://www.authentic8.com/privacy/. These Terms govern your access to and use of the Authentic8 Service and constitute a binding legal agreement between the Ordering Activity and Authentic8. If you accept these Terms or use the Authentic8 Service on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, "you" and "your" will refer and apply to that company or other legal entity. If you have been granted access to and use of the Authentic8 Service by and on behalf of the primary account holder, whether directly or through an administrator, you also agree to abide by these Terms.

YOU ACKNOWLEDGE AND AGREE THAT, BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE AUTHENTIC8 SERVICE.

Acknowledgment and Disclaimer

You acknowledge that the Authentic8 Service may not be in final form or fully functional and may not operate properly or contain errors. You assume all risk arising from use of the Authentic8 Service including, without limitation, the risk of damage to your computer system or the corruption or loss of content or information.

Authentic8 warrants that the Services will be perform substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8's control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. Authentic8 Services warrants that the services will, for a period of sixty (60) days from the date of your receipt, will be performed in accordance with the terms and conditions of the GSA Schedule Contract. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, The Authentic8 Service is provided "AS IS," without warranty of any kind. Authentic8 makes no representations or warranties regarding the suitability of the Authentic8 Service for your intended requirements or purposes or regarding any data or information that you download or access through the use of the Authentic8 Service.

Feedback

You agree that all feedback and comments and suggestions for improvements to the Authentic8 Service (collectively, "Feedback") provided to Authentic8 will be the sole and exclusive property of Authentic8 and you hereby assign to Authentic8 and agree to assign to Authentic8 all of your right, title, and interest in and to all Feedback, including all intellectual property rights therein. At Authentic8's request and expense, you will execute documents and take such further acts as Authentic8 may reasonably request to assist Authentic8 to acquire, perfect and maintain its intellectual property rights and other legal protections for the Feedback.

Eligibility

The Authentic8 Service is intended solely for persons who are 18 or older. Any access to or use of the Authentic8 Service by anyone under 18 is expressly prohibited. By accessing or using the Authentic8 Service you represent and warrant that you are 18 or older.
Registration

Past a trial period designated by Authentic8, you may only use the Authentic8 Service if you have a current, valid subscription. In order to use the Authentic8 Service, you must register to create an Authentic8 user account. During the registration process, you will be required to provide certain information and you will establish a username and a password. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. You are responsible for safeguarding your login credentials. You agree not to disclose your login credentials to any third party and to take sole responsibility for any activities or actions under your user account, whether or not you have authorized such activities or actions, including actions taken by users to whom you have granted access and use of the Authentic8 Service on your behalf, directly or through your account administrators. You will immediately notify Authentic8 of any unauthorized use of your user account.

Third Party Websites – Account Information

As a registered user of the Authentic8 Service, you may have the option of providing Authentic8 with login information and credentials, including but not limited to usernames and passwords, and other account information for your personal accounts with certain third-party websites, in order to allow Authentic8 to use, store and submit your credentials on your behalf to access your accounts with such third-party websites. By providing Authentic8 with such credentials, you understand and agree that Authentic8 will use, store and submit your credentials on your behalf, in order to provide the Authentic8 Service in accordance with your user account settings. You have the ability to disable the storage and submission of your credentials for your account with any third-party website at any time by adjusting your Authentic8 user account settings. PLEASE NOTE THAT YOUR RELATIONSHIP WITH EACH THIRD PARTY WEBSITE IS GOVERNED BY THE AGREEMENT YOU HAVE WITH SUCH THIRD PARTY WEBSITE. ANY RISK OF LOSS RELATING TO THE USE OF SUCH THIRD PARTY WEBSITES REMAINS ENTIRELY WITH YOU. You acknowledge and agree that Authentic8 is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

Authentic8 cannot always anticipate technical or other problems with third party websites which may result in service interruptions, a loss of your personalization settings or an inability to submit your credentials on your behalf. Authentic8 cannot assume responsibility for the deletion, non-delivery or failure to store or submit on your behalf any of your credentials, or loss of other information or settings on such third party websites.

Rights You Grant to Authentic8

By submitting your credentials for third party websites to Authentic8, you hereby authorize Authentic8 to use, store and submit such credentials on your behalf, log into such third party websites on your behalf and to configure the Authentic8 Service so that it is compatible with such third party websites. Authentic8 may use, store and submit such credentials on your behalf, but only to the extent necessary to provide the Authentic8 Service to you. You represent and warrant that you are entitled to submit such credentials to Authentic8 for this purpose, without any obligation by Authentic8 to pay any fees or other limitations.

YOU ACKNOWLEDGE AND AGREE THAT WHEN AUTHENTIC8 ACCESSES THIRD PARTY WEBSITES, AUTHENTIC8 IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF, OR ON BEHALF OF, ANY THIRD PARTY. You understand and agree that the Authentic8 Service is not sponsored or endorsed by any third party websites which are accessible through the Authentic8 Service.

Software

We reserve the right to add additional features or functions to the Authentic8 Service, including the Authentic8 App. When installed on your computer, the Authentic8 App communicates with our servers. We may require the updating of the Authentic8 App when we release a new version, or when we make new features available. This update may occur automatically or upon prior notice to you and may occur all at once or over multiple sessions. You acknowledge and agree that we have no obligation to make available to you any subsequent versions of the Authentic8 App.

Conditioned upon your compliance with the terms and conditions of these Terms and during the trial period and term of your subscription to use the Authentic8 Service only, Authentic8 grants you a non-exclusive and non-transferable license for a single user to use the executable form of the Authentic8 App on a computer owned or controlled by you, solely for your personal, non-commercial purposes, as described herein. Authentic8 reserves all rights not expressly granted to you in this Agreement. The license to the Authentic8 App granted under these Terms remains in effect unless earlier terminated in accordance with these Terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Restrictions

Except as expressly specified in these Terms, you agree not to modify the Authentic8 App, including but not limited to adding new features or otherwise making adaptations that alter its functionality. You agree to not use or allow others to use the Authentic8 application except in conjunction with an authorized subscription from Authentic8. You acknowledge and agree that portions of the Authentic8 Service, including but not limited to the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Authentic8 and its licensors. Accordingly, you agree not to disassemble, decompile or reverse engineer the Authentic8 Service, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

Payment Terms
Authentic8 offers new users a free trial to use the Authentic8 Service, which begins on the first day you register to use the Authentic8 Service (the “Trial”). Authentic8 may offer various account levels and subscription terms. A description of the features associated with these account levels, subscription terms and fees are available by contacting sales@authentic8.com. You agree to pay the applicable subscription fees that may accrue in relation to your use of the Authentic8 Service, if any, and you expressly agree that we are authorized to charge your Method of Payment for such amounts. Subscription fees will be payable in advance in accordance with the subscription term and billing cycle designated at enrollment, or subsequently established through your account page or otherwise in writing with Authentic8. Unless you cancel your Account prior to the end of the then current subscription term, your subscription term will automatically renew. For accounts set up on an invoice basis, unless an alternate billing cycle is established, you agree to pay all amounts stated in such invoices within thirty (30) days of receipt of the invoice. For corporate accounts, you will be charged additional fees as additional users are added to your account after the 30 day Trial for each user. All fees are non-refundable and non-transferable except as expressly provided in these Terms. All fees and applicable taxes, if any, are payable in United States dollars. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Authentic8 shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Privacy

See Authentic8’s Privacy Policy at http://www.authentic8.com/privacy/ for information and notices concerning Authentic8’s collection and use of your personal information.

Ownership

The Authentic8 Service is protected by copyright, trademark, and other laws of the United States and foreign countries. Except as expressly provided in these Terms, Authentic8 and its licensors exclusively own all right, title and interest in and to the Authentic8 Service, including all associated intellectual property rights. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Authentic8 Service.

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General Prohibitions

You agree not to do any of the following:

Post, upload, publish, submit or transmit any text, graphics, images, software, music, audio, video, information or other material that: (i) infringes, misappropriates or violates a third party’s patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any other person; or (vii) promotes illegal or harmful activities or substances.

Use, display, mirror or frame the Authentic8 Service, or any individual element within, Authentic8’s name, any Authentic8 trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Authentic8’s express written consent;

Access, tamper with, or use non-user areas of the Authentic8 Service, Authentic8’s computer systems, or the technical delivery systems of Authentic8’s providers;

Attempt to probe, scan, or test the vulnerability of any Authentic8 system or network or breach any security or authentication measures;

Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Authentic8 or any of Authentic8’s providers or any other third party (including another user) to protect the Authentic8 Service;

Attempt to access or search the Authentic8 Service or download information or data from the Authentic8 Service through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Authentic8 or otherwise generally available third party web browsers;

Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

Use any meta tags or other hidden text or metadata utilizing a Authentic8 trademark, logo URL or product name without Authentic8's express written consent;

Use the Authentic8 Service for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms;

Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Authentic8 Service to send altered, deceptive or false source-identifying information;

Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Authentic8 Service;

Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Authentic8 Service;

Collect or store any personally identifiable information from Authentic8 Service from other users of the Authentic8 Service without their express permission;

Impersonate or misrepresent your affiliation with any person or entity;

Violate any applicable law or regulation; or

Encourage or enable any other individual to do any of the foregoing.

Authentic8 will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Authentic8 may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Authentic8 has no obligation to monitor your access to or use of the Authentic8 Service or to review or edit any User Content, but has the right to do so for the purpose of operating the Authentic8 Service, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body.

Recovery against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Copyright Policy

Authentic8 respects copyright law and expects its users to do the same. Please see Authentic8's Copyright Policy at www.authentic8.com/copyright for further information.

Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of Authentic8 used herein are trademarks or registered trademarks of Authentic8. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the Federal laws of the United States without regard to its conflict of laws provisions.

Entire Agreement

These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitute the entire and exclusive understanding and agreement between Authentic8 and you regarding the Authentic8 Service, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Authentic8 and you regarding the Authentic8 Service.

Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Authentic8’s prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given: (i) by Authentic8 via email (in each case to the address that you provide) or (ii) by posting to your user account page. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

General

The failure of Authentic8 to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Authentic8. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.
Contacting Authentic8

If you have any questions about these Terms, please contact Authentic8 at support@authentic8.com.
SUBSCRIPTION SERVICES AGREEMENT
This Agreement (this “Agreement”) is entered into between Authentic8, Inc. (“Authentic8”) and the company identified below (“Ordering Activity”) and is effective as of the date signed by Authentic8 below (the “Effective Date”).

<table>
<thead>
<tr>
<th>Company:</th>
<th>Address:</th>
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ORDER FORM

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<tr>
<td><strong>Auto-renew:</strong></td>
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<tr>
<td><strong>Subscription Fees:</strong></td>
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<tr>
<td><strong>Authorized Users:</strong></td>
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<tr>
<td><strong>Additional Users:</strong></td>
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<tr>
<td><strong>Annualized Contract Value:</strong></td>
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<tr>
<td><strong>Access Terms:</strong></td>
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<td><strong>Additional Terms:</strong></td>
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<td><strong>Support Terms:</strong></td>
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This Agreement is subject to the attached terms and conditions, which is a part of this Agreement. By executing this Agreement, Ordering Activity agrees to be bound by those terms and conditions for the use of the Authentic8 Service. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

<table>
<thead>
<tr>
<th>ORDERING ACTIVITY</th>
<th>AUTHENTIC8</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>By:</strong></td>
<td><strong>By:</strong></td>
</tr>
<tr>
<td><strong>Name:</strong></td>
<td><strong>Name:</strong>  Title:</td>
</tr>
<tr>
<td><strong>Date:</strong></td>
<td><strong>Date:</strong>  Title:</td>
</tr>
</tbody>
</table>

AUTHORIZED USERS

1.1 Ordering Activity will determine the access controls for its employees and agents who are authorized to use the Authentic8 Service ("Authorized Users") in connection with Ordering Activity’s account. The Authentic8 Service may only be accessed and used by Authorized Users from compatible devices and may require login credentials, the use of which will be governed by the access terms in the associated Order Form. Ordering Activity is responsible for the activity occurring under its account by its Authorized Users (and their compliance with this Agreement).

1.2 Ordering Activity may from time to time replace an Authorized User who has terminated or changed their job status or function, or otherwise no longer requires use of the Authentic8 Service. Ordering Activity may add Authorized Users to its account at any time during the Subscription Term. Ordering Activity may only decrease the number of Authorized Users at the end of the Subscription Term (prior to the renewal). Authentic8 shall invoice Ordering Activity for any Authorized Users added during the Subscription Term in excess of the contracted number according to the terms set forth in the applicable Purchase Order.

AUTHENTIC8 SERVICE

2.1 Subject to the terms and conditions of this Agreement, Ordering Activity may access and use the Authentic8 Service for its business purposes during the Subscription Term and in accordance with the terms and limitations set forth in the Order Form.

2.2 In order to use the Authentic8 Service, each Authorized User must download the Authentic8 client software application (the "Authentic8 App") from the Authentic8 website or the applicable app store and install it on each device that will use the Authentic8 Service. Ordering Activity agrees to stay current with the latest version of the Authentic8 App, and acknowledges that Authentic8 reserves the right to deprecate older versions of the Authentic8 App subject to notification. Ordering Activity will only allow the installation the Authentic8 App on compatible devices that are supported by Authentic8. Ordering Activity and its Authorized Users may not modify, alter, decompile or reverse engineer the Authentic8 App.

USE OF THE AUTHENTIC8 SERVICE

3.1 Ordering Activity, and/or its Authorized Users may provide Authentic8 with certain login and other account information for websites and web-based applications that Authorized Users will access through the Authentic8 Service ("Account Access Information"). Authorized Users may only use the Authentic8 Service to access accounts for which they are authorized by Ordering Activity to access and use. By providing Account Access Information, the account owner (whether Ordering Activity or its Authorized Users) permits Authentic8 to use (and, if elected, store) the Account Access Information on behalf of the account owner. The account owner can remove any Account Access Information stored with the Authentic8 Service at any time. In no event shall Account Access Information associated with Authorized Users personal websites be accessible or made available to Ordering Activity. Authentic8 will maintain administrative and technical safeguards to protect the security and confidentiality of the Account Access Information stored in the Authentic8 Service in accordance with applicable industry standards; however, Ordering Activity, and its Authorized Users are ultimately responsible for taking appropriate steps to maintain the security and confidentiality of its Account Access Information.

3.2 Ordering Activity, and its Authorized Users, agree not to: (1) use the Authentic8 Service or other than as authorized in this Agreement; (2) resell, sublicense, or otherwise make the Authentic8 Service available to any third party; (3) use the Authentic8 Service to support any activity that is illegal or that violates the proprietary rights of others; (4) interfere with or disrupt the integrity or performance of the Authentic8 Service or any websites or web-based applications; (5) deactivate, impair, or circumvent any security or authentication measures of the Authentic8 Service or any websites or web-based applications; (6) access the Authentic8 Service for purposes of monitoring its performance or functionality; or (7) authorize any third parties to do the above.

3.3 Authentic8 is not responsible or liable for: (1) the availability, accuracy, or security of any websites or web-based applications accessed through the Authentic8 Service, (2) the content, products, or services on or available from those websites or web-based applications; or (3) the deletion, non-delivery or failure to store or submit Account Access Information, or a loss of other information or settings on the websites and web-based applications accessed through the Authentic8 Service.

SUPPORT AND AVAILABILITY

4.1 During the Subscription Term, Authentic8 will provide technical support for the Authentic8 Service according to the terms set forth in Exhibit A ("Support Terms and Service Availability"). Authentic8 will make the Authentic8 Service available in accordance with Exhibit A and will use reasonable efforts to maintain the Authentic8 Service in a manner that minimizes errors and service interruptions.

SUBSCRIPTION FEES

5.1 Authentic8 shall invoice Ordering Activity for the fees or charges for the Authentic8 Service as specified in the Order Form ("Subscription Fees"). All Subscription Fees are quoted in United States dollars. Subscription Fees for the contracted number of Authorized Users will be invoiced and are due within 30 days from the date of invoice, as otherwise stated in the GSA Schedule Contract or Purchase Order(s). Incremental service fees incurred by adding Authorized Users during the Subscription Term will be invoiced according to the terms set forth in the GSA Schedule Contract and the Purchase Order. All payment obligations are non-cancelable and once paid are nonrefundable.

5.2 Authentic8 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.3 Authentic8 reserves the right to modify the Subscription Fees or introduce new fees at its discretion by providing 30 days prior notice to Ordering Activity. Notwithstanding the foregoing, any changes to the Subscription Fees will not apply to Ordering Activity’s current Subscription Term, and will instead take effect at the beginning of the renewal term.

TERMINATION

7.1 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Authentic8 shall proceed diligently with performance of its Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
7.2 Upon any expiration or termination of this Agreement, Ordering Activity’s right to access and use the Authentic8 Service will automatically terminate, and Ordering Activity may not continue to access or use the Authentic8 Service. Authentic8 will have no liability for any costs, losses, damages, or liabilities arising out of or related to Authentic8’s exercise of its termination rights under this Agreement. Any payment obligations as of the expiration or termination (or that relate to activity during the Subscription Term) will remain in effect. The obligations and provisions of Sections 8 through 12 will survive any expiration or termination of the Agreement.

8. PROPRIETARY RIGHTS

8.1 Authentic8 owns all right, title and interest in and to the Authentic8 Service and the Authentic8 App, including all worldwide intellectual property rights therein (“Authentic8 IP”). This Agreement does not convey any proprietary interest in or to any Authentic8 IP or rights of entitlement to the use thereof except as expressly set forth herein. Ordering Activity grants Authentic8 the right to use its name (and the corresponding trademark or logo) on Authentic8’s website and marketing materials to identify Ordering Activity as a Ordering Activity; provided, however, that any such use must be pre-approved by Ordering Activity, which will not be unreasonably withheld or delayed. 8.2 Authentic8 will be free to use any suggestions, ideas, feedback, or recommendations provided by Customer regarding the Authentic8 Service or the Authentic8 App (“Feedback”), and by providing any Feedback, Customer grants Authentic8 a worldwide, perpetual, irrevocable, full-paid, and royalty-free license to use and exploit Feedback for any purpose and without any further obligation. Authentic8 acknowledges that the ability to use this Agreement and any Feedback received in advertising is limited by GSAR 552.203-71.

8.3 Each party understands that the other party may need to disclose certain non-public information relating to the disclosing party’s business that is marked or identified as “confidential” at the time of disclosure (“Confidential Information”) in connection with the use and/or performance of the Authentic8 Service. The receiving party agrees to take reasonable precautions to protect such Confidential Information, and to not disclose (without the disclosing party’s prior authorization) to any third person any such Confidential Information. Confidential Information does not include any information that the receiving party can: (1) is or becomes generally available to the public, or (2) was in its possession or was known prior to receipt from the disclosing party, or (3) was rightfully disclosed to it without restriction by a third party, or (4) was independently developed without use of any Confidential Information of the disclosing party. The receiving party may disclose Confidential Information if the disclosure is necessary to comply with a valid court order or subpoena (in which case the receiving party will, unless expressly prohibited by the terms of the court order or subpoena, promptly notify the disclosing party and cooperate with the disclosing party if the disclosing party chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed). Authentic8 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

9. DISCLAIMERS

9.1 Authentic8 warrants that the Services will be perform substantially in accordance with the SOFTWARE written materials accompanying it. In the event that the Services do not perform in accordance with SOFTWARE written materials accompanying it due to reasons within Authentic8’s control, for a period of sixty (60) days Authentic8 will repair the service in order to bring it into accordance, or provide a refund of subscription fees. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOINGThe Authentic8 Service and the Authentic8 App are provided “AS IS” and on an “AS AVAILABLE” basis. Authentic8 does not warrant that the Authentic8 Service will be provided without interruption or be completely error free. AUTHENTIC8 DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

9.2 Ordering Activity acknowledges that, despite the security features of the Authentic8 Service, no service can provide a completely secure mechanism of electronic transmission and that there are persons and entities that may attempt to breach Authentic8’s security measures. Authentic8 will not be liable for any security breach (or other events) caused by circumstances outside of its reasonable control. Authentic8 is not responsible for any data or information that Ordering Activity, or its Authorized Users, download or access through the use of the Authentic8 Service. Ordering Activity assumes all risk from the use of the Authentic8 Service including any damage to its computer system or devices or the corruption or loss of its data and information when accessing or using the Authentic8 Service.

10. RESERVED

11. INDEMNIFICATION

11.1 Authentic8 will: (1) defend Ordering Activity against any third party suit, claim, action or demand (a "Claim") alleging that the Authentic8 Service infringes any copyright or trademark or misappropriates a trade secret of a third party; and (2) indemnify and hold Ordering Activity harmless from any final award of damages or settlement amount arising in connection with any such Claim. Authentic8 does not assume the right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

12. GENERAL

12.1 The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

12.2 This Agreement is governed by and construed in accordance with the Federal laws of the United States, without giving effect to the principles of conflict of law. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. 12.3 Neither party may assign this Agreement, in whole or in part, without the other party’s prior written consent. Any attempt to assign this Agreement other than as permitted above will be null and void.

12.4 All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

12.5 This Agreement, together with the Underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitutes the complete and exclusive understanding and agreement between the parties regarding this subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to this subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties. [END]
Capitalized terms not defined below will have the meaning ascribed to them in the Agreement. Additional terms used herein are defined below.

1. SUPPORT AND MAINTENANCE

1.1 Technical Support. Ordering Activity will provide direct first tier technical support directly to its Authorized Users. Authentic8 will provide second tier support escalation to Ordering Activity via email and phone during the regular business hours of: 9am-6pm, Pacific Time, Monday-Friday (excluding national holidays).

1.2 Maintenance. Authentic8 will make updates (error corrections, bug fixes, enhancements and/or improvements) to the Authentic8 Service on an ongoing basis. Except in the case of emergencies, Authentic8 will schedule maintenance during appropriate, non-peak usage hours (typically between 10pm on Fridays and 12pm on Sundays, Pacific Time) and to the extent possible will provide advance notice of any planned service disruption.

1.3 Reporting Process. Only Ordering Activity’s Account administrator(s) may contact Authentic8’s technical support personnel. In connection with submitting a problem report, Ordering Activity must: (i) notify Authentic8 promptly of problems with the Authentic8 Service, and provide Authentic8 with any documentation available regarding the error sufficient to allow Authentic8 to reproduce the error; and (ii) provide Authentic8 with reasonable assistance, as requested, to troubleshoot the problem.

2. SERVICE LEVEL

2.1 Availability. The Authentic8 Service will be available 99.9% of the time per month, except for any scheduled maintenance or Service Interruptions (“Uptime Availability”). The Authentic8 Service (or a portion of the Authentic8 Service) may be unavailable at certain times, for any unanticipated or unscheduled emergency maintenance or unavailability as a result of (i) circumstances beyond Authentic8’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), or (ii) Internet third party service provider failures, delays, or denial of service attacks (“Service Interruptions”).

2.2 Remedies. If the Authentic8 Service does not meet the Uptime Availability in any given calendar month (excluding any scheduled maintenance or Service Interruptions), then Authentic8 will credit Ordering Activity a percentage of the Subscription Fees for that month as follows:

<table>
<thead>
<tr>
<th>Service Availability</th>
<th>Service Credit</th>
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<tbody>
<tr>
<td>99.5% - 99.9%</td>
<td>20%</td>
</tr>
<tr>
<td>99% - 99.5%</td>
<td>40%</td>
</tr>
<tr>
<td>&lt;99%</td>
<td>100%</td>
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</table>

Service credits must be requested in writing within 10 business days after the month following such service level unavailability. This credit will be applied against future Subscription Fees. If the Authentic8 Service does not meet the Uptime Availability for two (2) consecutive months in any three (3) month period, or four (4) times in any twelve (12) month period, Ordering Activity may terminate the Agreement and Authentic8 will refund the unused portion of the Subscription Fees that Ordering Activity had paid for the Authentic8 Service for the remainder of the Subscription Term. This section states Ordering Activity’s sole and exclusive remedy for the unavailability of the Authentic8 Service.
All references to Azul in these Terms and Conditions should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Azul Systems, Inc.” Nothing herein shall establish privity of contract between Azul Systems, Inc. and the Ordering Activity.

TERMS AND CONDITIONS FOR AZUL PRODUCTS AND SERVICES
AZUL SOFTWARE AGREEMENT

Definitions.
“Product” means the Azul software product available from the Download Site and detailed and further set forth in the applicable Exhibit A and an Order (and are incorporated herein by reference) in object code form.

“Download Site” means a password-protected, non-public online site managed and maintained by Azul where Customer is able to access and download the Product.

“Distribute” or a “Distribution” means delivering to, or making available to, a third-party end user (either directly or through indirect or other means including without limitation reseller channels, assignment, or sublicense).

“Software Services”, “Supported Instances” and “Third-Party Software Licenses” have the meanings as detailed and further set forth in the applicable Exhibit A and an Order (as defined in Section 5.2).

Grant of Product License. Subject to Customer’s compliance with all of the terms herein, Azul shall provide the Software Services for, and grants Customer the Product License to, the Product as set forth on each Order. Customer may only use the Product on the number of Supported Instances that have been purchased. Customer may make copies of the Product for back-up purposes, but Azul retains ownership of all copies. Customer acknowledges that the Product contains and uses certain third-party and/or open source software (“Third-Party Software”). THIRD-PARTY SOFTWARE MAY BE SUBJECT TO AND GOVERNED BY THE THIRD-PARTY SOFTWARE LICENSES AS DEFINED IN THE APPLICABLE EXHIBIT A (the “Third-Party Software Licenses”). Nothing herein shall bind the Ordering Activity to any Third-Party Software terms unless the terms are provided for review and agreed to in writing by all parties. Ordering Activity shall ensure it has reviewed the applicable Third-Party Software Licenses and has the proper licenses to use the Product. Notwithstanding anything to the contrary herein, this Agreement does not limit or supersede any rights or obligations Customer has as a result of Third-Party Software Licenses.

Customer Restrictions and Obligations. Customer will not (and will not allow any third party to): (i) unless so authorized in the applicable Exhibit A or an Order, externally Distribute the Product or any portion thereof (even though an applicable Third-Party Software License may give Customer the right to Distribute the Product) or the Documentation; or (ii) post or Distribute the Product (or any portion thereof) on any publicly accessible website or any other public means; or (iii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Product (except as expressly and specifically authorized by Azul in writing); or (iv) disclose to any third party any benchmarking or comparative study involving the standalone Product (except as expressly and specifically authorized by Azul in writing); or (v) reverse engineer, disassemble, decompile, or modify or create derivative works of the Product (except to the extent such restriction is prohibited by applicable law or is allowed by a relevant Third-Party Software License); or (vi) export or re-export the Product in violation of any applicable laws or regulations; or (vii) Distribute, sell or offer for sale any Azul product (irrespective of how or where such Azul product is obtained) without paid and active Software Services for such Azul product; or (viii) remove or alter any copyright, trademark, or other proprietary notice from the Documentation or the Product or any portion thereof. Except for the rights expressly granted herein, Azul retains all right, title and interest in and to the Product. Prior to disposing of any media or apparatus containing any part of the Product or Documentation, Customer shall completely destroy any Product and Documentation contained therein. All the limitations and restrictions on Products in this Agreement also apply to Documentation and screens.

Support and Maintenance. While the Software Services for a Product have not expired or been terminated, and Customer is otherwise in compliance with its obligations under this Agreement, Azul will provide support and maintenance services for that Product as and to the extent described in Exhibit B (“Support Services”), the applicable Exhibit A, and an Order. Customer may not use Support Services: (i) to support installations or deployments of a Product on more Supported Instances than have been purchased; or (ii) in violation of any Support Services Restrictions described in the applicable Exhibit A or in an Order; or (iii) purchased with a given Support Tier to support
installations or deployments of a Product that have purchased Software Services with a lower level of Support Tier (for example without limitation, Premium Support cannot be used to support installations that have purchased Standard Support only). For clarity and notwithstanding anything in this Agreement to the contrary, Azul has no obligation to provide Support Services to Customer’s end users.

Fees and Payment.

Customer agrees to pay to the GSA Schedule Contractor on behalf of Azul (or the Business Partner from whom Software Services or Professional Services are purchased) the fees as set forth in an applicable Order. Fees for Software Services and subsequent renewals are paid, in accordance with the GSA Schedule and GSA Schedule pricelist.

Compliance and Reporting. Upon written request from Azul and not to exceed once per calendar year, Customer shall provide a certificate to Azul executed by an authorized signatory of Customer stating that Customer is in compliance with the terms and conditions of this Agreement, including but not limited to confirmation that all applicable fees have been paid. If any underpayments are revealed by any such certificate (or if Customer otherwise becomes aware of any underpayments), Customer shall promptly pay any underpayments. Customer agrees to comply with the reporting obligations if specified on an Order.

Term and Termination.

Termination of the Agreement. The term of this Agreement will begin on the Effective Date. Any termination of this Agreement will not operate to terminate any active Software Services, and the terms and conditions of this Agreement will continue in full force and effect (except no new or renewals of Software Services may be purchased) until the latest expiration of any Software Services covered under this Agreement.

Term of Software Services. Each Software Services hereunder shall begin as of the date set forth on the application Order and shall continue for the initial term set forth on such Order. Following such initial term, each Software Services hereunder may be renewed for successive terms equal in length to the initial term by executing a new Order for such successive term; For each Software Services, the initial term, together with any renewals thereof, is referred to as the “Software Services Term”.

Effect of Termination. Upon the termination of this Agreement, all licenses granted hereunder (except for licenses granted on a perpetual basis and only if a material breach of this Agreement by Customer has not occurred) shall immediately terminate and Customer shall immediately cease all use of all affected Products and return or destroy all copies of all affected Products and all portions thereof and so certify to Azul. Any rights, obligations and duties herein which by their nature extend beyond the expiration or termination hereof shall survive any cancellation, expiration or termination hereof. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

Limited Warranty and Disclaimer. Except in the case of an Evaluation License, Azul warrants for a period of ninety (90) days (“Warranty Period”) from the beginning of the applicable Software Services Term that the Product will materially conform to Azul’s then current Documentation for such Product. This warranty covers only problems reported to Azul during the warranty period. ANY LIABILITY OF AZUL WITH RESPECT TO A PRODUCT OR THE PERFORMANCE THEREOF UNDER ANY WARRANTY, STRICT LIABILITY OR OTHER THEORY WILL BE LIMITED EXCLUSIVELY TO PRODUCT REPLACEMENT OR, IF REPLACEMENT IS INADEQUATE AS A REMEDY OR, IN AZUL’S OPINION, IMPRACTICAL, TO A REFUND OF AN APPROPRIATE PORTION THE REMAINING UNAMORTIZED SOFTWARE SERVICES FEE PAID BY CUSTOMER FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM. EXCEPT FOR THE FOREGOING WARRANTY BY AZUL, ALL PRODUCTS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND FROM ANYONE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. FURTHER, AZUL DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCTS ARE BUG FREE OR THAT THE PRODUCT’S USE WILL BE UNINTERRUPTED.
Business Partners. Azul has entered into agreements with other authorized organizations, including but not limited to resellers, distributors, and consultants, to promote, market, sell and support certain Azul products and services (such organizations are “Business Partners”). When Customer purchases Products, Software Services and/or Professional Services through a Business Partner, Azul confirms that it is responsible for providing the Product, associated Support Services, and/or Professional Services to Customer under the terms of this Agreement. Azul is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Customer, or (c) any products or services that Business Partners supply to Customer under any separate agreements between a Business Partner and Customer.

Reserved.

Miscellaneous. Each party represents and warrants that it shall comply with all applicable laws and regulations in connection with its performance hereunder. Azul may object to and reject any pre-printed or otherwise conflicting terms of any related purchase order, confirmation, or similar form which shall have no force or effect unless accepted by Azul. Neither this Agreement nor the licenses granted hereunder are assignable or transferable without the prior written consent of the other party (and any attempt to do so shall be void) except that either party may assign and transfer all of its rights and obligations hereunder without such written consent to a successor to (as applicable) substantially all of Azul’s Product business or assets or Customer’s business for which Products are
licensed and Support Services are provided. Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. The parties agree that they are each independent contractors and nothing in this Agreement will be deemed to establish a joint venture, partnership, agency or employment relationship between the parties. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be provided either in writing (and notices shall be sent to the address the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts) or via e-mail. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. Azul may use Customer’s name in client listings to the extent permitted by GSAR 552.203-71. No right or license, express or implied, is granted in this Agreement for the use of any Azul or third-party trade names, service marks or trademarks, including, without limitation, the Distribution of the Products utilizing any Azul Trademarks. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this arrangement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by Federal law without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. This Agreement, with the Purchase Order, GSA Schedule and GSA Schedule pricelist, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing. In the event of a conflict between this Agreement and a Negotiated Purchase Order, the Purchase Order shall prevail. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Products and accompanying documentation provided by Azul are “commercial items,” “commercial computer software” and/or “commercial computer software documentation.” Consistent with FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these terms and shall be prohibited except to the extent expressly permitted by these terms. Neither party is excused from taking reasonable steps to follow its normal disaster recovery procedures or its obligation to pay for Software Services or Professional Services delivered. Except as may be otherwise provided herein, this Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010). There are no third-party beneficiaries to this agreement.
EXHIBIT A-1

LICENSED PRODUCT: “ZING”

**Product:**
Zing Enterprise Bundle
Includes the Zing Virtual Machine (ZVM) for Java applications, Zing System Tools (ZST), and Zing Vision.

**Product License:**
Azul grants Customer a time-based (during the applicable Software Services Term), without rights to sublicense, worldwide, nontransferable (except in connection with a permitted assignment pursuant to Section 14 of the Agreement), nonexclusive right to use the Product in object code form only; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may only use the Product on Systems for which Customer has purchased a Supported Instance and solely in connection with Customer’s internal business operations.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SOFTWARE SERVICES TERM AND/OR USE INCONSISTENT HEREWITH.

**Software Services:** Time-based Product License (as described above) and associated Support Services for the Product during the term of the Product License.

**Support Services Additions** In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:
ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java

**Designated Support Contacts** As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer’s Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Supported Instances purchased and the Support Tier selected and paid for by Customer:

<table>
<thead>
<tr>
<th>Number of Supported Instances</th>
<th>Designated Number of Support Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard Premium</td>
</tr>
<tr>
<td>1 to 50</td>
<td>2</td>
</tr>
<tr>
<td>51 to 100</td>
<td>2</td>
</tr>
<tr>
<td>101 to 250</td>
<td>2</td>
</tr>
<tr>
<td>251 to 500</td>
<td>2</td>
</tr>
<tr>
<td>501 to 1000</td>
<td>4</td>
</tr>
<tr>
<td>1001 and over</td>
<td>4</td>
</tr>
</tbody>
</table>

**Third-Party Software Licenses** As listed at [http://www.azul.com/license/zing_third_party_licenses.html](http://www.azul.com/license/zing_third_party_licenses.html).

**PRODUCT-SPECIFIC DEFINITIONS:**
“System” means a physical hardware system capable of running the Product, including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable.
“Physical Node” means a System that includes up to two (2) processor sockets, where each processor socket may include an unlimited number of processing cores. For Systems with more than two (2) processor sockets, one Supported Instance is required for each two (2) processor sockets.
“Virtual Node” means a virtual machine that includes up to thirty-two (32) virtual processing cores. For virtual machines with more than thirty-two (32) virtual processing cores, one Supported Instance is required for each thirty-two (32) virtual processor cores.
“Supported Instance” means Software Services with (i) one or more instances of Zing System Tools and Zing Virtual Machine for Java applications running on either (a) one (1) Physical Node or (b) one (1) Virtual Node; and (ii) one or more instances of Zing Vision running on an unlimited number of Physical Nodes or Virtual Nodes.
EXHIBIT A-2
LICENSED PRODUCT: “ZULU ENTERPRISE”

PRODUCT:
Zulu Enterprise Bundle
Includes Zulu Enterprise (Azul’s supported builds of OpenJDK) and Zulu Mission Control (Azul’s builds of JDK Mission Control supported for use with Zulu Enterprise)

PRODUCT LICENSE:
Azul grants Customer a perpetual, worldwide, nonexclusive right to use the Product; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses.

Software Services: Time-based Support Services for the Product.

Support Services Additions: In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

- update the JDK component of the Product for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

<table>
<thead>
<tr>
<th>Security fixes that have an identified CVE</th>
<th>Platinum</th>
<th>Support Tier</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security fixes that have an identified CVE, bug fixes, and other updates</td>
<td>48 hours¹ / 15 days</td>
<td>7 days¹ / 15 days</td>
<td>5 days¹ / 30 days</td>
</tr>
<tr>
<td></td>
<td>7 days¹ / 15 days</td>
<td>5 days</td>
<td>30 days</td>
</tr>
</tbody>
</table>

¹ Limited to builds of the Zulu JDK/JRE for 64-bit Java versions 7 onward running on x86 processors on Linux, Windows and macOS operating systems

Common Vulnerabilities and Exposures (“CVE”) is as defined by the NIST National Vulnerability Database (reference https://nvd.nist.gov/vuln); and update the non-JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and backport security fixes that have an identified CVE from newer supported Java Major Releases to older supported Java Major Releases in accordance with the timeframes in the table above; and ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java; and for those Customers who have purchased Support Services with the Platinum or Premium Support Tiers (and except for those releases designated as “Not Verified” or “NV”), ensure and so certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) “Accessible APIs” means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) “Software” refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

Designated Support Contacts: As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer’s Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of Supported Instances purchased and the Support Tier selected and paid for by Customer:

<table>
<thead>
<tr>
<th>Number of Supported Instances</th>
<th>DESIGNATED NUMBER OF SUPPORT CONTACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td>1 to 50</td>
<td>2</td>
</tr>
<tr>
<td>51 to 100</td>
<td>2</td>
</tr>
<tr>
<td>101 to 250</td>
<td>2</td>
</tr>
<tr>
<td>251 to 500</td>
<td>2</td>
</tr>
<tr>
<td>501 to 1000</td>
<td>4</td>
</tr>
<tr>
<td>1001 and over</td>
<td>4</td>
</tr>
</tbody>
</table>


PRODUCT-SPECIFIC DEFINITIONS:

“System” means a physical hardware system capable of running the Product, including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable.

“Physical Node” means a System that includes up to two (2) processor sockets, where each processor socket may include an unlimited number of processing cores. For Systems with more than two (2) processor sockets, one Supported Instance is required for each two (2) processor sockets.

“Virtual Node” means a virtual machine that includes up to thirty-two (32) virtual processing cores. For virtual machines with more than thirty-two (32) virtual processing
cores, one Supported Instance is required for each thirty-two (32) virtual processor cores.
“Supported Instance” means Software Services with (i) one or more instances of the Zulu JDK/JRE running on either (a) one (1) Physical Node, or (b) one (1) Virtual Node; and (ii) one or more instances of Zulu Mission Control running on an unlimited number of Physical Nodes or Virtual Nodes.
Product:
Zulu Embedded, in the Product Configuration as specified in an Order

Product License:
Azul grants Customer a perpetual, worldwide, nonexclusive right to use the Product; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may (a) use, copy and Distribute the Documentation for the Product in connection with the Distribution of Combination Products; and (b) use, market, demonstrate, Distribute, provide training with respect to, and otherwise commercialize Combination Products and/or related services. Customer may use contractors and channels to exercise the rights granted in this Section provided any such contractors and channels agree to be bound by the terms of this Agreement and Customer assumes responsibility therefor.

Customer Restrictions and Obligations: In addition to the Restrictions and Obligations as specified in Section 3 of the Agreement, Customer will ensure that Azul’s rights (including, without limitation, rights with respect to license restrictions, limitations on liability and warranty disclaimers) are at least as protected in a written license agreement with Customer’s end users as those rights of Customer. Customer shall not make any representations or warranties specifically with respect to the Product except as expressly authorized in writing by Azul. Customer will not (and will not allow any third party to): (i) sell or offer for sale the Product or Software Services on a standalone basis, or use the Software Services on a standalone basis for the benefit of a third party; or (ii) use, market, demonstrate, Distribute, provide training with respect to, or otherwise commercialize the Product or Software Services except as a part of a Combination Product; or (iii) use the Product or Software Services for Customer’s internal business purposes or operations except as a part of a Combination Product; or (iv) market, Distribute, use, or otherwise commercialize the Product or Software Services in violation of any Support Services Restrictions described herein or in an Order. Customer will make information available to its end users regarding the Third-Party Software Licenses contained in the Product; for example, this requirement may be satisfied by providing notice in the installation process or user guide of the Combination Product. Customer agrees to use reasonable commercial efforts to enforce violations or infringements under any agreements for the Product with its customers and to inform Azul promptly of any known violation, infringement or breach.

Software Services: Time-based Support Services for the Product.

Support Services Restrictions: Support Services will not be provided for the Product: (a) for any use other than when used as part of Combination Products, or (b) for any Product Configurations not explicitly specified in an Order.

Support Services Additions: In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:
update the JDK component of the Product for a given update release within the timeframe as specified below after the update is released for General Availability (GA) by the associated OpenJDK project as follows:

<table>
<thead>
<tr>
<th>Security fixes that have an identified CVE</th>
<th>Support Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security fixes that have an identified CVE, bug fixes, and other updates</td>
<td>Premium</td>
</tr>
<tr>
<td>7 days</td>
<td>15 days</td>
</tr>
<tr>
<td>15 days</td>
<td>30 days</td>
</tr>
</tbody>
</table>

1 Limited to builds of the Zulu JDK/JRE for 64-bit Java versions 7 onward running on x86 processors on Linux, Windows and macOS operating systems

Common Vulnerabilities and Exposures (“CVE”) is as defined by the NIST National Vulnerability Database (reference https://nvd.nist.gov/vuln); and
update the non-JDK components of the Product for a given update release no later than thirty (30) days after the update is released for General Availability (GA) by the OpenJDK project; and
ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java; and for those Customers who have purchased Support Services with the Premium Support Tier (and except for those releases designated as “Not Verified” or “NV”), ensure and certify with each release of the Product that no Accessible APIs in the Product carry licenses that require code that runs on the Product using those APIs to carry a specific license, and that use with other Software does not contaminate the code or intellectual property of such Software with any license requirements, and distribution of such Software can be governed by any license at the discretion of the owner of the Software. For purposes herein, (a) “Accessible APIs” means all Java classes accessible via the JDK/JRE class path or module path, as well as all native symbols accessible via .h files included in the JDK/JRE; and (b) “Software” refers to application or code of Customer or third parties, which runs on or accesses the Product via the Accessible APIs.

Designated Support Contacts: As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer’s Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of unique Combination Products, the Supported Instances purchased and the Support Tier selected and paid for by Customer:

<table>
<thead>
<tr>
<th>Total Number of Supported Instances</th>
<th>DESIGNATED NUMBER OF SUPPORT CONTACTS PER UNIQUE COMBINATION PRODUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td>Less than 2,500</td>
<td>2</td>
</tr>
<tr>
<td>2,501 to 10,000</td>
<td>2</td>
</tr>
<tr>
<td>Greater than 10,000</td>
<td>2</td>
</tr>
</tbody>
</table>

PRODUCT-SPECIFIC DEFINITIONS:

“Customer Product” is a Customer product that is developed, manufactured, provided or Distributed by or for Customer, is licensed to Customer’s end users, and as further defined in an Order.

“Combination Product” means a Customer Product in or with which the Product (or any portion thereof) is included or provided or bundled or used with, and also includes Product (or any portion thereof) to the extent it is included in, used, provided or bundled with, or intended for use with, a Customer Product.

“Product Configuration” is the specific processor(s), operating system(s), and Java version(s) that are being licensed to Customer and are authorized for use, as specified in an Order.

“Supported Instance” means Software Services with one or more instances of the Product running on one (1) physical hardware system including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable; or one (1) virtual machine.
EXHIBIT A-4
LICENSED PRODUCT: “PING EMBEDDED”

Product:
Zing Embedded, in the Product Configuration as specified in an Order

Product License:
Azul grants Customer a time-based (during the applicable Software Services term) worldwide, nontransferable (except in connection with a permitted assignment pursuant to Section 14 of the Agreement), nonexclusive right and license to use in object code only and copy the Product to create, produce, support and maintain Combination Products; provided that certain Third-Party Software is instead licensed pursuant to the relevant terms set forth below in the Third-Party Software Licenses. Customer may (a) use, copy and Distribute the Documentation for the Product in connection with the Distribution of Combination Products; and (b) use, market, demonstrate, Distribute, provide training with respect to, and otherwise commercialize Combination Products and/or related services. Customer may use contractors and channels to exercise the rights granted in this Section provided any such contractors and channels agree to be bound by the terms of this Agreement and Customer assumes responsibility therefor.

CUSTOMER ACKNOWLEDGES THAT THE PRODUCT MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SOFTWARE SERVICES TERM AND/OR USE INCONSISTENT HEREWITH.

Customer Restrictions and Obligations: In addition to the Restrictions and Obligations as specified in Section 3 of the Agreement, Customer will ensure that Azul’s rights (including, without limitation, rights with respect to license restrictions, limitations on liability and warranty disclaimers) are at least as protected in a written license agreement with Customer’s end users as those rights of Customer. Customer shall not make any representations or warranties specifically with respect to the Product except as expressly authorized in writing by Azul. Customer will not (and will not allow any third party to): (i) sell or offer for sale the Product or Software Services on a standalone basis, or use the Software Services on a standalone basis for the benefit of a third party; or (ii) use, market, demonstrate, Distribute, provide training with respect to, or otherwise commercialize the Product or Software Services except as a part of a Combination Product; or (iii) use the Product or Software Services for Customer’s internal business purposes or operations except as a part of a Combination Product; or (iv) market, Distribute, use, or otherwise commercialize the Product or Software Services in violation of any Support Services Restrictions described herein or in an Order. Customer will make information available to its end users regarding the Third-Party Software Licenses contained in the Product; for example, this requirement may be satisfied by providing notice in the installation process or user guide of the Combination Product. Customer agrees to use reasonable commercial efforts to enforce violations or infringements under any agreements for the Product with its customers and to inform Azul promptly of any known violation, infringement or breach.

Software Services: Time-based Product License (as described above) and associated Support Services for the Product during the term of the Product License.

Support Services Restrictions: Support Services will not be provided for the Product: (a) for any use other than when used as part of Combination Products, or (b) for any Product Configurations not explicitly specified in an Order.

Support Services Additions: In addition to the Support Services as described in Exhibit B of the Agreement, Azul will use commercially reasonable efforts to:

ensure that the Product delivered to Customer has passed the OpenJDK Technology Compatibility Kit (TCK) available for a given major release of Java

Designated Support Contacts: As further detailed in Section 8 of Exhibit B (Support Services) of the Agreement, Customer may only contact Azul through Customer’s Designated Support Contacts and may designate up to the number of contacts as set forth in the table below based on the number of unique Combination Products and Supported Instances purchased and paid for by Customer:

<table>
<thead>
<tr>
<th>Total Number of Supported Instances</th>
<th>DESIGNATED NUMBER OF SUPPORT CONTACTS PER UNIQUE COMBINATION PRODUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td>Less than 2,500</td>
<td>2</td>
</tr>
<tr>
<td>2,501 to 10,000</td>
<td>2</td>
</tr>
<tr>
<td>Greater than 10,000</td>
<td>2</td>
</tr>
</tbody>
</table>


Product-specific definitions:

“Customer Product” is a Customer product that is developed, manufactured, provided or Distributed by or for Customer, is licensed to Customer’s end users, and as further defined in an Order.

“Combination Product” means a Customer Product in or with which the Product (or any portion thereof) is included or provided or bundled or used with, and also includes Product (or any portion thereof) to the extent it is included in, used, provided or bundled with, or intended for use with, a Customer Product.

“Product Configuration” is the specific processor(s), operating system(s), and Java version(s) that are being licensed to Customer and are authorized for use, as specified in an Order.
“Supported Instance” means Software Services with one or more instances of the Product running on one (1) physical hardware system including without limitation a computer, server, workstation, laptop, individual blade or other physical system, as applicable; or one (1) virtual machine.
EXHIBIT B

SUPPORT AND MAINTENANCE SERVICES ("SUPPORT SERVICES") TERMS AND CONDITIONS

SUPPORT AND MAINTENANCE SERVICES. Support Services consist of:
(a) Error corrections provided to Customer's Designated Support Contacts concerning the installation and use of supported versions of the Product,
(b) Product updates that Azul in its discretion makes generally available to its support and maintenance customers without additional charge, (c) access to Azul's support portal and Download Site, and (d) facilities for case and bug tracking, escalation of problems for priority attention, and assistance with troubleshooting to diagnose and fix errors in the Product.

Certain benefits of Support Services depend on the support tier which has been selected and paid for by Customer (the “Support Tier”), as set forth in the table below:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Support Tier</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td></td>
<td>Platinum or Premium</td>
</tr>
<tr>
<td>Support Hours and First Response SLA</td>
<td>Standard Business Hours</td>
</tr>
<tr>
<td></td>
<td>Next Business Day SLA</td>
</tr>
<tr>
<td></td>
<td>24x7x365 hours 1 hour SLA</td>
</tr>
<tr>
<td>Product Downloads and Fixes</td>
<td>Regular quarterly releases</td>
</tr>
<tr>
<td></td>
<td>Regular quarterly releases, Early Access to upcoming releases, and Hot Fixes</td>
</tr>
<tr>
<td>Number of Tickets</td>
<td>6 Tickets per year</td>
</tr>
<tr>
<td></td>
<td>Unlimited Tickets</td>
</tr>
<tr>
<td>Phone/Email/Web support</td>
<td>Phone, Email and Web</td>
</tr>
<tr>
<td></td>
<td>Phone, Email, and Web</td>
</tr>
<tr>
<td>Support Forum Access</td>
<td>Read &amp; Write</td>
</tr>
<tr>
<td></td>
<td>Read &amp; Write</td>
</tr>
</tbody>
</table>

ERROR PRIORITY LEVELS. Azul shall exercise commercially reasonable efforts to correct any Error reported by Customer in the current unmodified release of the Product in accordance with the priority level reasonably assigned to such Error by Azul.

Priority 1 Errors means a report that the Product is failing to perform in accordance with the Documentation and that such failure is reproducible and makes one or more critical functions of the Product inoperable. To be classified as Priority 1, an Error must (i) prevent a Customer from conducting critical and primary business functions (that are consistent with the Product’s intended use and functions) in a production environment, and (ii) have no immediate fix or work-around. For Priority 1 Errors, Azul shall commence the following procedures: (i) assign Azul engineers to diagnose the Error; (ii) notify Azul management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Customer with periodic reports on the status of the corrections; and (iv) immediately initiate work on a prioritized basis to provide Customer with a Workaround or Fix as soon as commercially reasonable.

Priority 2 Errors means a report that the Product is functioning but in a significantly degraded or restricted capacity. To be classified as Priority 2, an Error must be reproducible and (i) cause a high impact on some portion of Customer’s primary business functions (that are consistent with the Product’s intended use and functions) in a production environment, and (ii) have no immediate fix or work-around. For Priority 2 Errors, Azul shall commence the following procedures: (i) assign Azul engineers to diagnose the Error; (ii) notify Azul management that such Errors have been reported and of steps being taken to correct such Error(s); (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix as soon as commercially reasonable.

Priority 3 Errors means a report of degraded operations of the Product and reproducible limited condition that causes a slight or non-critical failure of the Product to function according to the Documentation. Azul shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Product release.

Priority 4 Errors means a report of minimal impact and means a minor problem or error(s) in the Documentation, a desired change in the Product which can be easily circumvented or avoided, or a Product enhancement request. Azul may, at its sole option, include a Fix for the Error or the requested enhancement in a future release of the Product.

EXCLUSIONS. Azul shall have no obligation to provide any Support Services for: (i) altered or damaged Products; (ii) any version of a Product that
is not currently supported per the Product Lifecycle Policy; (iii) any Product that is not obtained from the Download Site or a Business Partner, (iv) Product problems caused by Customer’s negligence, abuse or misapplication use of Products other than as specified in the Documentation or other causes beyond the control of Azul; (v) Products installed on any hardware that is not listed as supported in the Documentation; or (vi) Product component(s) or Product feature(s) specifically identified as “Community”, “Feature Preview”, “Early Access”, “Not Supported”, or “Experimental”. Azul shall have no liability for any changes in Customer’s hardware which may be necessary to use the Product.

CUSTOMER RESPONSIBILITIES. Customer shall exercise commercially reasonable efforts in cooperating with and providing information to Azul with regard to Support Services. Customer is required to assist Azul until problem resolution. Required Customer activities may include logging into Customer's systems for diagnostic of problems, downloading and installation of software updates, retrieval and transfer of system logs/files, re-installation of the Product, and participation in tests for fixes.

CASE RESOLUTION PROCESS. Using good faith and reasonable judgment, Customer will assign an initial Priority Level to each report prior to reporting it to Azul, and Azul will assign a unique tracking number to each report as it is reported. Using good faith and reasonable judgment, Azul may change the Priority Level of a report. Azul will assign technical support resources and provide progress reports for each report, using commercially reasonable efforts to do so, in accordance with Section 2 of this Exhibit B.

TARGET RESPONSE TIME. A response to a request for Support Services shall consist of receipt of and acknowledgement by Azul of Customer’s request for Support Services (the “First Response”). Azul will use commercially reasonable efforts to provide a First Response within the target SLA response time set forth in the table below. Customer acknowledges that a First Response may not include resolution for all requests for Support Services. However, Customer acknowledges and understands that no software is perfect or error free and that, despite Azul’s commercially reasonable efforts, Azul may not be able to provide answers to or resolve some or all requests for Support Services. Azul makes no promises, guarantees, or assurances of any kind that it will be able to resolve all of Customer’s Support Services requests.

<table>
<thead>
<tr>
<th>Error Type</th>
<th>TARGET RESPONSE TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
</tr>
<tr>
<td>Priority 1</td>
<td>1 Business Day</td>
</tr>
<tr>
<td>Priority 2</td>
<td>2 Business Days</td>
</tr>
<tr>
<td>Priority 3</td>
<td>2 Business Days</td>
</tr>
<tr>
<td>Priority 4</td>
<td>2 Business Days</td>
</tr>
</tbody>
</table>

PRODUCT LIFECYCLE POLICY. For Customers who have purchased Support Services, Azul offers support beginning from the Java Major Release Date, divided into two distinct phases: Production Support and Extended Support.

The Production Support phase includes maintenance updates, Error corrections, and security vulnerability resolutions, and may include feature enhancements. Security vulnerability resolutions will be made to supported Major releases and the latest Minor Release only, while Maintenance updates and Error corrections will be made to supported Major and supported Minor Releases. Minor Releases will be supported a minimum of twelve (12) months from the general availability of the Minor Release.

The Extended Support phase supports Product releases that have gone beyond the Production Support phase of the product lifecycle. During Extended Support, support is delivered primarily in the form of identifying Workarounds, and Azul may direct Customer to upgrade to a more current Major, Minor, or Maintenance Release of the Product in order to resolve issues. During the Extended Support phase, no Minor or Maintenance Releases are expected to be delivered, the exception being certain security vulnerability resolutions that may, at Azul’s sole discretion, be made available. A Product is deemed end-of-life (EOL) at the end of the Extended Support phase.

Each Major Release for a given Product is designated as Long Term Support (LTS), Medium Term Support (MTS), or Short Term Support (STS) as
detailed at [https://www.azul.com/support/product_releases/](https://www.azul.com/support/product_releases/) with the following Production Support and Extended Support periods:

<table>
<thead>
<tr>
<th>Lifecycle</th>
<th>Production Support (from the Java Major Release Date)</th>
<th>Extended Support (from the end of Production Support)</th>
</tr>
</thead>
<tbody>
<tr>
<td>LTS</td>
<td>8 years</td>
<td>2 years</td>
</tr>
<tr>
<td>MTS</td>
<td>1.5 years (from general availability of next LTS release)</td>
<td>1 year</td>
</tr>
<tr>
<td>STS</td>
<td>1 year</td>
<td>6 months</td>
</tr>
</tbody>
</table>

DESIGNATED SUPPORT CONTACTS Customer may only contact Azul through Customer’s Designated Support Contacts. Customer may designate up to the number of contacts as set forth in the applicable Exhibit A. Azul will provide Support Services to Customers solely by communicating during the hours of coverage with the individual Designated Support Contact(s) appointed by Customer. Customer may change the Designated Support Contacts by notifying Azul in writing.

DEFINITIONS.

“Business Day” means a day during Azul’s Standard Business Hours

“Business Hour” means an hour during Azul’s Standard Business Hours

“Documentation” means the official Product documentation made available by Azul with the Product, which may be modified from time to time.

“Early Access” means a version of the Product containing upcoming Fixes which is not yet subject to general release, which is released by Azul to Customers who have selected a Support Tier which includes Early Access.

“Error” means a reproducible failure of the Product to substantially conform to the functionality and specifications as described in the Documentation.

“Fix” means the repair or replacement of object or executable code versions of a Product or Documentation to remedy an Error.

“Hot Fixes” means a preliminary version of the Product containing upcoming Fixes which is not yet subject to general release or Early Access, which is released by Azul to Customers who have selected a Support Tier which includes Hot Fix access.

“Java Major Release Date” means the date of formal approval by the Java Community Process Executive Committee of the umbrella Java Specification Request (JSR) for a given major release of Java Standard Edition, as follows: (a) December 11, 2009 for JSR 270 for Java SE 6, (b) July 20, 2011 for JSR 336 for Java SE 7, (c) March 4, 2014 for JSR 337 for Java SE 8, (d) September 21, 2017 for JSR 379 for Java SE 9, etc.

“Major Release” means a Product release which may deliver significant new features, enhancements to existing features, or performance improvements, as well as Error corrections. Major Releases incorporate all applicable Fixes made in prior Major Releases, Minor Releases, and Maintenance Releases.

“Minor Release” means a Product release which may deliver new features, enhancements to existing features, or performance improvements, as well as Error corrections. Minor Releases incorporate all applicable Fixes made in prior Minor Releases and Maintenance Releases.

“Maintenance Release” means a Product release which may deliver Error corrections that are severely affecting a number of customers and cannot wait for the next Major or Minor Release. Maintenance Releases incorporate all applicable Error corrections made in prior Maintenance Releases. Maintenance Releases are released as needed based on customer feedback and outstanding Errors.

“Ticket” means a formal support case opened by or on behalf of Customer, where each case or trouble ticket documents a unique issue requiring investigation and resolution.

“Workaround” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of a Product.

THESE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS ATTACHMENT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BARRACUDA NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

Limited Hardware Warranty
Contractor warrants that commencing from the date of delivery to Ordering Activity, and continuing for a period of one (1) year: (a) its products (excluding any software) will be free from material defects in materials and workmanship under normal use; and (b) the software provided in connection with its products, including any software contained or embedded in such products will substantially conform to Contractor published specifications in effect as of the date of manufacture. Except for the foregoing, the software is provided as is. In no event does Contractor warrant that the software is error free or that Ordering Activity will be able to operate the software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the software or any equipment, system or network on which the software is used will be free of vulnerability to intrusion or attack. The limited warranty extends only to Ordering Activity the original buyer of the Barracuda Networks product and is non-transferable.

Remedy. Ordering Activity’s remedy and the liability of Contractor under this limited warranty shall be, at Contractor or its service centers option and expense, the repair, replacement or refund of the purchase price of any products sold which do not comply with this warranty. Hardware replaced under the terms of this limited warranty may not be refurbished or new equipment substituted at Contractor’s option. Contractor obligations hereunder are conditioned upon the return of affected articles in accordance with Contractor then-current Return Material Authorization (“RMA”) procedures. All parts will be new or refurbished, at Contractor’s discretion, and shall be furnished on an exchange basis. All parts removed for replacement will become the property of Contractor or Contractor’s agents, who will not be required to return any such parts. Contractor may at its discretion modify or exchange the hardware of the product at no cost to Ordering Activity to improve its reliability or performance. The warranty period is not extended if Contractor repairs or replaces a warranted product or any part.

Contractor may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

Exclusions and Restrictions. This limited warranty does not apply to Barracuda Networks products that are or have been (a) marked or identified as “sample” or “beta,” (b) loaned or provided to Ordering Activity at no cost, (c) sold “as is,” (d) repaired, altered or modified except by Contractor, (e) not installed, operated or maintained in accordance with instructions supplied by Contractor, or (f) subjected to abnormal physical or electrical stress, misuse, negligence or to an accident.

EXCEPT FOR THE ABOVE WARRANTY, CONTRACTOR MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO BARRACUDA NETWORKS PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, AVAILABILITY, RELIABILITY, USEFULNESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE. EXCEPT FOR THE ABOVE WARRANTY, BARRACUDA NETWORKS’ PRODUCTS AND THE SOFTWARE ARE PROVIDED “AS-IS” AND CONTRACTOR DOES NOT WARRANT THAT ITS PRODUCTS WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, AVAILABLE, SECURE OR ERROR FREE, OR THAT ANY ERRORS IN ITS PRODUCTS OR THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, CONTRACTOR DOES NOT WARRANT THAT BARRACUDA NETWORKS PRODUCTS, THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH BARRACUDA NETWORKS PRODUCTS WILL BE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

Barracuda Networks Software License Terms

The software and documentation, whether on disk, in flash memory, in read only memory, on any other media or in any other form (collectively “Barracuda Software”) is licensed, not sold, to Ordering Activity by Contractor for use only under the terms of this Attachment A. and Contractor reserves all rights not expressly granted to Ordering Activity. The rights granted are limited to Contractor’s intellectual property rights in the Barracuda Software and do not include any other patent or intellectual property rights. Ordering Activity owns the media on which the Software is recorded but Contractor retains ownership of the Software itself. If Ordering Activity has not completed a purchase of the Software and made payment for the purchase, the Software may only be used for evaluation purposes and may not be used in any production capacity. Furthermore the Software, when used for evaluation, may not be secure and may use publicly available passwords.

Permitted License Uses and Restrictions. If Ordering Activity has purchased a Barracuda Networks hardware product, this Attachment A allows Ordering Activity to use the Software only on the single Barracuda labeled hardware device on which the software was delivered. Ordering Activity may not make copies of the Software. Ordering Activity may not make a backup copy of the Software. If Ordering Activity has purchased a Barracuda Networks Virtual Machine Ordering Activity may use the software only in the licensed number of instances of the licensed sizes and Ordering Activity may not exceed the licensed capacities. Ordering Activity may make a reasonable number of backup copies of the Software. If Ordering Activity have purchased client software Ordering Activity may install the software only on the number of licensed clients. Ordering Activity may make a reasonable number of backup copies of the Software. For all purchases Ordering Activity may not modify or create derivative works of the Software. Ordering Activity may not make the Software available over a network where it could be utilized by multiple devices or copied. Unless otherwise expressly agreed to by Contractor, Contractor may at its discretion modify the hardware of the Software.

Ordering Activity’s use of the Software shall be limited to use on a single hardware chassis, on a single central processing unit, as applicable, or use on such greater number of chassis or central processing units as Ordering Activity may have paid Contractor the required license fee; and Ordering Activity’s use of the Software shall also be limited, as applicable and set forth in Ordering Activity’s purchase order or in Contractor’s GSA product catalog, user documentation, or web site, to a maximum number of (a) seats (i.e. users with access to install Software), (b) concurrent users, sessions, ports, and/or issued and outstanding IP addresses, and/or (c) central processing unit cycles or instructions per second. Ordering Activity’s use of the Software shall also be limited by any other restrictions set forth in Ordering Activity’s purchase order or in Contractor’s GSA product catalog, user documentation or Web site for the Software. The BARRACUDA SOFTWARE IS NOT INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, LIFE SUPPORT MACHINES, OR OTHER EQUIPMENT IN WHICH FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE. ORDERING ACTIVITY EXPRESSLY AGREES NOT TO USE IT IN ANY OF THESE OPERATIONS.
Ordering Activity may not transfer, rent, lease, lend, or sublicense the Software or allow a third party to do so. ORDERING ACTIVITY MAY NOT OTHERWISE TRANSFER THE SOFTWARE OR ANY OF ORDERING ACTIVITY’S RIGHTS AND OBLIGATIONS UNDER THIS ATTACHMENT A. Ordering Activity agree that Ordering Activity will have no right and will not, nor will it assist others to: (i) make unauthorized copies of all or any portion of the Software; (ii) sell, sublicense, distribute, rent or lease the Software; (iii) use the Software on a service bureau, time sharing basis or other remote access system whereby third parties other than Ordering Activity can use or benefit from the use of the Software; (iv) disassemble, reverse engineer, modify, translate, alter, decompile or otherwise attempt to discern the source code of all or any portion of the Software; (v) utilize or run the Software on more computers than Ordering Activity has purchased license to; (vi) operate the Software in a fashion that exceeds the capacity or capabilities that were purchased by Ordering Activity.

ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE BARRACUDA SOFTWARE IS AT ORDERING ACTIVITY’S OWN RISK AND THAT THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, AND ACCURACY IS WITH ORDERING ACTIVITY. THE BARRACUDA SOFTWARE IS PROVIDED “AS IS” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE BARRACUDA SOFTWARE, EITHER EXPRESSED OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, OF FITNESS FOR ANY APPLICATION, OF ACCURACY, AND OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CONTRACTOR DOES NOT WARRANT THE CONTINUED OPERATION OF THE SOFTWARE, THAT THE PERFORMANCE WILL MEET ORDERING ACTIVITY’S EXPECTATIONS, THAT THE FUNCTIONS WILL MEET ORDERING ACTIVITY’S REQUIREMENTS, THAT THE OPERATION WILL BE ERROR FREE OR CONTINUOUS, THAT CURRENT OR FUTURE VERSIONS OF ANY OPERATING SYSTEM WILL BE SUPPORTED, OR THAT DEFECTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION GIVEN BY CONTRACTOR OR AUTHORIZED CONTRACTOR REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE BARRACUDA SOFTWARE PROVE DEFECTIVE, ORDERING ACTIVITY ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. FURTHERMORE CONTRACTOR SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE RESOURCES, ABNORMAL OPERATING CONDITIONS, OR PARTICULAR INSTALLATIONS FROM THE INSTALLATION CONDITIONS AS WELL AS BY TRANSPORTATION DAMAGE. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Contractor does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or ATTACK. ORDERING ACTIVITY EXPRESSLY ACKNOWLEDGE AND AGREE THAT ORDERING ACTIVITY WILL PROVIDE AN UNLIMITED PERPETUAL ZERO COST LICENSE TO CONTRACTOR FOR ANY PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS WHICH ORDERING ACTIVITY EITHER OWN OR CONTROL THAT ARE UTILIZED IN ANY BARRACUDA PRODUCT.

Content Restrictions. ORDERING ACTIVITY MAY NOT (AND MAY NOT ALLOW A THIRD PARTY TO) COPY, REPRODUCE, CAPTURE, STORE, RETRANSMIT, DISTRIBUTE, OR BURN TO CD (OR ANY OTHER MEDIUM) ANY COPYRIGHTED CONTENT THAT ORDERING ACTIVITY ACCESS OR RECEIVE THROUGH USE OF THE SOFTWARE. ORDERING ACTIVITY ASSUME ALL RISK AND LIABILITY FOR ANY SUCH PROHIBITED USE OF COPYRIGHTED CONTENT. Ordering Activity agrees not to publish any benchmarks, measurements, or reports on the product without Contractor’s written express approval.

Trademarks. Certain portions of the product and names used in this Attachment A, the Software and the documentation may constitute trademarks of Barracuda Networks. Ordering Activity is not authorized to use any such trademarks for any purpose.

Collection of Data. Ordering Activity agrees to allow Contractor through Barracuda Networks to collect information (“Statistics”) from the Software in order to fight spam, virus, and other threats as well as optimize and monitor the Software. Information will be collected electronically and automatically. Statistics include, but are not limited to, the number of messages processed, the number of messages that are categorized as spam, the number of virus and types, IP addresses of the largest spam senders, the number of emails classified for Bayesian analysis, capacity and usage, websites not categorized, fingerprints of emails, and other statistics. Ordering Activity’s data will be kept private and will only be reported in aggregate by Barracuda Networks.

Subscriptions. Software updates and subscription information provided by Barracuda Energize Updates or other services may be necessary for the continued operation of the Software. Ordering Activity acknowledge that such a subscription may be necessary. Furthermore some functionality may only be available with additional subscription purchases. Obtaining Software updates on systems where no valid subscription has been purchased or obtaining functionality where subscription has not been purchased is strictly forbidden and in violation of this Attachment A. All initial subscriptions commence at the time of activation and all renewals commence at the expiration of the previous valid subscription. Unless otherwise expressly provided in the documentation, Ordering Activity shall use the Energize Updates Service and other subscriptions solely as embedded in, for execution on, or (where the applicable documentation permits installation on non-Barracuda Networks equipment) for communication with Barracuda Networks equipment owned or leased by Ordering Activity. All subscriptions are non-transferable. Contractor makes no warranty that subscriptions will continue un-interrupted.

Time Base License. If Ordering Activity’s Software purchase is a time based license Ordering Activity expressly acknowledge that the Software will stop functioning at the time the license expires.

Support. Telephone, email and other forms of support will be provided to Ordering Activity if you have purchased a product that includes support. The hours of support vary based on country and the type of support purchased. Barracuda Networks Energize Updates typically include Basic support.

Changes. Contractor through Barracuda Networks reserves the right at any time not to release or to discontinue release of any Software or Subscription and to alter features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Software or Subscriptions.

Open Source Licensing. Barracuda Networks products may include programs that are covered by the GNU General Public License (GPL) or other Open Source license agreements, in particular the Linux operating system. It is expressly put on record that the Software does not constitute an edited version or further development of the operating system. These programs are copyrighted by their authors or other parties, and the authors and copyright holders disclaim any warranty for such programs. Other programs are copyright by Contractor. Contractor through Barracuda Networks makes available the source code used to build Barracuda products available at source.barracuda.com. This directory includes all the open source programs that are distributed on the Barracuda products. Obviously not all of these programs are utilized, but since they are distributed on the Barracuda product Contractor through Barracuda is required to make the source code available.

Barracuda Instant Replacement Service
Contractor through Barracuda Networks shall provide the instant replacement services described below commencing on the date of delivery of the Barracuda Networks, Inc. product for which the Instant Replacement Service is purchased (Product) to the Ordering Activity, and continuing for a period of one (1) year, three (3) years, or five (5) years depending on the Service purchased (Instant Replacement Service Period). During the Instant Replacement Service Period, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a new Product within twenty-four (24) hours if Ordering Activity resides in the United States. For Ordering Activities residing outside the United States, Barracuda Networks will use commercially reasonable efforts to ship Ordering Activity a replacement Product via express mail within one business day.

Upon requesting a replacement Product, Ordering Activity must return the original Product to Contractor through Barracuda Networks. Ordering Activity must return the original Product to Barracuda Networks within 30 days after shipment of the replacement Product. Barracuda Networks will pay shipping costs to ship the replacement Product to Ordering Activity. The Ordering Activity is responsible for shipping costs back to Barracuda Networks of the covered unit.

This Instant Replacement Service Period is not extended if Contractor through Barracuda Networks replaces a Product. Barracuda Networks may change the availability of Instant Replacement Service programs, at its discretion, but any changes will not be retroactive.

This Instant Replacement Service extends only to the original Ordering Activity of the Product and is non-transferable. Instant Replacement must be purchased within 60 days of initial order of the system to be covered.

Ordering Activity's remedy and the liability of Contractor under this Instant Replacement Service and during the Instant Replacement Service Period will be shipment of a replacement Product within the time period and according to the replacement process set forth above and on the Barracuda Networks Web Site or literature accompanying the Product, or a refund of the purchase price if the Product is returned to Contractor through Barracuda Networks.

Restrictions. This Instant Replacement Service does not apply if (a) the Product has been altered, except by Contractor through Barracuda Networks, (b) the Product has not been installed, operated, repaired, or maintained in accordance with instructions, (c) the Product has been subjected to abnormal physical or electrical stress, misuse, or negligence (d) the Product has an altered or missing serial number; or (e) Contractor has not received payment for the Product or (f) the Product is physically damaged or (g) a Ordering Activity must have current EU to take advantage of IR.

Renewal. At the end of the Instant Replacement Service Period, Ordering Activity may have the option to renew the Instant Replacement Service at then-current GSA price, provided such Instant Replacement Service is available. All initial subscriptions commence at the time of sale of the unit and all renewals commence at the expiration of the previous valid subscription.

DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS INSTANT REPLACEMENT SERVICE, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO ORDERING ACTIVITY. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

Barracuda Energize Updates

Barracuda Energize Updates provide Ordering Activity's Barracuda Networks product with protection from the latest Internet threats. The team at Contractor through Barracuda Central continuously monitors the Internet for new trends in network security threats and develops strategies to mitigate those threats. Energize Updates deliver the latest definitions most appropriate to Ordering Activity's product -- spam, virus, content categories, spyware filter, intrusion prevention, IM protocols, policies, security updates, attacks and document formats. These updates are sent out hourly or more frequently if needed, to ensure that Ordering Activity always have the latest and most comprehensive protection.

Barracuda Energize Updates subscriptions need to be purchased with any Barracuda Networks product to provide complete protection from the latest Internet threats. Subscriptions can be purchased or renewed for hardware appliances for up to 5 years from purchase of product. In addition to definition updates, Energize Updates subscriptions also provide:

Basic Support, which includes email support 24x7 and phone support between the hours of 9 a.m. and 5 p.m. Monday through Friday in the US (Pacific Time). Note that Contractor through Barracuda Networks Technical Support will take and respond to support calls 24x7 from Basic Support customers if we are not helping other customers.

Firmware Maintenance which includes new firmware updates with feature enhancements and bug fixes for up to 4 years from purchase of product.

Security Updates to patch or repair any security vulnerabilities for up to 5 years from purchase of product.

Optional participation in the Barracuda Early Release Firmware program.
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   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

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

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

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

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

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

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

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

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated
pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is
confirmed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

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

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

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

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

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

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

June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing
customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give
sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be
incorporated into a Government contract, and not when the clause is triggered.

EC America, Inc.

1. **Definitions.** Capitalized terms not expressly defined in this Agreement have the meaning given to them in Schedule “A”.

1.1. **Grant of License.** BlueCat grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicenseable license to use the Software components of the Software Products identified on any Purchase Order, subject at all times to the terms and conditions set forth in this Agreement.

1.2. **Duration of License.** Software Products licensed on a Subscription basis are temporary and expire when the Subscription Period for the relevant Software Product(s) expires or is terminated. For Software licensed on a perpetual basis, such licenses will become perpetual (unless terminated as provided herein or as otherwise set out in a Purchase Order) when all payments for such licenses have been received by BlueCat.

2. **Support; Duration.** BlueCat shall provide the standard Support for the applicable Software Product to the extent specified in a Purchase Order. Support shall be provided as a Subscription during the Subscription Period. Once paid, Support fees are non-refundable.

3. **Access and Use.** Subject to the terms and condition of this Agreement, Customer may remotely access and use (i) the Cloud Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order; and (ii) the DNS Flex Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order.

3.1. **Service Levels, Sole Remedy.** BlueCat will make the Cloud Service and the cloud service portions of the DNS Flex Service, in each case as ordered by Customer, available to Customer in accordance with the applicable Service Level Schedule. BlueCat’s obligations in the Service Level Schedule do not apply to the extent: (a) Customer’s system does not meet the minimum requirements listed in the Documentation to support the applicable BlueCat Offering; (b) reserved; and (c) the Service Availability (as defined in the Service Level Schedule) is impacted by Customer’s failure to incorporate or utilize any recommendations or data produced by the applicable BlueCat Offering (e.g. security recommendations emanating from the applicable BlueCat Offering). The remedies listed in the Service Level Schedule are Customer’s sole remedy and BlueCat’s sole obligation for any failure of the Cloud Service or the cloud service portions of the DNS Flex Service. All other Cloud Services are provided "as is", per the disclaimer in Section 6.4.

4. **Access Methods, Authorized Users, Unauthorized Access or Use.** Customer agrees that it is responsible for protecting the security and integrity of the Access Methods. Customer shall be fully responsible for any Authorized Users’ breach of this Agreement. Customer agrees that it is liable for any acts or omissions occurring under any Access Methods, whether by Authorized Users or otherwise. Each Party shall notify the other Party immediately of any suspected or known unauthorized access or use of the Cloud Services or DNS Flex Services. Customer will use commercially reasonable efforts to prevent such unauthorized access or use, and will use commercially reasonable efforts to stop said unauthorized access or use.
3.5. Customer Data. Customer hereby grants BlueCat a non-exclusive, worldwide right to use, process and transmit, the Customer Data via the Cloud Services and DNS Flex Services so that BlueCat may apply the applicable ordered Cloud Services and DNS Flex Services to Customer. Customer agrees that BlueCat does not review, edit, substantiate, determine or otherwise have any responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of any Customer Data. Customer has sole responsibility for, and BlueCat disclaims all liability for, the Customer Data transmitted by Customer to the Cloud Services or DNS Flex Services.

3.6. Updates and Modifications. Customer acknowledges and agrees that from time to time BlueCat may apply updates to, or otherwise revise, the Cloud Services or DNS Flex Services and that such updates and/or revisions may result in additions, modifications or removal of functionality, features, content or the appearance of the Cloud Services or DNS Flex Services. Any material updates to the Cloud Services or DNS Flex Services that results in the removal of material functionality, considering the overall level of service, shall be considered a material change to this Agreement and shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

3.7. Ancillary Services Software. BlueCat grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable and limited license to use the Ancillary Cloud Service Software during the applicable Subscription Period solely for Customer’s internal business purposes. In addition, BlueCat shall provide Support for the Ancillary Service Software during the applicable Subscription Period. Customer’s right to use such software and to receive Support for such software ceases when the right to access and use Cloud Services or DNS Flex Services, as applicable, ends. At such time, each copy of the Ancillary Service Software must be promptly uninstalled or BlueCat may disable the Ancillary Service Software.

3.8. APIs. In the event that BlueCat makes available any APIs to Customer as part of the DNS Flex Services or Cloud Services, then Customer may access such APIs on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such APIs in accordance with such specifications, restrictions and guidances as BlueCat may stipulate from time to time. In addition, APIs regarding BlueCat Gateway are subject to the requirements detailed at the following address: https://quay.io/repository/bluecat/gateway and Customer agrees to comply with such requirements. BlueCat may from time to time on reasonable notice require Customer at Customer’s own cost to take such steps as are required to integrate any modifications or updates BlueCat makes to APIs. BlueCat reserves the right to restrict Customer access the APIs if BlueCat reasonably determine, in BlueCat sole discretion, that the volume of queries originating from Customer use of the APIs is unduly burdening any API.

3.9. Service Points. Customer acknowledges and agrees that, in order to access and use the DNS Flex Services, Customer must use Service Points and that all Customer’s devices must point directly to a Service Point (“first hop”).

4. ADDITIONAL TERMS & RESTRICTIONS

4.1. License and Subscription Models. The BlueCat Offerings are provided or made available based on the license or subscription model identified in the applicable Purchase Order. Usage of the BlueCat Offerings may not exceed the maximum allowable licenses, subscriptions or Unique Active IPs or any other usage or scope restrictions. Prior to renewal of any BlueCat Offerings and at BlueCat’s discretion, acting reasonably, at any time during the Subscription Period where Customer’s usage thereof has exceeded such restrictions, Customer will be invoiced for any over usage of the applicable product or service at the then-current list price in accordance with the GSA Schedule Pricelist. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

4.2. Active Unique IPs. Usage of the DNS Flex Services may not exceed the maximum number of Unique Active IPs per month specified in the applicable Purchase Order for that pricing tier. Where Customer’s usage of the DNS Flex Services has exceeded such restrictions, then Customer will be invoiced for any such over usage, at BlueCat’s discretion, acting reasonably, at any time during the Subscription Period, at the then-current list price in accordance with the GSA Schedule Pricelist.

4.3. Acceptable Use Policy. Customer agrees to, and agrees to ensure that its Authorized Users will, comply with the Acceptable Use Policy. Neither this Agreement nor the Acceptable Use Policy requires that BlueCat take any action against Customer or any Authorized User or other third party for violating the Acceptable Use Policy or this Agreement, but BlueCat is free to take any such action it sees fit, in addition to any other remedies BlueCat may have.

4.4. Suspension of Perpetual Licenses. If Customer is transitioning from an existing BlueCat perpetual license model to the subscription license model of DNS Flex Services, upon delivery of the DNS Flex Services, all perpetual licenses being replaced are suspended during the Subscription Period. To reinstate such perpetual licenses, please contact BlueCat.

4.5. Appliances. Upon payment of additional fees, BlueCat shall provide the Appliances identified in a Purchase Order.

4.6. E-Learning. If Customer orders the E-Learning Cloud Service pursuant to a Purchase Order, the terms and conditions in Schedule “B” will apply in addition to the terms and conditions of this Agreement.

4.7. Professional Services. Upon payment of additional fees, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule “C”.

4.8. Managed Services. If Customer is a managed provider of DNS services, then the terms and conditions in Schedule “D” will apply in addition to the terms and conditions of this Agreement.

4.9. Hosted Services. If Customer purchases Hosted Services pursuant to a Purchase Order, the terms and conditions in Schedule “E” will apply in addition to the terms and conditions of this Agreement.

5. INVOICES, DELIVERY, ACCESS AND PAYMENT
5.1. Invoices. Upon the delivery of any BlueCat Offering or any other BlueCat products or services, BlueCat shall issue Customer an invoice. BlueCat shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.2. Payment Terms, No Refund. All invoices are due, and Customer agrees to pay each such invoice, in full thirty (30) days from the date of invoice receipt without deduction or set off. Except as otherwise permitted in this Agreement, once paid, fees are non-refundable. All applicable sales and use taxes shall be identified on the invoice and are the responsibility of the Customer. In the event of payment after the due date, interest shall be payable on the overdue amount at the rate of one and one half (1.5%) percent per month, calculated and compounded monthly, or the maximum rate permitted by law, whichever is less, calculated from the due date to the date of payment. All prepaid fees are non-refundable. Should Customer terminate (or not renew prior to contract end date) annual Support services and subsequently re-instates them, Customer may be subject to the then-current reinstatement fee. The reinstatement fee shall be computed as the sum of the following: (i) amount that would have been paid by the Customer for the past Agreement period(s) had coverage been maintained continuously.

5.3. Delivery, Risk of Loss, Access. (a) For Software Products or Ancillary Service Software provided via Appliances, BlueCat shall arrange for delivery of Appliances to the address indicated in the Purchase Order, provided that all costs related to shipping and insurance of the Appliances are paid by Customer. Delivery of Appliances and risk of loss will pass to Customer FOB shipping point. (b) For Software Products provided for download and installation on Customer equipment or environment or for any other Ancillary Service Software, BlueCat shall arrange for virtual delivery of such software by making it available for download, such as providing a license key, at which point delivery will be deemed to be complete. (c) For Cloud Services or the cloud services portions of the DNS Flex Services, BlueCat shall arrange for delivery by making such services available for use by providing login credentials to Customer, at which point delivery will deemed complete.

6. LIMITED WARRANTIES FOR SOFTWARE AND APPLIANCES, DISCLAIMER

6.1. Software Product Warranty; Ancillary Service Software Warranty. For a period of sixty (60) days following delivery, all ordered Software Products and Ancillary Service Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and antivirus software) and will perform substantially in accordance with its Documentation. Such warranty does not apply: (a) to any change or service to such software made by any party other than BlueCat or its authorized agent; (b) to the operation of such software with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) if such software was used in a manner other than as contemplated in this Agreement or the Documentation; or (d) to failure by Customer to report a warranty claim within the warranty period specified in this Section 6.1.

6.2. Appliance Warranty. Any applicable Appliance warranty is described in the BlueCat Customer Care Support Handbook.

6.3. Software Warranty and Appliance Remedy. Upon a valid software warranty claim by Customer, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of any other Software Product or any Ancillary Service Software, deliver a replacement copy of such Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Customer and attributable to the portion of their time rise to the warrant claim. The foregoing remedies are BlueCat’s sole obligation and Customer’s sole remedy in the event of a valid warranty claim under this Section 6.

6.4. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6 OR SCHEDULE “C”, BLUECAT DOES NOT REPRESENT OR WARRANT THAT THE BLUECAT OFFERINGS, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF ANY OF THEM. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.2, THIS SECTION 6, AND SCHEDULE “C”, THE BLUECAT OFFERINGS, ANCyLAR Service SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLUECAT HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABILITY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, CURRENCY, RELIABILITY, SECURITY, OR UNINTERRUPTED USE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, BLUECAT EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER’S USE OF ANY OF THE BLUECAT OFFERINGS, ANCILLARY SERVICE SOFTWARE, APPLIANCES, MANAGED SERVICES, HOSTED SERVICES OR PROFESSIONAL SERVICES IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

7. CONFIDENTIALITY, NON-DISCLOSURE

7.1. Non-Disclosure. Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in this Agreement. Each receiving Party is responsible for any breach of this Agreement by any person to whom it provides, or provides access to, Confidential Information. Each receiving Party shall safeguard the disclosing Party’s Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care.

7.2. Destruction of Confidential Information. Upon the termination of this Agreement, or at any time at the disclosing Party's request, the recipient Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such information (such as archived records), and such information will continue to be treated as Confidential Information, notwithstanding any termination or expiration of this Agreement. Upon the request of the disclosing Party, the recipient Party shall certify in writing that all materials containing Confidential Information of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.
7.3. No Rights to Confidential Information. All Confidential Information remains the sole property of the disclosing Party and no license or other rights to Confidential Information is granted or implied by this Agreement.

7.4. Required Disclosure. In the event that Confidential Information has been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

8. OWNERSHIP, INTELLECTUAL PROPERTY

8.1. Ownership. As between the parties, all ownership and Intellectual Property Rights in and to the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, belong to BlueCat, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software Products and any Ancillary Service Software provided to Customer pursuant to this Agreement are licensed, and not sold, and Customer receives no title or ownership in any of the foregoing. BlueCat reserves all rights not expressly granted under this Agreement.

8.2. Service Results. All Intellectual Property Rights in and to the Service Results belong to BlueCat. Customer acknowledges and agrees that BlueCat may monitor and analyze, and that the Service Results may include, information based on the data of BlueCat’s customers, including Customer Data. During and after the Subscription Period, BlueCat may use Customer Data and Service Results for its own internal purposes, such as to develop, test, increase service and product value, and optimize the BlueCat Offerings.

8.3. Customer Data. All ownership rights in and to Customer Data belong to Customer. Customer agrees that BlueCat may use, process and transmit Customer Data to provide the BlueCat Offerings, Ancillary Service Software, Appliances, Managed Services, Hosted Services and Professional Services, in each case in accordance with its Privacy Statement available at https://www.bluecatnetworks.com/privacy/. BlueCat acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

9. INDEMNIFICATION

9.1. BlueCat’s Indemnification Obligations. BlueCat shall indemnify and defend Customer against any and all third party claims or demands that the BlueCat Offerings (or any portion thereof) violate a third party’s Intellectual Property Rights in Canada, the United States or Japan and all amounts required to be paid in a settlement approved by BlueCat or awarded by a court in a final, non-appealable judgement; provided: (a) Customer has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay; (b) BlueCat shall control over the defense of the claim, provided that any settlement or resolution entered into by BlueCat shall not require any admission of liability or any payment by Customer; (c) Customer has made no admission against BlueCat’s interests and has not agreed to any settlement of any claim or demand without BlueCat’s consent; and (d) Customer shall cooperate with BlueCat in the defense of the claim, at BlueCat’s expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

9.2. Exceptions to BlueCat’s Indemnification Obligations. Notwithstanding Section 9.1, BlueCat shall be under no obligation to indemnify or defend Customer if any infringement claim or demand by a third party arises as a result of any: (a) access or use of the BlueCat Offerings in violation of or inconsistent with this Agreement or the Documentation; (b) modification to the BlueCat Offerings by a party other than BlueCat or its authorized agents, which modification has resulted in the claim or demand by the third party; (c) combination of the BlueCat Offerings with any computer program, software, hardware or equipment where such claim of infringement would not exist without such combination; (d) use of a superseded version of the Software or Ancillary Cloud Services Software where use of a then-current version would avoid any claim of infringement; or (e) access to or use of the BlueCat Offerings after BlueCat notifies Customer to discontinue such access or use.

9.3. Additional Infringement Remedies. At BlueCat’s sole expense and discretion, in response to any pending or potential infringement claim, BlueCat may: (a) procure for Customer the right to continue using the offending BlueCat Offering or applicable portion thereof; (b) replace or modify the offending BlueCat Offering or applicable portion thereof so that it is non-infringing; or (c) terminate this Agreement either entirely or only as it relates to the offending BlueCat Offering in question or the applicable portion thereof and upon return of the BlueCat Offering in question or the applicable portion thereof or certification of destruction, refund to Customer the pro rata unused portion of any prepaid fees allocable to such part(s) of the BlueCat Offerings that is (are) terminated. For software licensed on a perpetual basis, such refund shall be based on the unamortized or un-expensed portion of the purchase price allocated to that portion of the Software, based on a three-year straight line amortization.

9.4. Sole Remedy. Sections 9.1 and 9.3 shall constitute Customer’s sole remedy from BlueCat in respect of infringement claims and demands.

9.5. Reserved.

10. LIABILITY, LIMITATIONS AND EXCLUSIONS

10.1. LIMITATIONS. THE LIMITATION OF LIABILITY SET FORTH IN THE UNDERLYING GSA SCHEDULE CONTRACT BETWEEN ORDERING ACTIVITY AND EC AMERICA SHALL APPLY TO CUSTOMER.

11. SUBSCRIPTION PERIODS, AGREEMENT TERM, TERMINATION AND SUSPENSION

11.1. Subscription Periods; Renewal. The Subscription Periods may be renewed for additional successive one (1) year terms by executing a new Purchase Order at the then current GSA Schedule Pricelist fee for the applicable BlueCat Offerings and Professional Services and may not be cancelled with less than sixty (60) days’ notice prior to the expiration of the then-current period. BlueCat will provide (a) Customer, if purchasing direct, or (b) Immix or other channel partner if Customer is purchasing through the channel, with ninety (90) days notice of any renewal of Subscription Period. Customer must
confirms renewal of the subscription period within the ninety (90) day period; otherwise, the subscription period is considered expired and Customer must immediately cease using the Software and Software Products and delete all virtual instances of the Software and all Services shall immediately cease.

11.2. Term of Agreement. This Agreement is effective during the period commencing as of the Effective Date and expires on the date that the last Purchase Order hereunder expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.

11.3. Termination for Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, BlueCat shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.4. Suspension of Cloud Services or DNS Flex Services. In the event that BlueCat, acting reasonably, suspects or learns of any of the following described circumstances, then BlueCat may immediately temporarily suspend Customer's access to and use of the Cloud Services and/or DNS Flex Services, in addition to any remedies BlueCat may have: (a) breach of the Acceptable Use Policy; (b) Customer's failure to cooperate with BlueCat's reasonable investigation of any suspected violation of this Agreement; (c) access or manipulation of the Cloud Services or DNS Flex Services without BlueCat's consent; (d) any circumstance that requires suspension of the Cloud Services or DNS Flex Services in order to protect the BlueCat Offerings, BlueCat, or its customer's data; or (e) suspension required by law.

11.5. Termination Obligations. Upon the earlier of termination of this Agreement, or termination or expiration of any outstanding Purchase Order or Subscription Period, Customer shall (a) delete, return or destroy all instances of Software Products, Ancillary Service Software, Appliances and any Documentation and, upon request, certify to compliance with this Section 11.5(a); (b) cease to access and use the Cloud Services, DNS Flex Services and any Cloud Data; and (c) upon request, confirm in writing compliance with Section 7.2. With respect to Cloud Services and DNS Flex Services, BlueCat shall provide Customer Data available to Customer for download for thirty (30) days following termination and BlueCat shall destroy all Customer Data except for any aggregated anonymized information based on Customer Data upon the expiry of such thirty (30) day period. Section 11.5(a) does not apply to Software Products licensed on a perpetual basis in the event that Customer terminates this Agreement pursuant to Section 11.3.

11.6. Survival. Notwithstanding the termination or expiry of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 4.3, 5.1, 5.2, 6.4, 7, 8, 9, 10, 11.5, 11.6 and 12.

12. MISCELLANEOUS PROVISIONS

12.1. Audit; Monitoring. Subject to Government security requirements, BlueCat reserves the right to audit and monitor Customer's use of the Cloud Services and compliance with this Agreement, including the Acceptable Use Policy.

12.2. Orders through Resellers. Section 5 shall not apply to orders placed through a reseller. All other terms and conditions in this Agreement shall apply to orders placed through a reseller.

12.3. Assignment. Without the prior written consent of BlueCat, Customer may not assign this Agreement or any of its rights or obligations hereunder, except to an Affiliate and provided such Affiliate agrees to be bound by the terms of this Agreement and Customer remains responsible for Affiliate's compliance with this Agreement, including payment of all fees. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts except to an Affiliate and provided such Affiliate agrees to be bound by the terms of this Agreement and Customer remains responsible for Affiliate's compliance with this Agreement.

12.4. Press Releases, Marketing. BlueCat may refer to Customer for the limited purpose of identifying it as a customer in sales and marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 582.203-71.

12.5. Entire Agreement, Amendment and Headings. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), contains the entire understanding of the Parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both Parties. Headings used in this Agreement are for convenience of reference only, and shall not be used to modify the meaning of or to interpret the terms and conditions of this Agreement.

12.6. Waiver, Severability. The waiver of any breach of this Agreement, or the failure of a Party to exercise or enforce any right under this Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under this Agreement. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then BlueCat’s liability will be limited to the greatest extent permitted by law.

12.7. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any party other than BlueCat, Customer and their permitted assigns any benefits, rights or remedies.

12.8. Rights and Remedies. Except as expressly set out in this Agreement regarding the Service Level Schedule remedies and in Section 6 and Section 9.4, in the event of any breach of this Agreement, the rights and remedies of the Parties provided for in this Agreement shall not be exclusive or exhaustive, and are in addition to any other rights and remedies available at law.

12.9. Notices. Any notice required or otherwise provided for in this Agreement shall be given to BlueCat or Customer, as the case may be, at the physical or e-mail address set forth on the signature page of this Agreement, or as updated from time to time pursuant to a notice provided pursuant to this Section, with a copy to any individuals with whom the Parties typically communicate.

12.10. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
12.11. Export Controls. Customer acknowledges and agrees that the BlueCat Offerings and any Software and Ancillary Service Software are subject to export controls under U.S., Canadian and other export control laws. Customer shall not directly or indirectly, whether to an Affiliate or a third party: (a) export, re-export, transfer, or release (herein referred to as “export”) any component of the BlueCat Offering, including any Software and Ancillary Service Software, to any prohibited or restricted destination, person, or entity, or (b) access or use or allow any Authorized User, Affiliate or third party to access or use the BlueCat Offerings in a manner prohibited or restricted by export control laws. Customer shall comply with all applicable export controls laws at all times.

12.12. US Federal and State Government Customers. The BlueCat Offerings are each a “commercial item” as that term is defined in Federal Acquisition Regulation (“FAR”) 2.101, consisting of “technical data”, “commercial computer software”, “commercial computer software documentation” and/or “commercial services” as such terms are defined in FAR 2.101 or used in FAR 12.211 and 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire only the rights set out in this Agreement for the BlueCat Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the BlueCat Offerings is prohibited except to the extent expressly permitted by the terms of this Agreement. To the extent allowed by applicable law, this US Government end user provision is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software or technical data. Terms and conditions herein that are prohibited by federal law or procurement regulation are not enforceable against the U.S. government.

12.13. Governing Law. This Agreement is governed by the Federal laws of the United States. The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version adopted by any state, does not apply to this Agreement.

12.14. Counterparts; Delivery by E-mail. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by e-mail transmission will constitute valid and effective delivery of an original executed copy.

SCHEDULE “A”

DEFINITIONS

In the Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings, and such meanings shall apply to both singular and plural forms of any such terms:

(a) “Access Methods” means the user identifiers and passwords for the Cloud Service or DNS Flex Services issued by Customer to Authorized Users pursuant to this Agreement;

(b) “Acceptable Use Policy” means BlueCat’s acceptable use policy located at https://www.bluecatnetworks.com/license-agreements/, as may be updated by BlueCat from time to time;

(c) “Affiliate” means a Party's direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control;

(d) “Agreement” means this Master Agreement, all schedules annexed hereto, each Purchase Order, and any other document incorporated by reference herein;

(e) “Ancillary Service Software” means any software provided by BlueCat that is required to be installed and executed in order to facilitate Customer’s use of the DNS Flex Services or Cloud Services, including the Service Points, any software applications made available for download, and any software resident or installed in any Appliance;

(f) “API” means BlueCat owned or licensed application programming interface made available by BlueCat as part of the DNS Flex Services or Cloud Services;

(g) “Appliance” means any physical computer hardware component sold by BlueCat where Software or any Ancillary Service Software is resident or installed;

(h) “Authorized User” means any employees, and agents of Customer, who Customer gives access to the Cloud Services or DNS Flex Services pursuant to this Agreement;

(i) “BlueCat” means:

BlueCat Networks (USA) Inc., located at 1000 Texan Trail, Suite 105, Grapevine, Texas 76051 USA, with respect to Customers located in the United States of America and Japan;

BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Customers located outside the United States of America and Japan; or

BlueCat Federal USA, Inc. located at 11710 Plaza America Drive, Suite 120, Reston, Virginia 20190 USA, with respect to Federal and State Government Customers located in the United States of America.

(j) “BlueCat Customer Care Support Handbook” means the support handbook available from BlueCat, as may be updated from time to time by BlueCat in its sole discretion. The current BlueCat Customer Care Support Handbook is attached hereto as Exhibit A;

(k) “BlueCat Offerings” means the following products and services provided or made available by BlueCat: Software Products, Cloud Services and DNS Flex Services and any other products or services made available by BlueCat;

(l) “Cloud Services” means the DNS Edge cloud services made available by BlueCat for subscription by Customer, as well as any Ancillary Service Software and any Support for the Cloud Services, and any BlueCat Master Agreement 2019 March 11
software made available for access and use as part of the Cloud Services. “Cloud Services” exclude DNS Flex Services;

(m) “Confidential Information” means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, information technology networks, including all technical information, data, documentation, code, security measures and procedures and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential. Non-public features of the Cloud Services and DNS Flex Services shall be considered Confidential Information. Confidential information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;

(n) “Customer Data” means the IP addresses, hostnames and DNS query logs and any other information that is uploaded or transmitted by Customer to BlueCat through any Cloud Services or the cloud services portion of the DNS Flex Services;

(o) “Documentation” means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the BlueCat Offerings, made available in electronic format from BlueCat, and any revisions, updates and supplements thereto, as such documentation may be amended by BlueCat from time to time or embedded in any BlueCat Offering;

(p) “DNS Flex Services” means the services made available from BlueCat for subscription by Customer, as well as any Ancillary Service Software (including Service Points) and any APIs, any Support for the DNS Flex Services, and any software made available of for access and use as part of the DNS Flex Services. DNS Flex Services exclude any Cloud Services;

(q) “Effective Date” is defined in the first paragraph of this Agreement;

(r) “e-Learning” means BlueCat’s computer based training courses made available to Customer as a Cloud Service;

(s) “first hop” has the meaning given to it in Section 3.9;

(t) “Hosted Services” means the hosted external DNS services available from BlueCat from time to time;

(u) “Intellectual Property Rights” means all intellectual property and other proprietary rights, including all rights provided under trade secret law, patent law, copyright law, trade mark or service mark law, design patent or industrial design law, semi-conductor chip or mask work law, and any other statutory provision or common law principle which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or not and including all applications therefor;

(v) “Material Provisions” means Sections 2, 3, 4, 5.1, 7, 8, 12.3, 12.11 and 12.12;

(w) “Party” means either BlueCat or Customer and “Parties” refers to both BlueCat and Customer;

(x) “Professional Services” means professional services provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Software Products;

(y) “Purchase Order” means a written agreement signed by both parties, including an order schedule, a sales quote issued by BlueCat, a SOW, or any other document confirming any BlueCat Offerings to be purchased by Customer, any applicable Subscription Period(s), and any Professional Services to be purchased by Customer, in each case, as agreed to by BlueCat and Customer and consistent with the terms and conditions of this Agreement;

(z) “Service Level Schedule” means the service level schedule related to Cloud Service or the cloud services portion of the DNS Flex Services, as may be updated by BlueCat from time to time and published at https://www.bluecatnetworks.com/license-agreements/;

(aa) “Service Point” means the Software that the Customer deploys in their infrastructure that facilitates “first hop” capabilities in their DNS solution;

(bb) “Service Results” means any information, statistics, results, feeds, graphs, analysis and reports computed and generated by and from the DNS Flex Services or Cloud Services;

(cc) “Software” means the then current object code version of the computer program or application licensed by BlueCat to Customer pursuant to this Agreement, as evidenced either on an Appliance or available for download, in each case, as part of a Software Product;

(dd) “Software Products” means any and all software products offered by BlueCat for license, excluding DNS Flex Services. Software Products may include any Software, whether embedded on an Appliance or made available for download. BlueCat’s current Software Product offerings are listed on BlueCat’s website located at https://www.bluecatnetworks.com/license-agreements/, as such list may be updated by BlueCat from time to time;

(ee) “SOW” means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer;

(ff) “Subscription” means a subscription for the Subscription Period to (i) with respect to Software Products, license and use Software Products, and, to the extent ordered, to receive Support, ordered and paid for by Customer pursuant to one or more Purchase Orders; (ii) with respect to Cloud Services, to access and use the Cloud Services, and to receive Support for such Cloud Services, ordered and paid for by Customer pursuant to one or more Purchase
In addition to the terms and conditions set forth in the BlueCat Master Agreement, which continue to apply to Professional Services to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services provided by BlueCat.

1. **Professional Services.** All Professional Services to be provided by BlueCat to Customer shall be described in a SOW signed by both parties and referencing the Agreement. Each SOW must be consistent with the terms in this Agreement (including this Schedule “C”) unless explicitly stated in the SOW.

2. **Time and Materials.** Unless explicitly stated in the SOW, all Professional Services are performed on a “time and material” basis. If requested, (a) BlueCat will provide regular updates on the services being performed and (b) BlueCat will not exceed the estimate in the SOW without Customer’s consent.

3. **Expenses.** Customer agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

4. **Change Orders.** If either Party wishes to make a change to the scope of work set out in a SOW, a change order must be submitted which describes the scope of the Professional Services to be performed, the revised time frame and a cost estimate. Each change order must be accepted by both parties to be binding.

5. **Scheduling.** Unless explicitly stated in the SOW, Professional Services will be provided between Monday and Friday, from 8:00 am to 5:00 pm local time. Weekend and overtime rates apply outside these days and hours.

6. **Delivery Dates.** Delivery dates in the SOW are estimates only and are not binding completion dates.

7. **Invoices.** Unless otherwise agreed, BlueCat will invoice Customer for services performed and expenses incurred on a monthly basis. Payment is due thirty (30) days from invoice receipt.

8. **Prepaid.** Prepaid service days expire unless used within twelve (12) months of the purchase date as specified in the Purchase Order. No credit or refund shall be due to Customer for expired or unused services.

9. **Limited License re. Deliverables.** BlueCat is not providing or licensing any software to Customer in connection with the Professional Services, except for specific deliverables identified in the SOW ("Deliverables"). The Deliverables are not “work made for hire” and any Intellectual Property Rights in the Deliverables remain with BlueCat. The Deliverables are licensed to Customer in connection with the Software upon the same terms and conditions as set forth in the Master Agreement.

10. **Warranty.** For a period of thirty (30) days from the performance of the Professional Services, BlueCat warrants that the Professional Services are performed in a professional manner using qualified and experienced personnel familiar with BlueCat Offerings. Any warranty claims must be reported to BlueCat within thirty (30) days of the related Professional Services.

11. **Exceptions to Warranty.** The warranty set forth in Section 10 does not apply upon any of the following: (a) any change, addition, deletion or other modification was made to the Deliverables, except as specifically authorized in writing by BlueCat; and (b) failure by Customer to report a deficiency within the specified warranty period.

12. **Warranty Remedy.** Upon a valid deficiency claim by Customer, BlueCat shall remedy the deficiency within a reasonable period of time and failing that, BlueCat shall refund all Professional Services fees paid by Customer and attributable to the deficiency giving rise to the warranty claim.

13. **Independent Contractor.** The manner and means used by BlueCat to perform the Professional Services are in the sole discretion and control of BlueCat. BlueCat may make use of subcontractors to perform the Professional Services provided BlueCat shall remain responsible for the performance of its subcontractors.
14. Expiry. Unless otherwise agreed, a SOW expires if the project is not commenced within six (6) months.
15. Reserved.

**SCHEDULE “D”**

**ADDITIONAL MANAGED SERVICES TERMS AND CONDITIONS**

1. Managed Services for End Customers. The Parties acknowledge that the Customer is purchasing certain Software Products in order to manage or host DNS records (“Managed Services”) for its end user customer (“End Customer”). Customer shall obtain in writing each End Customer’s agreement and acknowledgement that the Software Products are for such End Customer’s internal use only. Customer shall use the Software Products only for providing Managed Services to End Customers.

2. Transfer of License for Managed Services. In the event of any termination of the relationship between Customer and the End Customer, Customer may transfer to End Customer or if instructed to do so by End Customer, transfer to a replacement provider, this Agreement including the license(s) for the Software. Should Customer’s transfer of the Software Products be to a replacement provider, such replacement provider’s license to the Software Products and/or Services shall be solely and exclusively for use in that replacement provider’s provision of Software and/or Services to End Customer. In order to effect such a transfer, Customer shall provide BlueCat with prior written notice of the transfer and shall execute, and arrange for End Customer to execute, an assignment agreement whereby End Customer and, if applicable, its replacement provider, agree to comply with the terms and conditions of this Agreement.

3. Restrictions on Use for Managed Services. If Customer is using any of the Software Products to provide Managed Services, then Customer shall ensure each of its End Customers using Software Products as part of Customer’s Managed Service offering signs and returns the Simplified EUA which is attached hereto as Exhibit B.

**SCHEDULE “E”**

**HOSTED EXTERNAL DNS SERVICE TERMS AND CONDITIONS**

1. Hosted External DNS Services. Subject to payment of Hosted Services fees, BlueCat shall provide the Hosted Services upon the terms and conditions set forth herein.
2. Term. Hosted Services may be renewed annually for additional successive one (1) year terms by executing a new Agreement in writing at the then current fee in accordance with the GSA Schedule pricelist.
3. Monitor of Use. BlueCat reserves the right to monitor Customer’s use of the Hosted Services to ensure compliance with the terms herein. BlueCat shall invoice Customer for any over-usage of the Hosted Services at BlueCat’s then-current price in accordance with the GSA Schedule pricelist.
4. Customer Warranties. Customer represents and warrants that it is the registrant or duly authorized representative with respect to any domain names submitted to BlueCat in connection with the Hosted Services and that it has all right, title and interest to use the data which Customer provides to BlueCat to perform the Hosted Services. Customer further acknowledges and warrants that (a) it is entirely responsible for all content and information directly or indirectly delivered to or passed through BlueCat by the Customer, its customers or end users, and (b) BlueCat exercises no control over and accepts no responsibility for such content or information.
5. BlueCat Warranty. BlueCat warrants that the Hosted Services will be delivered substantially as described in the Service Levels identified below. BlueCat does not warrant the Hosted Services against malfunction or cessation of internet services by internet providers or of any of the networks that form the internet which may make the Hosted Services temporarily or permanently unavailable.
6. Warranty Remedy. Upon a valid deficiency claim by Customer pursuant to Section 5 above, BlueCat shall provide a credit for future Hosted Services as set forth in Section 8 below.
7. Reserved.
8. Service Level Agreement.
   (a) During the term of the Master Agreement, BlueCat shall provide Customer with access to Resolution Services without any Service Outages each month (the “Performance Objective”). “Resolution Services” means the ability to receive and answer well-formed DNS queries along all IP addresses on standard ports with 100% availability.
   (b) “Service Outages” means that the Resolution Services were available less than 100% and shall specifically exclude (i) unavailability of the Resolution Services due to Customer’s misuse of the services, negligent or unlawful acts committed by Customer or its agents, acts or omissions of Customer’s domain name registrar, unavailability of the Customer’s network, and force majeure events; and (ii) suspension of the services by BlueCat in accordance with the terms herein. BlueCat, in its sole and reasonable discretion, shall determine whether an event is considered a Service Outage.
   (c) Upon Service Outages lasting, in aggregate, less than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one day of Resolution Services. Upon Service Outages lasting, in aggregate, more than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one week of Resolution Services.
   (d) All Service Outages and all claims for credit must be reported by Customer to BlueCat within thirty days of the event giving rise to the claim. Customer shall provide to BlueCat all relevant details and documentation supporting its claim of a Service Outage to allow BlueCat to investigate the claim.
   (e) Upon failure by BlueCat to maintain 99.9% uptime (as measured on a monthly basis) of Resolution Services for three consecutive months, Customer may terminate the Hosted Services.
   (f) Credits may only be used towards Hosted Services fees. Customer’s sole and exclusive remedy in the event BlueCat fails to meet the Performance Objectives is to receive credits as set forth herein and BlueCat shall have no further liability to Customer.

**EXHIBIT A**

CUSTOMER CARE HANDBOOK
(to be attached in final version)

**EXHIBIT B**
SIMPLIFIED EUA
(to be attached in final version)
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

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

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

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

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

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by
the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

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

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

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

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

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

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

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

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

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

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

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

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

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

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

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

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

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

Definitions.

“Blue Light” means Blue Light, LLC, a Delaware limited liability company.

“IBM i2 Software” means International Business Machines Corporation’s i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Analyze applications.

“Internal Network” means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.

“Software” means (a) the object code version of Blue Light’s software known as the Blue Light Management Console software and related explanatory written materials and files (“Documentation”); and (b) any modified versions and copies of, and upgrades, updates and additions to, such software and Documentation, provided to you by Blue Light at any time, to the extent not provided under a separate agreement.

Software License. Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

RESERVED.

Intellectual Property Ownership. The Software and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization and code of the Software are the valuable trade secrets and confidential information of Blue Light. The Software are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

Restrictions. Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted
under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY’S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREBIN. You shall not use or offer the Software on a service bureau basis.
DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7 BELOW, THE SOFTWARE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Section 6 will survive the termination of this Agreement, howsoever caused, but this shall not imply or create any continued right to use the Software after termination of this Agreement.

Express Warranty: The Blue Light Management Console and I2 Software provided herein is warranted by Blue Light to be free from defects in workmanship for a period of ninety (90) days under normal use from the date of actual delivery to buyer. Blue Light’s liability hereunder is limited to remedying any defect or to replacing any of the software that are found defective.

Export Rules. You agree that the Software and shall not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the “Export Laws”). In addition, if the Software is identified as an export controlled item under the Export Laws, you represent and warrant that you are not a citizen of, or located within, an embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export Laws from receiving the Software.

RESERVED.

Reserved.

Software and Blue Fusion Appliance License Agreement

Definitions.

“Blue Light” means Blue Light, LLC, a Delaware limited liability company.

“Blue Fusion Appliance” means Blue Light LLC’s hardware server appliance used as a delivery vehicle for the IBM i2 Software and the Blue Light Management Console.

“IBM i2 Software” means International Business Machines Corporation’s i2 Products: Enterprise Insight Analysis Core, Enterprise Insight Analysis Premium and the Intelligence Analysis Portal applications.

“Internal Network” means a private, proprietary network resource accessible only by your employees and individual contractors (i.e., temporary employees). Internal Network does not include portions of the Internet or any other network community open to the public.

“Software” means (a) the object code version of Blue Light’s software known as the Blue Light Management Console software and related explanatory written materials and files (“Documentation”); and (b) any modified versions and copies of, and upgrades, updates
Software License. Blue Light grants you a non-transferable, non-exclusive license to use the Software for your internal purposes (and not for the benefit of any third party) solely in connection with your use of the IBM i2 Software. You may install and use one copy of the Software in support of one deployment of the IBM i2 Software. The deployment may include multiple instances of the IBM i2 software used as separate environments in support of the production IBM i2 software (e.g., production, development, training, disconnected operations). You may make a reasonable number of backup copies of the Software, provided your backup copies are not installed or used for other than archival purposes.

Appliance License. Blue Light grants you a non-transferable, non-exclusive license to use the Blue Fusion Appliance for your internal purposes and in the demonstration of the functionality of the associated i2 Software and Blue Light Management Console.

RESERVED.

Intellectual Property Ownership. The Software and Blue Fusion Appliance and any authorized copies that you make are the intellectual property of and are owned by Blue Light. The structure, organization, and code of the Software and Blue Fusion Appliance are the valuable trade secrets and confidential information of Blue Light. The Software and Blue Fusion Appliance are protected by law, including but not limited to the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this agreement does not grant you any intellectual property rights in the Software and all rights not expressly granted are reserved by Blue Light.

Restrictions. Any permitted copy of the Software that you make must contain the same copyright and other proprietary notices that appear on or in the Software. You shall not modify, adapt, or translate the Software. You shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent you may be expressly permitted under applicable law to decompile only in order to achieve interoperability with the Software. The Software is designed and provided to you as a single product to be used as a single product with the IBM i2 Software. You shall not use the Software on a stand-alone basis or with software or products other than the IBM Application Solution. YOU SHALL NOT RENT, LEASE, SELL, SUBLICENSE, ASSIGN, OR TRANSFER YOUR RIGHTS IN THE SOFTWARE, THE BLUE FUSION APPLIANCE OR THIS AGREEMENT, OR AUTHORIZE ANY PORTION OF THE SOFTWARE TO BE COPIED ONTO ANOTHER INDIVIDUAL OR LEGAL ENTITY'S COMPUTER EXCEPT AS MAY BE EXPRESSLY PERMITTED HEREIN. You shall not use or offer the Software on a service bureau basis.

DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10 BELOW, THE SOFTWARE AND APPLIANCE ARE LICENSED TO YOU ON AN AS-IS BASIS, WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. The provisions of Sections 6 and Section 7 will survive the termination
of this Agreement, howsoever caused, but this shall not imply or create any continued right to use
the Software after termination of this Agreement.

RESERVED.

Export Rules. You agree that the Software and/or Blue Fusion Appliance shall not be shipped,
transferred or exported into any country or used in any manner prohibited by the United States Export
Administration Act or any other export laws, restrictions or regulations (collectively the “Export Laws”).
In addition, if the Software or Blue Fusion Appliance is identified as an export controlled item under
the Export Laws, you represent and warrant that you are not a citizen of, or located within, an
embargoed or otherwise restricted nation and that you are not otherwise prohibited under the Export
Laws from receiving the Software or Blue Fusion Appliance.

Express Warranty: The Blue Fusion Appliance provided herein is warranted by Blue Light to be free
from defects in workmanship and in material for a period of ninety (90) days under normal use from
the date of actual delivery to buyer. Blue Light’s liability hereunder is limited to remedying any defect
or to replacing any of the equipment, or the components thereof, that are found defective.

RESERVED.

Services Agreement Terms and Conditions

Services.

Subject to the terms and conditions set forth in this Agreement, the underlying GSA Schedule contract,
and the purchase order, BL will provide the Services set forth in the Service Addendum. Defined terms
used in this Agreement shall have the meanings ascribed to them in Section 8 hereof if not otherwise
defined in this Agreement.

BL shall not be responsible for securing any intellectual property rights that may be owned or retained
by third parties, unless specifically set forth in the Service Addendum.

BL’s personnel will perform their work for Ordering Activity both remotely, and, as agreed by Ordering
Activity and BL, on the Ordering Activity’s premises. Ordering Activity agrees to provide necessary
working space and facilities, and any other reasonable services and materials BL or its personnel may
need in order to perform the work assigned to them. Subject to Government security requirements,
Ordering Activity agrees to provide BL support personnel with access to Ordering Activity systems. This
may include customer portal access, VPN access, or dialup out-of-band management access to each
remote site, in addition to passwords, access codes, or security devices.

Ordering Activity acknowledges that BL may require documents, information and cooperation by
Ordering Activity in order to properly perform the Services hereunder and that BL is not responsible for
(i) errors, delays, or other consequences arising from the failure of Ordering Activity to provide such
documents, information, or cooperation, or (ii) from the inaccuracy or incompleteness of any such
documents or information.
RESERVED.

Reserved.

Warranty Disclaimer.

a. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE SERVICE ADDENDUM, BL DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. BL DOES NOT WARRANT THAT THE SERVICES (INCLUDING ANY HARDWARE OR SOFTWARE) PROVIDED OR LICENSED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

RESERVED.

Reserved.

Reserved.

Definitions. The following defined terms shall apply to capitalized terms in this Agreement.

Affiliate: As to a party, means any entity controlling, controlled by, or under common control with such party, where the term "control" and its correlative meanings, "controlling," "controlled by," and "under common control with," means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity. Without limiting the foregoing, but in addition thereto, any Affiliate of, or subsidiary of, BL Technologies, Inc. shall be deemed to be an Affiliate of BL.

BL Parties: BL, its Affiliates and their members, shareholders, managers, officers, directors, employees, contractors, and agents.

Customer Parties: Customer and the Affiliates, owners, officers, directors, employees, contractors, and agents of Customer or of the Affiliates of Customer.

Services: All services, equipment, software and other offerings of any kind set forth in the Service Addendum to be provided or licensed by BL to Ordering Activity pursuant to this Agreement.
EXHIBIT A

Service Addendum

Services; Products Sales.

Services. BL shall perform the professional, support or application services (the “Services”) specified in the applicable purchase order.

Reserved.

Support Services.

With respect to Services identified as “support services” in the purchase order (“Support Services”), BL will neither be responsible for nor obligated to provide such Support Services in the event support or maintenance is necessitated by any of the following: (a) faulty electrical systems external to devices not furnished by BL; (b) accident, transportation, neglect, or misuse; (c) repair, damage, or increase in service time resulting from failure to provide a suitable installation environment (including but not limited to failure of or failure to provide adequate or proper electrical power, air conditioning, humidity control, or protection from dust or dirt from the outside or within the building), or from use of supplies or materials not meeting the network specifications set forth in any order accepted by BL for such installation unless such supplies or materials were recommended or used by BL; (d) damage or errors attributable to misuse or use not in accordance with applicable documentation; or (e) such service is necessitated by or the result of malfunctions or other problems of software or hardware other than software or hardware provided by BL.

Ordering Activity shall designate and provide BL with a primary contact for Support Services. Ordering Activity shall not permit persons other than authorized representatives of BL to perform support and maintenance services, adjustment, repairs or modifications to any Components for which Support Services are provided (the “Supported System”) without the prior written consent of BL. Ordering Activity will assist BL in maintaining a remote access connection via the Internet to the Supported Systems at Ordering Activity’s facilities seven (7) days a week, twenty-four (24) hours per day.

Lease. With respect to any hardware identified in the purchase order as “Leased Hardware”, BL hereby agrees to lease the Leased Hardware to Ordering Activity for the term. Following delivery of the Leased Hardware to Ordering Activity, Ordering Activity shall bear reasonable risks of loss, damage, theft, or destruction to the Leased Hardware, excluding reasonable wear and tear. Ordering Activity shall not repair or maintain the Leased Hardware without BL’s prior written consent. Ordering Activity shall notify BL of any known or threatened damage to, or loss of, the Leased Hardware. BL shall be solely responsible for all Leased Hardware repair and maintenance expenses pre-approved by it in writing. Notwithstanding the foregoing, in the event any damage to or loss of Leased Hardware arises out of the negligence or willful misconduct of Ordering Activity, Ordering Activity shall be solely responsible for all costs and expenses incurred in connection with repairing, maintaining, or replacing such Leased Hardware. Except as set forth below in this Section 1.4, nothing contained in this Agreement shall give or convey to Ordering Activity any right, title or interest in or to the Leased Hardware. Ordering Activity shall not: (i) not enter into any sublease, loan, or similar arrangement with respect to the Leased Hardware or (ii) transfer, assign, convey, encumber, pledge, or otherwise dispose of the Leased Hardware.
Hardware or any interest therein, and any attempt by Ordering Activity to do any of the foregoing without BL’s prior written consent shall be void. Upon the expiration or termination of this Service Addendum, Ordering Activity shall promptly either: (i) prepare, package, and ship the Leased Hardware in accordance with BL’s reasonable instructions; (ii) provide BL with access to Ordering Activity’s facilities so that BL may prepare, package, and ship the Leased Hardware for return to BL or (iii) purchase the Leased Hardware from BL by issuing a purchase order to BL within thirty (30) days of the date of termination. Any such sale of the Leased Hardware to Customer shall be on an “as-is” basis.

Acceptance. Within two business days of BL notifying Ordering Activity via email that Services identified in the purchase order as “Professional Services” are completed (the “Testing Notice”), Ordering Activity shall test the Component deliverables identified as work product (“Work Product”) to determine whether they comply with the specifications set forth in the purchase order. Ordering Activity shall promptly either advise BL that the Work Product is accepted (an “Acceptance Notice”) or deliver to BL a written statement describing in detail the reasons why the Work Product does not comply with such specifications (a “Non-Compliance Notice”). Upon receipt of a Non-Compliance Notice, BL shall correct the Work Product so that the Work Product complies with such specifications, and the foregoing testing procedure shall be repeated until Ordering Activity accepts the Work Product. The foregoing remedies shall be Ordering Activity’s remedies with respect to Work Product for which a non-compliance is claimed. The provision of an Acceptance Notice or the failure to provide a Non-Compliance Notice within two (2) Business Days of the date of the Testing Notice shall constitute acceptance of the Work Product by Ordering Activity. Ordering Activity may not withhold its acceptance of the Work Product as a result of defects therein that do not materially affect the performance or functionality thereof.

Proprietary Rights.

BL Software. Any Software identified in the purchase order as “BL Software” and all associated documentation shall be the sole and exclusive property of BL (the "BL Software"). All rights in and related to the BL Software, including, without limitation, copyrights, trademarks, trade secrets, patents, and all other intellectual property rights or proprietary rights, are hereby exclusively reserved by BL. If the applicable purchase order includes BL Software, Ordering Activity’s sole right to use the BL Software shall be set forth in the above Software License Agreement (the “EULA”) and it is expressly understood that no right (other than pursuant to the EULA) or title to or ownership in or to the BL Software is transferred or granted to Ordering Activity under this Service Addendum.

Third Party Software. Software provided under this Agreement may include software owned by third parties (“Third Party Software”).

Reserved.
Reserved.

Limited Warranty. BL shall provide the Services in a professional manner consistent with industry standards applicable to the nature of the Services. Any claim for a breach of the foregoing warranty must be made by Ordering Activity within five (5) days following the completion of the applicable Services. If Ordering Activity fails to provide notice of such claim within such five (5) day period, Ordering Activity shall be deemed to have waived its rights to make a claim for a breach of the foregoing warranty. Ordering Activity’s remedy and BL’s sole obligation for any breach of the foregoing warranty or any other claim regarding the Services or Work Product shall be for BL to re-perform the applicable Service or
repair the applicable Work Product. BL will pass through and assign to Customer any third party’s warranty which BL receives in connection with a Component provided to Customer to the extent such pass through and assignment is permitted by such third party. BL does not and cannot warrant, guarantee, or make any representations regarding the performance, use or results of the use of the Components in terms of correctness, accuracy, reliability, currentness, or otherwise.

Reserved.
TRIANING PROGRAM

License Grant: Blue Light hereby grants to you a limited, non-exclusive, non-sub-licensable license to access one training module in the Training Program for educational purposes only. You may not, nor cause or permit any other person to, reproduce, download, disseminate, disassemble, decompile, reverse engineer, translate, sell, manufacture, sublicense, distribute, transfer, modify, adapt, creative derivative works from the Training Program.

Ownership: Blue Light is and remains the exclusive owner of all right, title, and interest (including copyright, patent, trade secret and other proprietary rights) in and to the Training Program. Nothing in this Agreement will be construed as granting you any title or interest in or to the Training Program. You agree not to contest the validity of Blue Light’s rights or to perform any act adverse to Blue Light’s rights.

Online User and User Information / Passwords: You will be asked to provide certain information to gain access to the Training Program. You agree that the information you provide is true, accurate, and complete and that you will not register under a name of, or attempt to enter or use the Training Program under a name or ID that is not your own. You agree that it is your responsibility to maintain your access to the Training Program and keep your password and other information you provide confidential. You agree to immediately notify Blue Light or the institution reselling your Training Program if there is any known or suspected unauthorized use of your credentials to the Training Program.

RESERVED.

NO WARRANTY; BL shall provide the Training in a professional manner consistent with industry standards applicable to the nature of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE TRAINING PROGRAM IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

RESERVED.

Reserved.
BLUE PRISM SOFTWARE, INC.
1688 MERIDIAN AVENUE, SUITE 700
MIAMI BEACH, FL 33139

U.S. Federal Government License Addendum

We (Blue Prism Software, Inc., or “Licensor”) have set out here the terms and conditions that apply (“Addendum”), in addition to the End User License and Support Terms at Attachment A (“EULA”), to the Software and support we provide to U.S. Government agencies (“Ordering Activity”). Ordering Activity is defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. References to “you” or “your” in the EULA shall be deemed references to Ordering Activity.

This Addendum and the EULA, to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases) contain the whole agreement between the parties relating to the subject matter hereof and set out the terms on which Ordering Activity can use our Software and services (the “Agreement”). To the extent the terms and conditions in the EULA are inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable, as set forth below:

Acquisition of Commercial Items. The Software and support are commercial items as defined by the Federal Acquisition Regulation (“FAR”) at FAR 2.101 and are licensed to Ordering Activity under the applicable terms of FAR Part 12, “Acquisition of Commercial Items” and/or DoD Federal Acquisition Regulation Supplement (“DFARS”) 227.7202, “Commercial computer software and commercial computer software documentation”. Any use, modification, reproduction, release, performance, display, or disclosure by Ordering Activity shall be governed solely by, and prohibited, except as expressly permitted under, the terms of the Agreement.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alt I 2018) and (Alt II June 2016), and 52.212-4(f) Excusable delays (June 2010), the GSAR and the FAR provisions shall take precedence.

Contract Formation. Subject to FAR Sections 1.601(a) and 43.102, Ordering Activity’s Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind Ordering Activity must be included within the contract signed by Ordering Activity.

Audit. During the term of this Agreement: (a) If Ordering Activity’s security requirements included in the Order are met, Licensor or its designated agent may audit Ordering Activity’s facilities and records to verify Ordering Activity’s compliance with this Agreement. Any such audit will take place only during Ordering Activity’s normal business hours contingent upon prior written notice and adherence to any security measures Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Licensor will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or support (“Notice”); or (b) If Ordering Activity’s security requirements are not met and upon Licensor’s request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Licensor (“Self-Assessment”) to verify Ordering Activity’s compliance with this Agreement. Discrepancies found in an audit may result in a charge by the Licensor to the Ordering Activity. If disputed by the Ordering Activity, such charge shall be resolved through the Disputes clause at FAR 52.233-1.

Termination. Clauses in the EULA referencing termination or cancellation of the EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4(l) Termination for the Government’s Convenience, and (m) Termination for Cause, which do not provide for unilateral cancellation by the Licensor. If the Licensor believes the Ordering Activity to be in breach, it must file a claim with the Ordering Activity contracting officer and continue performance pending resolution of the claim as provided for in FAR 52.233-1.

Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the Federal laws of the United States, specifically including applicable limitations periods. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as
if such law or regulation had not been enacted. In the absence of a statutory provision expressly authorizing an equitable remedy, clauses in the EULA referencing equitable remedies are deemed not applicable to Ordering Activity’s Order and are therefore deemed to be deleted. The Ordering Agency shall not be required to pay attorneys’ fees or other litigation costs except to the extent expressly authorized by statute.

**Force Majeure.** Subject to FAR 52.212-4 (f) Excusable Delays (JUN 2010), unilateral termination by Licensor does not apply to an Ordering Activity Order and all clauses in the EULA referencing unilateral termination rights of Licensor are hereby deemed to be deleted.

**Assignment.** All clauses regarding assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing
assignment in the EULA are hereby deemed to be deleted.

Waiver of Jury Trial. All clauses referencing waiver of jury trial are subject to FAR Clause 52.233-1, Disputes (JUL 2002), and all clauses governing waiver of jury trial in the EULA are hereby deemed to be deleted.

Ordering Activity Indemnities. All EULA clauses referencing indemnities by Ordering Activity are hereby deemed to be deleted.

Licensor Indemnities. All EULA clauses that (1) violate DOJ’s right (28 U.S.C. 516) to represent Ordering Activity in any case and/or (2) require that Ordering Activity give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

Renewals. All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

Future Fees or Penalties. All EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits Ordering Activity from paying any fees or penalties beyond the Agreement amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act, 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

Dispute Resolution and Venue. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes.

Advertisements and Endorsements. Unless specifically authorized by Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

Public Access to Information. Licensor agrees that the EULA and this Addendum contain no confidential or proprietary information and acknowledges the EULA and this Addendum will be available to the public.

Confidentiality. Any provisions that require Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. When the end user is an instrumentality of the US Government, neither this Addendum, the EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. The Ordering Activity may retain confidential information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained confidential information will continue to be subject to the confidentiality obligations of this Addendum, the EULA and the Schedule Contract.
Attachment A
End User License and Support Terms

We (Blue Prism Software, Inc.) have set out here the terms that apply to the digital workforce we provide to you. We draw your attention to the following key clauses: Clause 3 on warranties, Clause 4 on the use of our products, and Clause 6 on limitations on liability. This document, and its schedules and annexes as appendices to it, including the Order (where “Order” or “order” means an order on the Blue Prism Order Form or other document agreed with us that incorporates these terms), contain the whole agreement between the parties relating to the subject matter hereof and set out the terms on which you can use our products and services (our “Agreement”). The applicable End User License and Support Terms are those set out in the version signed between the parties at the time of your initial Order, unless agreed otherwise in writing between us. The order will set out the software to be made available to you (the “Software”) and the support that we will provide. The Agreement starts on the date set out in the order document between you and us, or between you and the Reseller, and lasts until the end of the license term also specified there, unless it is terminated earlier in accordance with these terms.

PRODUCT LICENSE AND SUPPORT

Once we accept your Order we will generate your license keys for the Software in the quantities specified in the order, and provide the support specified in the order. When we issue a license key to you, we grant you a non-exclusive license to use the Software in the format it is provided to you. We will provide you with license keys which last for twelve (12) months unless otherwise stated in the order. If a license key expires before the Agreement does, and provided you are compliant with the Agreement, we will provide further license keys. We will do this to cover the whole term of the Agreement. Each license key permits you to deploy a single instance of the Software in a single live, production environment, to make copies as reasonably required for back-up, testing, development or archive and to use all the written materials we make available to you. The Software and these materials together form the “Products”.

Your license permits you and your Affiliates, through your Users, to use the Products for automating your (and your Affiliates’) business processes (which includes automation of your own business processes for the benefit of your clients). Your “Affiliates” are persons that control, are controlled by, or are under common control with you, where “control” means direct or indirect ownership of at least 50% of the voting interest. Your “Users” are any employee, individual contractor, or employee of a service provider to you, which you allow to use the Products provided to you. You will be responsible for all acts and omissions of your Affiliates and Users and, if you use third party hosting, those of the hosting provider as if they were your own. Except as described here, the Agreement does not permit you to assign, sublicense, copy or provide or make the Products available to any person, or use the Products for any person. The Agreement does not permit you to modify or adapt the Products, or render any Software human-readable. You may not reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation.

If there is any overuse of a Product, or use outside the scope of the license granted, whether identified by audit or otherwise, you agree to pay for any overuse of the Products or an extension to the license at our standard rates.

SECURITY AND UPDATES

We will take reasonable steps to ensure that our Software does not contain viruses or other malicious code.

We may make changes to the Products from time-to-time, for example to improve them or address potential security concerns, and will make updated versions available to you.

OUR WARRANTIES

We warrant that the Software will in all material respects have the functionality specified in its technical documentation when working within an environment meeting the minimum technical requirements specified in that documentation. If we breach this warranty your sole remedy will be to require us to provide a corrected version of the Software. You agree that we are not required to try to remedy any error that cannot be replicated on the latest version of the Software.

We also warrant that we will provide support with reasonable skill and care. If this warranty is breached your sole remedy will be re-performance.
TO THE EXTENT NOT PROHIBITED BY MANDATORY LAW: (I) WE EXCLUDE ALL TERMS AND OBLIGATIONS WHICH WOULD OTHERWISE BE IMPLIED INTO THE AGREEMENT; AND (II) WE EXCLUDE ANY STATEMENT NOT SET OUT IN THE AGREEMENT. WE WILL NOT BE HELD TO STATEMENTS MADE BY THIRD PARTIES. YOU ACKNOWLEDGE THAT THE PRODUCTS MAY NOT BE COMPLETELY ERROR-FREE, OR MEET YOUR PARTICULAR REQUIREMENT, AND THAT THE PRODUCTS ARE PRICED ON THAT BASIS.

Your Responsibilities

You shall: (i) use the Products only in accordance with law (including export control laws and regulations), and not for any illegal purpose; (ii) ensure that you have all rights necessary to provide any materials that you provide to us, and to grant us the rights to use them for the purposes of the Agreement; (iii) not modify, remove, or obfuscate any copyright or other notice placed on or embedded in any Products; and (iv) not use the Software so as to subject any part of it to an open source license. You shall ensure that your Affiliates and Users will also comply with Clause 4.1.

You agree to defend us against any claim or proceedings brought by any person, and indemnify us against any loss, damage, or expense we suffer or incur, as a result of your breach of Clause 4.1.

INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

You retain all right and title to the processes and procedures which you automate using the Software. All right and title to the Products (and any derivative works) and anything we create belongs to us or our licensors. Except for the license expressly granted under the Agreement, all our rights are reserved and no other license is granted.

You grant us a non-exclusive license during the term of the Agreement to use all materials you provide to us in connection with the Agreement for the purposes of performing our obligations and exercising our rights under it. You agree that we are free to use all general knowledge, skills, techniques, and ideas that we acquire or develop in performing the Agreement, subject to any obligation of confidentiality under Clause 8. By providing feedback to us you agree that we may use it to improve our products or otherwise.

Provided you comply with Clause 5.4, we shall: (i) defend you against any legal proceedings brought by a third party alleging that your use of the Products in accordance with the Agreement infringes the intellectual property rights of that third party (an "IPR Claim"); and (ii) indemnify you for any amount we agree in settlement of the IPR Claim, or which is finally awarded by a court of competent jurisdiction against you (with no further right of appeal) as a result of the IPR Claim. This indemnity will not apply to the extent the underlying allegation arises from: (i) your breach of the Agreement or negligence, or use of a Product outside the scope of the Agreement; (ii) modification of any Product (other than modifications we make), or use of a non-current version of a Product where you have already been advised by us to upgrade; (iii) combination of a Product with third party materials; or (iv) use of the Product after you become aware of the IPR Claim (unless we agree you can continue to use it). This Clause 5.3 sets out our entire obligation and liability in connection with any allegation that a person's intellectual property rights have been infringed.

To benefit from the indemnity you must: (i) notify us promptly upon becoming aware of the IPR Claim, and in any event within
thirty (30) days; (ii) procure that we have sole conduct of the investigation, defense, and settlement of the IPR Claim; (iii) provide such assistance as we reasonably request in relation to defense of an IPR Claim (at our cost); (iv) not take any step involving any payment or admission of liability in relation to an IPR Claim without our prior written consent; and (v) immediately cease using the Product subject to the IPR Claim (unless we agree otherwise).

If an IPR Claim is made (or we think one is likely to be made) we may, in our discretion: (i) procure the right for you to continue using the Product; (ii) replace or modify the Product to avoid the potential infringement; or (iii) terminate the Agreement immediately upon written notice to you and provide a pro-rata refund of any fees which have been paid to us in respect of the Software for the period following termination in lieu of damages and without admission of fault.

LIABILITY
Nothing in the Agreement limits or excludes liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, for breach of Clause 8, under the indemnities in Clause 11.2, for infringement by you of our intellectual property rights or breach of any restrictions on use set out in the Agreement, or for any liability which cannot lawfully be so excluded or limited.

Subject to Clause 6.1, neither of us shall be liable for loss of profits, loss of goodwill, loss of anticipated savings, loss of revenue or business opportunity, loss of or damage to data, injury to reputation, or any indirect, special, or consequential loss, whether or not the parties were aware of the possibility of such loss, and in each case whether the loss arises from breach of contract, tort (including negligence), strict liability, statutory duty, or otherwise.

Subject to Clause 6.1, each party's total aggregate liability arising in connection with the Agreement, whether for breach of contract, tort (including negligence), strict liability, statutory duty, or otherwise, shall not, in each year, exceed an amount equal to the amount Ordering Activity paid for the licensed Software and Products.

AUDIT
We are regularly audited against ISO/IEC 27001 standards by independent third party auditors. If you request it, we will provide details of this. We may inspect and take copies of your records (either ourselves or using an external auditor) to verify your compliance with the Agreement, on reasonable notice. You agree to allow access to all relevant records and personnel, and provide all reasonable assistance for the completion of the audit, and we will comply with your standard health and safety policies provided to us a reasonable time in advance of the inspection. We will bear our own costs, except if an audit shows any overuse of a Product or use outside of the scope of the license granted in which case you will pay our reasonable demonstrable costs of the audit.

CONFIDENTIALITY
If information is marked as confidential, or is by its nature confidential, it shall be "Confidential Information". Each license key is our Confidential Information. Confidential Information shall not include information that: (i) was in the public domain other than due to a breach of the Agreement or other obligation of confidentiality; (ii) was lawfully received from a third party without obligation of confidentiality; or (iii) was developed independently without reference to Confidential Information.

Each of us shall keep the other's Confidential Information confidential, and not use it except for the purposes of the Agreement without consent. Confidential Information shall not be disclosed to any third party except for the purposes of the Agreement, in which case the disclosing party shall ensure the third party complies with these obligations of confidentiality. This shall not prevent a disclosure required by law, court order, or by any regulatory body in a competent jurisdiction (but then only to the extent and for the purpose required).
applicable law, then this Clause 8 will apply for five (5) years following expiry or earlier termination of the Agreement.

The parties may publicize their relationship throughout the Agreement term in accordance with this Clause 8.4. Neither party may issue a press release or other public announcement (“Publicity”) without the prior written approval of the other party (which will not be unreasonably withheld or delayed). Blue Prism may use your name and logo in its public customer lists (among and with no greater prominence than other named customers). Any use by a party of any stylized logos of the other party for Publicity shall be in accordance with the other party’s trademark and logo usage guidelines.

DATA PROTECTION

For the purposes of the Agreement, “Data Protection Law” means all privacy laws applicable to personal data processed under the Agreement and “Personal Data” means “personal data” or the equivalent term as defined by Data Protection Law.

We both agree to comply with the obligations that apply to us (respectively) under Data Protection Law. To provide support to you, we may need to receive limited Personal Data to enable us to communicate with you (“Account Management Information”). We do not wish to receive any Personal Data from you other than Account Management Information, and you agree not to disclose any such Personal Data to us. If a support issue requires the provision of additional information to us, you must anonymize, redact or otherwise alter the information such that it does not contain Personal Data (“Cleansed Information”).

In the event that you provide us with Personal Data in breach of Clause 9.2, we shall be entitled to delete it and cease providing support in respect of the support issue in question until Cleansed Information is provided to us. In the event that you inadvertently provide Personal Data to us in breach of Clause 9.2, you appoint us as a “processor”, or the equivalent term as defined by Data Protection Law, to process the Personal Data for the purposes of providing support or as otherwise agreed in writing (the “Permitted Purpose”) and the remaining provisions of this Clause 9 shall apply.

You authorize our transfer of Personal Data to other countries and engagement of others to process the Personal Data for the Permitted Purpose. Our relevant third party processors are listed on http://portal.blueprism.com/agreements, and we remain primarily responsible for the performance of any subcontracted obligations. If we engage a new processor of Personal Data, we will update the list before permitting access to the Personal Data. We will also impose contractual terms to the standard required by law. You can object to the new processor on reasonable grounds within ten (10) business days of our update to the list, in which case we will look at whether we can support you without using them (or otherwise resolve your objection). If not, we will not allow the new processor to process the Personal Data, and we may suspend support.

We will implement technical and organizational measures to protect the Personal Data from accidental or unlawful destruction, loss, alteration, and from unauthorized disclosure (a “Security Incident”). If we become aware of a Security Incident we will tell you without undue delay and provide you with reasonable information to help you fulfil any reporting obligations you have. We will also take reasonable steps to remedy or mitigate the impact of the Security Incident. We will ensure all of our personnel who have access to Personal Data are bound by obligations of confidentiality.

If you need our reasonable assistance to respond to any request from a data subject of Personal Data, or any enquiry or complaint, we will provide it and bear the cost of this unless we consider it will require additional resource from us, in which case we will let you know before incurring additional costs. If we receive any communication ourselves in relation to Personal Data, we will let you know promptly. If we believe our processing of Personal Data poses a high risk to the data protection rights and freedoms of the data subjects, we will let you know and reasonably co-operate with any data privacy impact assessment as may be required by law.
Following termination or expiry of the Agreement, we will destroy or return any Personal Data we hold except as required to comply with law, or Personal Data which has been archived on back-up systems. This Clause 9 will continue to apply to any retained Personal Data for as long as we hold it.

We shall also contribute to audits and inspections by allowing you to review any written records which we maintain in respect of them, and will also respond to any written audit questions in respect of, our compliance with this Clause 9.

TERMINATION

Either of us can terminate the Agreement upon written notice if the other commits a material breach which is not remedied (if capable of remedy) within thirty (30) days after notice to remedy such breach.

Upon termination or expiry of the Agreement, you will remove all copies of the Products from your systems and return them (or destroy them if we agree), and confirm in writing that you have done so, and immediately pay any amounts you owe us. Termination or expiry shall not affect any rights, remedies, obligations or liabilities that have accrued up to the date of termination or expiry.

DISPUTE RESOLUTION AND CONDUCT OF CLAIMS

If one of us believes that the other has breached the Agreement, then that party shall notify the other in writing clearly explaining the nature of the alleged breach. Each of us will then co-operate to resolve the issue, including by taking steps to cure any breach. If it has not been resolved within a further twenty (20) business days, then either party can pursue its remedies at law, in equity, or otherwise. This shall not prevent a party from seeking interim relief through the courts.

We will only be liable to you in connection with the Agreement, not to third parties. If an Affiliate or User suffers a loss as a result of our breach, this will be deemed to have been suffered by you and you may seek to recover that loss (subject to the other terms of the Agreement). In exchange, you will defend and indemnify us against any claims brought directly against us by an Affiliate or User. If you use a third party hosting or other service provider, you will defend and indemnify us against any claims brought by that service provider.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New York without giving effect to principles of conflict or choice of law thereof and the parties hereby accept the exclusive jurisdiction of the courts located in New York, New York. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. To the maximum extent permitted by the governing law, no
transactions called for herein shall be governed or affected by any version of the Uniform Computer Information Transactions Act enacted in any jurisdiction. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the prevailing party shall be entitled to an award of attorneys’ fees and costs. For this purpose, “expenses” include, without limitation, court or other proceeding costs, and experts’ and attorneys’ fees and their expenses. No action under this Agreement, whether in contract or in tort, may be commenced more than two (2) years after the date on which such action accrued.

MISCELLANEOUS PROVISIONS

Except for making payments, neither party will be liable for failure or delay in performing its obligations to the extent outside its reasonable control as long as it notifies the other party promptly of the cause and likely duration. 

Except as otherwise expressly stated, nothing in the Agreement shall confer any right or benefit upon any person who is not a party to it. You may not dispose of or encumber the Agreement without our prior written consent (not to be unreasonably withheld).

During the Agreement and for six (6) months afterwards, neither of us may solicit any employee of the other who is or has been engaged in provision or receipt of the Software, provided that this shall not prevent offering employment if that individual responds to a general public advertisement for employment not specifically directed at employees of the other party.

Variations to the Agreement, and any waivers, must be in writing. Waiver on one occasion does not waive a right for future occasions. Rights and remedies under the Agreement are without prejudice to other rights. If a provision (or part of one) is invalid or unenforceable, the rest shall remain in full force.

The Agreement is the entire agreement and understanding between the parties and supersedes any other agreement relating to the same subject matter.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

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

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific Terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

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

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

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

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

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

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

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

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

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

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Following the BravoSolution General Terms and Conditions are specific terms for BravoSolution Subscription Software, Support, Professional Services, Hosting Services and Hosting Service Levels.

GENERAL TERMS AND CONDITIONS.

RESERVED.

PROPRIETARY RIGHTS.

Proprietary Rights. Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to the Licensed Software and Documentation, but excluding Content. Ordering Activity agrees to reproduce and not to remove the copyright, trademark and other proprietary notices contained on or in the Licensed Software and Documentation as delivered to Ordering Activity on all copies of such Licensed Software. Ordering Activity shall not take any action to jeopardize, limit or interfere with such ownership of and rights with respect to the Licensed Software and Documentation. Contractor reserves all rights not explicitly granted in the Agreement. Ordering Activity shall not sublicense, sell or otherwise transfer the Licensed Software without the express written permission of Contractor.

Ownership of Inventions. The parties do not anticipate that they will undertake any development work under this Agreement, and any such development work shall be the subject of a separate written agreement between the parties. Notwithstanding the foregoing, and except as expressly set forth in an applicable written agreement, Contractor owns all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names and trade secrets and other proprietary rights) in and to all Inventions and all components or any reproductions thereof, in whole and in part. No Intellectual Property Rights in or to any Inventions is conveyed to Ordering Activity under this Agreement other than any limited grants of access rights or licenses specifically granted herein. Ordering Activity agrees not to remove any copyright, trademark or other proprietary notice contained on or in the Inventions as delivered to Ordering Activity. Contractor shall own all modifications to the Licensed Software and Documentation made by Contractor pursuant to any Services provided hereunder.

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DEFINITIONS.

“Agreement” means the terms and conditions herein.

“Confidential Information” means any and all proprietary or non-public information disclosed by one party (the “Discloser”) to the other party (the “Recipient”) pursuant to this Agreement, which is in written, graphic, machine readable or other tangible forms, or oral, perceived or intangible information, which the Discloser designates as being confidential or proprietary or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential, including without limitation, the terms and conditions of this Agreement.

“Documentation” means standards manuals, data models, flow charts and other materials regarding the use of the Licensed Software and generally supplied by Contractor to Ordering Activity, whether in printed or electronic format, as well as complete or partial copies of the foregoing.

“Error” means a reproducible programming error or bug in the Licensed Software that results in the failure of the Licensed Software to comply substantially with the Documentation, including any known computer viruses, Trojan horses, worms, trap doors, time bombs, or other code designed to be harmful.

“Hosting Services” shall have the meaning set forth under the section with the heading Hosting Services.

“Hosting Term” means the period of time that Contractor through BravoSolution shall provide Hosting Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.

“Intellectual Property” means any and all trade secrets, patents, copyrights, trademarks, service marks, trade names, domain names, trade dress, URLs, brand features, know-how and similar rights of any type under the laws of any applicable governmental authority, including, without limitation, all applications and registrations relating to any of the foregoing.


“Inventions” means, collectively and without limitation, any and all inventions (of any type), ideas, discoveries, software, methods, developments, concepts, processes, improvements, and all other works of authorship, in whole or in part, whether or not patentable or copyrightable, conceived or made by BravoSolution or BravoSolution personnel pursuant to this Agreement, any SOW or in the course of BravoSolution’s performance of any Services provided hereunder regardless of any participation, assistance or cooperation by Ordering Activity or its personnel in connection therewith; provided, however, that Inventions shall exclude (i) the Licensed Software and other pre-existing intellectual property owned by Ordering Activity, and (ii) Ordering Activity’s Confidential Information.

“Licensed Software” means (i) the proprietary software product which is developed and owned by Contractor (including any Third Party Software incorporated therein) identified on an applicable Order Form (ii) any Documentation for the Licensed Software, and (iii) any Updates delivered to Ordering Activity pursuant to this Agreement.

“License Term” means the period of time the license of the Licensed Software granted hereby shall be in effect which shall commence upon the Commencement Date and continue for the period set forth on an applicable Order Form.

“Maintenance Services” shall have the meaning set forth in Section 0 hereof under the heading Support Terms below.

“Maintenance Term” shall mean the period of time Contractor shall render the Maintenance Services to Ordering Activity, which shall commence upon the Commencement Date and continue for the period set forth on the applicable Order Form.

“Order Form” means one or more documents that are executed by the parties in connection with this Agreement.

“Service” means the software implementation, consulting and other professional services that may be provided by Contractor to Ordering Activity under this Agreement as described in one or more SOWs.

“SOW” means the source code version of the Licensed Software.

“SOW” means a Statement of Work that is executed by the parties in connection with this Agreement. Each fully executed SOW shall be deemed an attachment to the Agreement and incorporated by reference hereto.

“Term” shall mean the period of time this Agreement shall be in effect, which shall commence upon the Effective Date and continue until the end date listed on the Order Form.

“Third Party Software” means certain software licensed by Contractor and included or embedded in the Licensed Software.

“Updates” means (a) subsequent releases of the Licensed Software (not including any Third Party Software) that (i) add new features, functionality, and/or improved performance or, (ii) operate on new or other databases, operating systems, or client or server platforms; and (b) Error fixes, patches, workarounds, and maintenance releases; provided, however that Updates shall not include new or separate products. Contractor shall not provide any Updates to Third Party Software.

SUBSCRIPTION SOFTWARE LICENSE TERMS AND CONDITIONS

LICENSE.

Grant of Rights. Subject to all of these terms and conditions, Contractor grants to Ordering Activity a limited term, worldwide, non-exclusive, non-transferable, license to access, use, display and perform the Licensed Software in object code form solely in accordance with the Documentation; (ii) for any web based functionality provided within the Licensed Software, to allow authorized participants to use the Licensed Software for the purpose of accessing and using the Licensed Software via a standard Internet Explorer web browser in the manner and to the extent provided for by the Documentation; and (iii) to use the Documentation solely for the purposes of supporting Ordering Activity’s use of the Licensed Software in accordance with the terms of the Documentation. All rights not specifically granted shall be reserved to Contractor.

Restrictions. Ordering Activity shall not directly or indirectly (i) download, use or otherwise copy all or any portion of the Licensed Software or Documentation, except as stated in these terms; (ii) cause or permit the reverse engineering, modification, disassembly or decompilation of the Licensed Software or any portion thereof; (iii) modify or change the Licensed Software (except to configure the Licensed Software by means of the user-enabled features of the Licensed Software); (iv) create any derivative works of the Licensed Software or Documentation; (v) sublicense, rent, loan, lease, transfer, grant access to or otherwise distribute the Licensed Software to any other person or entity, except as stated otherwise in these terms; or (vi) use the Licensed Software or Documentation to provide services to third parties in a time-sharing, service bureau or application service provider arrangement.

LICENSED SOFTWARE WARRANTY.

Scope of Warranty. Contractor warrants that during the License Term the Licensed Software will be substantially free from Errors in the event that the Ordering Activity discovers that the Licensed Software contains Errors during any such period, then Ordering Activity shall promptly report such Errors to Contractor in writing. Ordering activity shall report such Errors in the form reasonably requested by Contractor so as to enable Contractor to reproduce, verify, diagnose and correct each Error. Contractor’s sole obligation and Ordering Activity’s sole and exclusive remedy for Errors will be that Contractor will use commercially reasonable efforts to provide a correction or workaround for each Error in the Licensed Software reported by Ordering Activity to Contractor during the License Term.

Exclusion. Contractor will have no obligation under this Agreement with respect to Errors caused by (i) a malfunction of computer hardware or software other than the Licensed Software, (ii) any modification or change of the Licensed Software that is made by Ordering Activity, or (iii) any combination, operation or
use of the Licensed Software with systems or other software other than those described herein or the Documentation, or that may otherwise be approved by Contractor.

MAINTENANCE SERVICES.
Subject to Ordering Activity's payment of any Maintenance Fees set forth on the Order Form, during a Maintenance Term Contractor will provide the following Maintenance Services:
Updates for the Licensed Software as such Updates are made generally available by Contractor to Ordering Activity
Commercially reasonable efforts to effectuate prompt resolution of Errors in the Licensed Software in accordance with generally accepted industry standards ("Software Support") see the specific terms in the section below entitled Software Support. Contractor will communicate the problem status regularly to Ordering Activity. Similarly, Ordering Activity will communicate with Contractor regarding any change in problem status, and will be available to Contractor for ongoing clarifications. Reserved.

Excluded Services. Except as otherwise provided herein, the Maintenance Services do not apply to or include: (i) Software Support required as a result of use or maintenance of Licensed Software other than in accordance with these terms herein; (ii) Software Support required as a result of database errors, content or other inputs; (iii) user education and training, except as described herein; (iv) correction of or assistance regarding problems caused by operator errors, including but not limited to the entry of incorrect data and improper procedures; (v) hardware problems experienced by Ordering Activity; or (vi) correction of errors attributable to software other than the Licensed Software (collectively "Excluded Services"). Reserved.

Contact Person(s). Ordering Activity shall appoint one (1) person as the principal point of contact for the communication of Errors to Contractor and for the receipt of Error fixes, work-arounds, patches and Updates, if any. Additionally, Ordering Activity may appoint another person as a back up for the principal contact. Contractor will provide an account manager who will service Ordering Activity and will monitor Ordering Activity's support needs.

DISCLAIMER.

LIMITED WARRANTY FOR MAINTENANCE SERVICES.
CONTRACTOR WARRANTS THAT THE MAINTENANCE SERVICES WILL BE (I) PERFORMED IN COMPLIANCE WITH ALL APPLICABLE LAWS, REGULATIONS AND RULES; (II) PROVIDED IN A PROFESSIONAL AND WORKMANLIKE MANNER IN ACCORDANCE WITH GENERALY ACCEPTED INDUSTRY STANDARDS AND (III) PERFORMED BY PERSONNEL QUALIFIED TO PERFORM THE TASKS NECESSARY FOR PROVIDING THE MAINTENANCE SERVICES. CONTRACTOR’S SOLE OBLIGATION, AND ORDERING ACTIVITY ORDERING ACTIVITY’S SOLE AND EXCLUSIVE REMEDY IN THE CASE OF A BREACH OF SUCH WARRANTIES WILL BE FOR CONTRACTOR TO RE-PERFORM SUCH MAINTENANCE SERVICES IN CONFORMANCE WITH SUCH APPLICABLE LAWS. GENERALY ACCEPTED INDUSTRY STANDARDS OR USING QUALIFIED PERSONNEL, AS APPLICABLE. EXCEPT AS SET FORTH HEREIN, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS RELATING TO THE MAINTENANCE SERVICES FURNISHED OR OTHERWISE PROVIDED HEREUNDER.

SOFTWARE SUPPORT TERMS
Contractor provides thorough 24x7x365 global Software Support, capable of handling all functional and technical problems.

Software Support is available to all users, buyers and suppliers.

Software Support contact information:

<table>
<thead>
<tr>
<th>Domestic / Toll Free Phone:</th>
<th>International / Toll Free Phone:</th>
<th>Email:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-877-528-2947</td>
<td>+00-800-2255-4626</td>
<td><a href="mailto:support@bravosolution.com">support@bravosolution.com</a></td>
</tr>
</tbody>
</table>

Software Support Hours of Operation (Staffed):
24x5 staffed support: Sundays 2100 hours thru Fridays 2000 hours Eastern Prevailing Time

After Hours Support:
For urgent assistance after staffed support hours, support specialists carry cellular phones and will return calls within one hour of receipt.

Severity

<table>
<thead>
<tr>
<th>Priority</th>
<th>Severity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent</td>
<td>1</td>
<td>Time Critical system problem. BravoSolution production environment is inoperative and business is being impacted and no work can be done. No work around exists and use of Licensed Software functionality is materially compromised.</td>
</tr>
<tr>
<td>High</td>
<td>2</td>
<td>Time Critical system problem. BravoSolution production environment is adversely affected or is inoperative. Productivity is being compromised; work can be done but not at full capacity. The problem is time critical and affecting more than 1 user.</td>
</tr>
<tr>
<td>Medium</td>
<td>3</td>
<td>Non-time critical system problem. BravoSolution production environment has encountered a non-critical problem or defect and / or questions have arisen on the use of the system. Affects at least 1 user. (Issues involving a single user where they are not able to use whole or part of the system).</td>
</tr>
<tr>
<td>Low</td>
<td>4</td>
<td>Non-time critical system problem. Low priority request with no system impact, such as enhancements, feature request or other non-critical problem. Non-time critical system problem affecting only one user.</td>
</tr>
</tbody>
</table>

### Escalation

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response</th>
<th>Follow-up Response</th>
<th>Service Level/Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent Incident (Severity 1)</td>
<td>30 Minutes</td>
<td>1 Hour</td>
<td>The Error will be routed to BravoSolution development resources within 30 minutes of Ordering Activity support notification and resolution efforts will be ongoing until the Error is resolved. The target time-to-resolution is 24 hours from the time Ordering Activity support notifies development of the Error.</td>
</tr>
<tr>
<td>High Incident (Severity 2)</td>
<td>1 Hour</td>
<td>1 Hour</td>
<td>The Error will be routed to BravoSolution development resources within 1 hour of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The target time-to-resolution is 1 business day from the time Ordering Activity support and development is notified of the Error.</td>
</tr>
<tr>
<td>Medium Incident (Severity 3)</td>
<td>1 Hour</td>
<td>24 Hours</td>
<td>The Error will be routed to development within 24 hours of Ordering Activity support notification and resolution efforts will be scheduled according to priorities set by Ordering Activity Support, Product Management and Development. The repair may be scheduled for the next product release and is determined by Ordering Activity Support, Product Management and Development collectively.</td>
</tr>
<tr>
<td>Low Incident (Severity 4)</td>
<td>N/A</td>
<td></td>
<td>Used for Documentation Errors, Enhancement Requests, and other minor issues or concerns.</td>
</tr>
</tbody>
</table>

### Professional Services Terms and Conditions

SERVICES.

Subject to these terms and conditions, Ordering Activity hereby engages Contractor to provide the Services. Unless otherwise specified in a SOW, the Services shall be performed at the facilities and location designated by Contractor. The parties shall each designate an account director or project manager who shall work together to manage the timely and successful implementation of the Services. Subject to these terms and the applicable SOW, Contractor may subcontract some or all of the Services to be performed hereunder. In performing the Services, Contractor shall use commercially reasonable efforts to adhere to any timetables set forth in an SOW.

_Reserved._

Ordering activity shall assist Contractor in the performance of the Services by making available to Contractor on a timely basis all equipment, software, documentation, information, office and working space, Internet connectivity and personnel reasonably requested by Contractor from time to time. Ordering Activity shall also ensure that the Ordering Activity personnel so made available to Contractor are familiar with Ordering Activity requirements and have the expertise and capabilities necessary to so assist Contractor.

Performance Generally. Ordering Activity acknowledges and agrees that Contractor’s obligations and commitments, and in particular any timetables or prices, are subject to Ordering Activity’s performance of its obligations and the performance by third parties of their respective obligations, as well as the realization of any assumptions that are stated in the applicable SOW or in another document executed by Contractor and Ordering Activity.

_RESERVED._

SERVICES WARRANTY.

Contractor warrants that the Services to be provided hereunder will be provided when and as required by this Agreement and shall be performed in a professional and workmanlike manner, in accordance with prevailing standards in the industry. BRAVOSOLUTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

### Hosting Terms and Conditions

HOSTING SERVICES.

In consideration for Ordering Activity’s payment of the Hosting Fee(s) set forth in the Order Form and commencing as of the date Contractor begins hosting the Licensed Software on BravoSolution controlled servers, Contractor shall provide the Hosting Services to Ordering Activity as specified herein. Hosting on BravoSolution Servers. BravoSolution shall make available one or more BravoSolution controlled servers for purposes of hosting the Licensed Software and the Content in accordance with the details set forth on an applicable Order Form. Contractor shall be responsible for installing the Licensed Software on the Hosting Servers.
Software on such servers. At all times, BravoSolution or its subcontractor shall retain ownership of the BravoSolution servers, together with any associated equipment, hardware, software and other infrastructure components utilized by BravoSolution in providing services to Ordering Activity hereunder.

DISCLAIMER.
By performing the Hosting Services, Contractor through BravoSolution is providing Ordering Activity with access to the Licensed Software via the Internet. Ordering Activity hereby acknowledges that (i) the Internet is not owned, operated, managed by or in any way affiliated with Contractor or BravoSolution or any of its Affiliates; (ii) the Internet is a separate network of computers independent of Contractor and BravoSolution; (iii) Ordering Activity’s use of the Internet is solely at Ordering Activity’s own risk and is subject to all applicable laws, rules and regulations; and (iv) access to the Internet and the Licensed Software may be dependent on numerous factors, technologies and systems, many of which are beyond Contractor’s authority and control and for which Contractor and BravoSolution shall not be liable hereunder. Ordering Activity agrees that Contractor shall not be held responsible in any way for outages or downtime resulting from causes beyond the control of Contractor or BravoSolution (e.g., telecommunications disturbances, packet loss un- attributable to a specific cause, or other Internet outages of any kind).

2.2 THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.228-75—PRICE REDUCTIONS; CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 552.215-72—PRICE ADJUSTMENT—FAILURE TO PROVIDE ACCURATE INFORMATION.

USAGE OF THE LICENSED SOFTWARE.
Contractor reserves the right to, from time to time, monitor the Licensed Software hosted on its servers only for the purposes of providing the services. Ordering Activity hereby acknowledges and agrees that Contractor and BravoSolution exercises no control whatsoever over the material transmitted or received on or through the Licensed Software by Ordering Activity. Ordering Activity shall ensure that all materials that transmitted or received on or through the Licensed Software comply with all applicable laws, rules and regulations. Without limiting the foregoing sentence, Ordering Activity hereby acknowledges that it will not violate any of the following policies respecting usage of the Licensed Software:

The transmission of spam (unsolicited commercial messages or communications in any form) on or through the Licensed Software is prohibited;

The transmission of any material on or through the Licensed Software in violation of any applicable laws or regulations is prohibited. This includes, but is not limited to, unauthorized transmission of copyrighted material, material protected by trade secret, or material that is otherwise deemed to be proprietary, as well as transmission of material that is legally judged to be threatening or obscene or that, in Contractor’s reasonable business discretion, is deemed inappropriate or improper;

Intentionally omitting, deleting, forging or misrepresenting transmission information (including, without limitation, headers, return addressing information and Internet Protocol addresses) or taking any other actions intended to misrepresent or hide Ordering Activity’s or any user’s identity or contact information is prohibited.

Reserved.

SECURITY.
Contractor represents and warrants that BravoSolution has implemented and maintains the Hosting Services at reputable third party Internet service providers and hosting facilities and that it shall use commercially reasonable technical, physical and procedural controls at least as rigorous as accepted industry practices to protect Ordering Activity’s Content and Confidential Information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors to Ordering Activity’s systems and Content, whether by accident or otherwise. The parties acknowledge, however, that Contractor and BravoSolution cannot, given the nature of current computer systems and networks, guarantee absolute security of the Licensed Software, or any activity occurring on or through it.

PERFORMANCE.
Manner of Performance. Contractor may subcontract with third parties for the purpose of performance of the Hosting Services; provided, however, that Contractor shall remain responsible for ensuring its subcontractors comply with the terms and conditions of this Agreement. BravoSolution shall have the right to relocate the Licensed Software, the BravoSolution controlled servers or any of BravoSolution’s operations at any time.

Cooperation and Assistance. Ordering Activity shall provide Contractor with reasonable cooperation and assistance in connection with performance of its obligations hereunder.

ORDERING ACTIVITY CONTENT.
Ownership. Contractor acknowledges and agrees that the Content and any intellectual property rights in or relating thereto are and shall continue to be the sole and exclusive property of Ordering Activity or its third-party licensors. Contractor acknowledges that it shall not, by virtue of this Agreement, acquire any ownership interest in the Content or any intellectual property rights in or relating thereto. Ordering Activity reserves all rights to the Content not expressly granted to Contractor hereunder. Ordering Activity represents and warrants that the Content shall not include any personally identifiable information.

License Grant. During the Hosting Services term, Ordering Activity hereby grants to BravoSolution through Contractor a non-exclusive, royalty-free, worldwide right and license to use, reproduce, display, perform and transmit the Content solely on or in conjunction with the Licensed Software, as contemplated hereunder, subject to and in accordance with the terms, conditions and provisions of this Agreement. Contractor shall have the right to make daily, incremental backups five times a week and one complete weekly backup of the Content. Should the need arise, Contractor shall use commercially reasonable efforts to reconstruct the Content from its backup.

HOSTING SERVICE LEVELS.
Availability and Maintenance. Contractor will make the Licensed Software available for access twenty-four (24) hours per day, seven (7) days per week, excluding times for scheduled maintenance to be performed by or on behalf of Contractor (“Scheduled Maintenance”). Scheduled Maintenance shall take place between 2200 hours Friday and 1600 hours Sunday, Eastern Prevailing Time, or such other time as required. Service Levels.
Availability. Contractor will provide no less than 98% Total Time of Availability, which will be calculated on a monthly basis, as follows:

Scheduled Maintenance will not be included as downtime in calculation of monthly availability. When the application is unavailable due to causes beyond Contractor’s reasonable control, such as Internet outages, weather, acts of God, Ordering Activity system issues, or utility system outages, such unavailability will not be included as downtime. Unscheduled and emergency maintenance will be included as downtime in monthly availability calculation. The availability of the system is calculated in the following way:

Total Time of Availability = Total Time (24/7) – Scheduled Maintenance – Uncontrollable Outages

% Availability = (Total Time of Availability – Unscheduled/Emergency Maintenance) * 100 / Total Time of Availability

Maintenance Notifications. Contractor will communicate with the Ordering Activity’s Designated Company Administrator(s) in the event that unscheduled maintenance or emergency maintenance is required. An email or phone call (including voice mail) will constitute sufficient notification of impending

maintenance of any type. Unscheduled and Emergency maintenance windows may involve maintenance/repairs for which advance notification is not possible. Contractor will employ best efforts to notify client of Unscheduled and Emergency maintenance windows at the earliest time possible.

Maintenance Scheduling and duration. Total Scheduled Maintenance will not exceed 72 hours in any given month.

Backups/Recovery Actions.

- redundant RAID for all data storage of Ordering Activity data.
- incremental file system backups nightly and shall perform full file system backups weekly.
- maintain journaling of database transactions.
- perform database exports nightly, prior to scheduled file system backups.
- perform cold database backups at regular intervals.
- transport tapes of file systems and data backups off-site to a secure storage location on a weekly basis.

Monitoring.

Application monitoring. BravoSolution shall employ a transaction monitoring system in order to verify application functionality for uptime reporting purposes and for the purpose of providing notification in the event of failures. BravoSolution shall check the application at least four times per hour for functionality.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

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

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

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

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

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

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

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

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

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

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

a) “Hardware” which includes any Brocade hardware products, and any related documentation and manuals.

b) “Software” which includes any Brocade software licensed by Contractor to Ordering Activity in the form of any bundled firmware, or standalone software products, or other software, any backup copies of such software, and any related documentation and manuals provided therewith; and shall include any Upgrades (as defined below) or modified versions of such software provided to Ordering Activity by Contractor.

c) “Products” which includes, either an individual component of Brocade Hardware and/or Software or any combination thereof.

d) “Support” which includes maintenance and/or support services for the chosen Products.

SOFTWARE SPECIFIC TERMS.

LICENSE GRANT. EACH SOFTWARE PRODUCT MAY HAVE DIFFERENT LICENSING GRANTS AND RESTRICTIONS DEPENDING ON THE NATURE OF THE SOFTWARE. THE SPECIFIC LICENSING TERMS, MODEL, AND RESTRICTIONS RELATED THERETO FOR EACH SOFTWARE PRODUCT SHALL BE SET FORTH IN THE RELEVANT CONTRACTOR QUOTATION. TO THE EXTENT THAT NO SUCH LICENSING TERMS EXIST, THE FOLLOWING LICENSE GRANT SHALL BE APPLICABLE: SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND PAYMENT OF THE APPLICABLE LICENSE FEES, BROCADE AND ITS SUPPLIERS GRANT TO CUSTOMER A NON-EXCLUSIVE, NON-TRANSFERABLE LICENSE TO USE THE APPLICABLE SOFTWARE IN OBJECT CODE FORM SOLELY FOR INTERNAL PURPOSES AND SOLELY FOR THE PURPOSES SET FORTH IN THE BROCADE PRODUCT DOCUMENTATION.

ADDITIONAL SOFTWARE TERMS. THE FOLLOWING TERMS SHALL APPLY TO ALL SOFTWARE PROVIDED PURSUANT TO THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY AND ALL SOFTWARE DELIVERED HERUNDER IS LICENSED, NOT SOLD. ORDERING ACTIVITY SHALL HAVE NO RIGHT, AND ORDERING ACTIVITY SPECIFICALLY AGREES NOT TO, AND NOT TO PERMIT THIRD PARTIES TO: (I) MODIFY, ADAPT, CHANGE, ENHANCE OR CREATE DERIVATIVE WORKS BASED UPON THE SOFTWARE; (II) COPY, OR OTHERWISE REPRODUCE THE SOFTWARE IN WHOLE OR IN PART; (III) DECOMPILE, TRANSLATE, REVERSE ENGINEER, DISASSEMBLE OR OTHERWISE REDUCE THE SOFTWARE TO HUMAN-READABLE FORM; (IV) USE THE SOFTWARE ON ANY APPLIANCES/HARDWARE IN EXCESS OF THE NUMBER OF APPLIANCES/HARDWARE FOR WHICH IT IS LICENSED; (V) REMOVE, MODIFY OR OTHERWISE TAMPER WITH ANY NOTICE OR LEGEND ON ANY LABELING ON ANY PHYSICAL MEDIA CONTAINING THE SOFTWARE OR (VI) USE THE SOFTWARE FOR PROVIDING SERVICE BUREAU OR OTHER RELATED SERVICES TO THIRD PARTIES. ORDERING ACTIVITY’S RIGHTS IN THE SOFTWARE WILL BE LIMITED TO THOSE EXPRESSLY GRANTED HEREIN, AND ORDERING ACTIVITY SHALL HAVE NO RIGHT TO SUBLICENSE THE SOFTWARE. BEFORE DECOMPILING THE SOFTWARE FOR THE PURPOSES OF OBTAINING THE INTERFACE INFORMATION, ORDERING ACTIVITY WILL REQUEST CONTRACTOR THROUGH BROCADE TO PROVIDE IT WITH THIS INFORMATION. CONTRACTOR WILL CHARGE ORDERING ACTIVITY FOR ITS CORRESPONDING SERVICES AT THE APPLICABLE GSA RATES.

NUCLEAR, AVIATION OR LIFE SUPPORT APPLICATION. CONTRACTOR SPECIFICALLY DISCLAIMS LIABILITY FOR USE OF THE PRODUCTS IN CONNECTION WITH THE DESIGN, CONSTRUCTION, MAINTENANCE AND/OR OPERATION OF ANY (I) NUCLEAR FACILITY, (II) AIRCRAFT, AIRCRAFT COMMUNICATION OR AIRCRAFT GROUND SUPPORT SYSTEM, OR (III) SAFETY OR HEALTH CARE CONTROL SYSTEM, INCLUDING WITHOUT LIMITATION, LIFE SUPPORT SYSTEM.

OPEN SOURCE SOFTWARE. CERTAIN COMPONENTS OF THE SOFTWARE, INCLUDING SOFTWARE DESIGNED TO INTEROPERATE WITH THE SOFTWARE, MAY INCORPORATE OR BE BASED ON “OPEN SOURCE” SOFTWARE. SUCH SOFTWARE IS SUBJECT TO THE APPLICABLE OPEN SOURCE LICENSE (E.G., GNU GENERAL PUBLIC LICENSE) AND IS NOT SUBJECT TO THIS AGREEMENT. TO OBTAIN A COPY OF THE SOURCE CODE AND APPLICABLE LICENSING TERMS FOR THE OPEN SOURCE SOFTWARE USED BY BROCADE, PLEASE SEE HTTP://WWW.BROCADE.COM/SUPPORT/OSSC.D.JSP, AS MAY BE AMENDED FROM TIME TO TIME. CONTRACTOR DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES WITH RESPECT TO SUCH OPEN SOURCE SOFTWARE.

RESTRICTED RIGHTS. THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION PROVIDED UNDER THIS AGREEMENT INCORPORATE COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION DEVELOPED EXCLUSIVELY AT PRIVATE EXPENSE, AND IS IN ALL RESPECTS PROPRIETARY PROPERTY BELONGING SOLELY TO CONTRACTOR OR ITS LICENSORS. IF ORDERING ACTIVITY IS ACQUIRING THE SOFTWARE ON BEHALF OF ANY PART OF THE UNITED STATES GOVERNMENT, THE FOLLOWING PROVISIONS APPLY. THE OBJECT CODE AND ACCOMPANYING DOCUMENTATION ARE DEEMED TO BE “COMMERCIAL COMPUTER SOFTWARE” AND “COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION”, RESPECTIVELY, PURSUANT TO DFAR SECTION 227.7202 AND FAR 12.212(B), AS APPLICABLE. ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF THE OBJECT CODE AND/OR THE ACCOMPANYING DOCUMENTATION BY THE U.S. GOVERNMENT OR ANY OF ITS AGENCIES SHALL BE GOVERNED SOLELY BY THE TERMS OF THIS AGREEMENT AND SHALL BE PROHIBITED EXCEPT TO THE EXTENT EXPRESSLY PERMITTED BY THE TERMS OF THIS AGREEMENT. ANY TECHNICAL DATA PROVIDED THAT IS NOT COVERED BY THE ABOVE PROVISIONS IS DEEMED TO BE “TECHNICAL DATA COMMERCIAL ITEMS” PURSUANT TO DFAR SECTION 252.227.7015(A), ANY USE, MODIFICATION, REPRODUCTION, RELEASE, PERFORMANCE, DISPLAY OR DISCLOSURE OF SUCH TECHNICAL DATA SHALL BE GOVERNED BY THE TERMS OF DFAR SECTION 252.227.7015(B).
AUTHORIZED LICENSES FOR USERS. ORDERING ACTIVITY’S USE OF THE SOFTWARE AND THE APPLICABLE FEES RELATED THERETO ARE BASED UPON A SPECIFIC LICENSING MODEL, E.G., CONCURRENT USERS, NAMED USERS, PER TERABYTE USED, OR RIGHTS LIMITED TO SPECIFIC NETWORKING SWITCHES, SERVERS OR PLATFORMS (“AUTHORIZED LICENSES”). THE APPLICABLE LICENSING MODEL AND THE NUMBER OF AUTHORIZED LICENSES WILL BE SET FORTH IN CONTRACTOR’S QUOTATION OR IN THE BROCADE DOCUMENTATION FOR SUCH SOFTWARE. FOR CERTAIN SOFTWARE, ORDERING ACTIVITY MAY HAVE THE RIGHT TO INCREASE THE NUMBER OF AUTHORIZED LICENSES FOR THE APPLICABLE SOFTWARE PROVIDED THAT ORDERING ACTIVITY PAYS CONTRACTOR THE ADDITIONAL LICENSE AND SUPPORT FEES, AND SUCH FEES SHALL BE PAID TO CONTRACTOR PRIOR TO INITIATING SUCH INCREASES. ORDERING ACTIVITY AGREES TO WORK IN GOOD FAITH WITH CONTRACTOR TO ACCURATELY COUNT THE AUTHORIZED LICENSES. ORDERING ACTIVITY CONSENTS TO AND SHALL TAKE ALL ACTIONS NECESSARY FOR THE INSTALLATION AND USE OF CERTAIN USER AUTHORIZATION SOFTWARE TO VERIFY THE LOCATION AND NUMBER OF ORDERING ACTIVITY’S AUTHORIZED LICENSES.

SUPPORT OBLIGATIONS.

GENERAL SUPPORT OBLIGATIONS.

TECHNICAL SUPPORT. PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE REMEDIAL TELEPHONE, EMAIL, ONLINE AND/OR ONSITE ASSISTANCE FOR THE PRODUCTS LISTED ON A CONTRACTOR SUPPORT QUOTATION (“COVERED HARDWARE” AND “COVERED SOFTWARE”, RESPECTIVELY OR “COVERED PRODUCT(S)” COLLECTIVELY) BASED ON THE APPLICABLE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY. WHENEVER ORDERING ACTIVITY SUBMITS A SUPPORT REQUEST TO CONTRACTOR, THROUGH BROCADE RELATED TO THE COVERED PRODUCTS (“PROBLEM”), CONTRACTOR, THROUGH BROCADE, WILL CLASSIFY THE PROBLEM ACCORDING TO THE ORDERING ACTIVITY’S “SEVERITY” LEVEL THAT DEFINES THE PROBLEM, BASED ON THE ORDERING ACTIVITY SEVERITY LEVEL DESCRIPTIONS LOCATED IN THE SUPPORT PLAN POLICIES DOCUMENT AT BROCADE’S WEBSITE, WHICH DOCUMENT MAY BE UPDATED FROM TIME TO TIME IN BROCADE’S DISCRETION. ADDITIONAL CHARGES MAY APPLY IF ORDERING ACTIVITY CONTACTS BROCADE WHEN IT IS LATER DETERMINED THAT THE CAUSE WAS NOT RELATED TO THE COVERED PRODUCTS. CONTRACTOR, THROUGH BROCADE, WILL ONLY PROVIDE SUPPORT FOR THE BASELINE LICENSED SOFTWARE, AND WILL NOT SUPPORT ANY CUSTOMIZATIONS OR UNIQUE IMPLEMENTATIONS OF THE SOFTWARE UNDER ITS GENERAL SUPPORT OBLIGATIONS, AND ANY SUCH ASSISTANCE WILL BE PROVIDED ON A TIME AND MATERIAL BASIS.

SUPPORT TERM AND RENEWAL. THE INITIAL TERM APPLICABLE TO EACH SUPPORT QUOTATION WILL BEGIN (I) IN THE CASE OF NEWLY ACQUIRED PRODUCTS, ON THE DATE OF SHIPMENT; OR (II) IN THE CASE OF PREVIOUSLY SHIPPED PRODUCTS, ON THE EFFECTIVE DATE SPECIFIED ON CONTRACTOR’S QUOTATION, AND SUCH SERVICES SHALL CONTINUE THROUGH THE TERM STATED ON THE QUOTATION. THEREAFTER, SUCH SUPPORT WILL ONLY BE RENEWED BASED ON CONTRACTOR’S RENEWAL QUOTATION TO ORDERING ACTIVITY AND RECEIPT OF ORDERING ACTIVITY’S CORRESPONDING PURCHASE ORDER. FOR THE FIRST RENEWAL PERIOD, SUPPORT MAY BE RENEWED FOR THE NEXT TERM AT THE SAME RATE AS THE INITIAL SUPPORT TERM.

COVERED PRODUCTS. PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SUPPORT FOR THE COVERED PRODUCTS, AS DESCRIBED IN A CONTRACTOR QUOTATION. ANY CHANGES TO THE COVERED PRODUCTS SHOULD BE REPORTED TO CONTRACTOR, THROUGH BROCADE, PRIOR TO MAKING ANY SUCH CHANGES, AND SUCH CHANGES COULD RESULT IN MODIFICATIONS TO CONTRACTOR’S OBLIGATIONS AND THE APPLICABLE SUPPORT FEES. ORDERING ACTIVITY IS RESPONSIBLE FOR ACTIVATING THE SUPPORT PLAN FOR ALL COVERED PRODUCTS, INCLUDING CHANGES MADE TO THE COVERED PRODUCT LIST, VIA BROCADE’S WEBSITE UNDER “SUPPORT”.

RECERTIFICATION OF PRODUCTS. FOR ANY PRODUCTS WHERE ORDERING ACTIVITY REQUESTS SUPPORT ON PRODUCTS PREVIOUSLY SUPPORTED BY ANOTHER PARTY OR FOR WHICH SUPPORT SERVICES HAVE LAPSED, CONTRACTOR MAY REQUIRE THAT THE PRODUCT BE RECERTIFIED. UPON RECEIPT OF PURCHASE ORDER, CONTRACTOR, THROUGH BROCADE, WILL COMMENCE MAINTENANCE IN ACCORDANCE WITH THE START DATE ON THE QUOTATION AND WILL SCHEDULE THE RECERTIFICATION ACTIVITY. SHOULD A REQUEST FOR REMEDIAL MAINTENANCE BE RECEIVED PRIOR TO THE COMPLETION OF THE RECERTIFICATION, SUCH SERVICE MAY BE DELAYED (INCLUDING RELATED RESPONSE TIME COMMITMENTS) UNTIL SUCH TIME AS THE RECERTIFICATION IS COMPLETED. SHOULD CONTRACTOR, THROUGH BROCADE DEEM THAT THE PRODUCTS ARE UNSUPPORTABLE, ORDERING ACTIVITY WILL BE NOTIFIED ACCORDINGLY AND A CREDIT OR REFUND PROVIDED FOR ANY APPLICABLE PREPAID SUPPORT FEES.

THIRD PARTY PRODUCT INTEROPERABILITY. DUE TO INTEROPERABILITY REQUIREMENTS, ORDERING ACTIVITY AGREES THAT THE USE OF ANY THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO, OPTICAL TRANSCEIVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY BROCADE MAY CAUSE ERRORS IN THE OPERATION OF THE PRODUCTS OR MAY CAUSE ADDITIONAL RESOLUTION TIME FOR CONTRACTOR, THROUGH BROCADE UNDER ITS SUPPORT OBLIGATIONS HEREUNDER. ORDERING ACTIVITY ACKNOWLEDGES THAT USE OF ANY SUCH THIRD PARTY PRODUCTS SHALL RELEASE CONTRACTOR FROM THE PERFORMANCE OF CONTRACTOR’S SUPPORT OBLIGATIONS RELATED THERETO, AND ORDERING ACTIVITY AGREES TO PAY CONTRACTOR FOR ANY TIME SPENT DIAGNOSING SUCH PROBLEMS WHICH SHALL BE BILLED AT CONTRACTOR’S Hourly GSA RATE. CONTRACTOR MAY BE PREPARED IN ITS DISCRETION TO PROVIDE ADDITIONAL PROFESSIONAL SERVICES TO RESOLVE ANY SUCH PROBLEMS IN SUCH CIRCUMSTANCES, BUT SHALL NOT BE OBLIGED TO DO SO.

CANCELLATION. ORDERING ACTIVITY MAY CANCEL SUPPORT SERVICES AT ANY TIME ON THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONTRACTOR. IN SUCH EVENT, CONTRACTOR, THROUGH BROCADE, SHALL REFUND ANY SUPPORT FEES PREPAID FOR THE PERIOD AFTER SUCH TERMINATION, LESS ANY PREPAYMENT OR MULTI-YEAR DISCOUNT TO WHICH ORDERING ACTIVITY IS NO LONGER ENTITLED. NOTWITHSTANDING THE FOREGOING, WITH RESPECT TO PREMIER AND PREMIER PLUS SUPPORT SERVICES, CHARGES APPLICABLE TO THE SUPPORT ACCOUNT MANAGER (“SAM”) AND ONSITE ENGINEER (“OSE”) ARE NON-REFUNDABLE IN THE EVENT THAT SUPPORT SERVICES ARE CANCELLED BY ORDERING ACTIVITY.

SOFTWARE SPECIFIC SUPPORT TERMS.
UPGRADES. SUBJECT TO PAYMENT OF THE APPLICABLE FEES, CONTRACTOR, THROUGH BROCADE, WILL USE REASONABLE EFFORTS TO PROVIDE A PATCH FOR ANY MATERIAL DEVIATION BETWEEN THE CURRENT RELEASE OF THE COVERED SOFTWARE AND ITS SPECIFICATIONS WHICH IS REPORTED BY ORDERING ACTIVITY TO BROCADE AND IS REPRODUCIBLE BY BROCADE. ADDITIONALLY, CONTRACTOR, THROUGH BROCADE, MAY PROVIDE ORDERING ACTIVITY WITH MAINTENANCE RELEASES, FEATURE RELEASES AND PLATFORM RELEASES OF THE COVERED SOFTWARE, ON AN “IF AND WHEN AVAILABLE” BASIS, THAT BROCADE GENERALLY MAKES AVAILABLE TO OTHER BROCADE CUSTOMERS AT NO CHARGE BEYOND THE FEES FOR SUPPORT. AS USED HEREIN: (I) “PLATFORM RELEASE” MEANS A PLATFORM, OPERATING SYSTEM OR SOFTWARE ARCHITECTURE CHANGE AND/OR THE ADDITION OF A MAJOR NEW APPLICATION OR FUNCTION; (II) “FEATURE RELEASE” MEANS A MAJOR NEW FEATURE OR AN ENHANCEMENT IN OPERATING PERFORMANCE THAT DOES NOT ALTER THE BASIC FUNCTIONALITY; (III) “MAINTENANCE RELEASE” MEANS A REGULARLY SCHEDULED UPDATE WHICH MAY INCLUDE DEFECT FIXES AND LIMITED PLATFORM-SPECIFIC IMPROVEMENTS; AND (IV) “PATCH” MEANS A TEMPORARY SOLUTION TO A ORDERING ACTIVITY-REPORTED CRITICAL DEFECT (ALL COLLECTIVELY REFERRED TO AS “UPGRADES”).

LICENSED TERMS. ALL UPGRADES ARE SUBJECT TO THE ORIGINAL LICENSE TERMS AND CONDITIONS FOR THE BASELINE SOFTWARE. SUPPORT RELATED TO SUCH BASELINE SOFTWARE AND ALL UPGRADES WILL BE SUBJECT TO THE ADDITIONAL TERMS AND CONDITIONS CONTAINED IN THIS ATTACHMENT A.

SOFTWARE SUPPORT POLICY. CONTRACTOR, THROUGH BROCADE, WILL PROVIDE SOFTWARE SUPPORT FOR THE THEN CURRENT FEATURE RELEASE AND THE GREATER OF (I) THE TWO IMMEDIATELY PRECEDING FEATURE RELEASES, OR (II) ALL FEATURE RELEASES MADE AVAILABLE WITHIN THE PRECEDING 12 MONTHS. AS A GENERAL RULE, UPGRADES MUST BE INSTALLED SEQUENTIALLY THROUGH ALL FEATURE RELEASES AND PLATFORM RELEASES (E.G., TO UPGRADE FROM RELEASE 5.1 TO 6.0, ALL FEATURE RELEASES AND PLATFORM RELEASES AFTER 5.1 WILL BE ADDED AS PART OF THE UPGRADE PROCESS).

CONDITIONS AND LIMITATIONS OF SOFTWARE SUPPORT. SUPPORT SERVICES DOES NOT COVER AND CONTRACTOR DISCLAIMS ANY RESPONSIBILITY FOR PROBLEMS ARISING OUT OF ORDERING ACTIVITY’S FAILURE TO IMPLEMENT ALL UPGRADES ISSUED HEREUNDER, CHANGES TO THE COMPUTING ENVIRONMENT, ALTERATIONS OR MODIFICATIONS OF THE SOFTWARE PERFORMED BY PARTIES OTHER THAN BROCADE, IMPROPER INSTALLATION, MISAPPLICATION, MODIFICATION, UNSUITABLE PHYSICAL OR OPERATING ENVIRONMENT, ABNORMAL PHYSICAL STRESS, IMPROPER MAINTENANCE (UNLESS BY BROCADE), REMOVAL OR ALTERATION OF SWITCH OR PART IDENTIFICATION LABELS, OR FAILURE CAUSED BY A PRODUCT FOR WHICH CONTRACTOR IS NOT RESPONSIBLE. CONTRACTOR MAY REPAIR OR REPLACE PRODUCT FOR SERVICE TO CONTRACTOR, THROUGH BROCADE, UPON RECEIPT OF WHICH BROCADE WILL ISSUE AN RMA TO ORDERING ACTIVITY; AND (II) IF PRODUCT IS NOT UNDER WARRANTY, THEN ORDERING ACTIVITY MUST ISSUE A PURCHASE ORDER TO PROVIDE THE SPARES AND ONSITE LABOR REQUIRED TO FULLY SUPPORT THE PRODUCT.

HARDWARE SPECIFIC SUPPORT TERMS.

GENERAL DESCRIPTION. FOR ALL PROBLEMS IDENTIFIED BY BROCADE RELATED TO COVERED HARDWARE AND PROVIDED THAT ORDERING ACTIVITY HAS PAID THE APPLICABLE SUPPORT FEES, CONTRACTOR, THROUGH BROCADE, WILL PROVIDE HARDWARE SUPPORT IN ACCORDANCE WITH THE TERMS HEREIN AND IN ACCORDANCE WITH THE SUPPORT PLANS AT BROCADE’S WEBSITE, WHICH MAY BE UPDATED FROM TIME TO TIME IN BROCADE’S DISCRETION. CONTRACTOR MAY REQUIRE UP TO THIRTY (30) DAYS FROM RECEIPT OF ORDER TO PROVIDE THE SPARES AND ONSITE LABOR REQUIRED TO FULLY SUPPORT THE PRODUCT.

MALFUNCTIONING COVERED HARDWARE. IF ANY COVERED HARDWARE MALFUNCTIONS, CONTRACTOR, THROUGH BROCADE, WILL REPAIR OR REPLACE SUCH COVERED HARDWARE, OR ANY PARTS OF THE COVERED HARDWARE AS PROVIDED IN THE APPLICABLE SUPPORT PLAN. ANY ITEM CONTRACTOR REPLACES WILL BECOME BROCADE’S PROPERTY, AND THE REPLACEMENT ITEM WILL BECOME ORDERING ACTIVITY’S PROPERTY. THE REPLACEMENT ITEMS MAY NOT BE NEW, BUT WILL BE IN GOOD WORKING ORDER AND AT LEAST FUNCTIONALLY EQUIVALENT TO THE ITEM REPLACED. BEFORE CONTRACTOR EXCHANGES ANY HARDWARE, ORDERING ACTIVITY MUST REMOVE ALL FEATURES, PARTS, OPTIONS, ALTERATIONS, ENCUMBRANCES, AND ATTACHMENTS NOT PROVIDED BY BROCADE. ORDERING ACTIVITY ALSO AGREES TO ENSURE THAT THE ITEM IS FREE OF ANY LEGAL OBLIGATIONS, ENCUMBRANCES, OR RESTRICTIONS THAT COULD PREVENT ITS EXCHANGE. BASED ON THE SUPPORT PLAN SELECTED BY ORDERING ACTIVITY, ORDERING ACTIVITY MAY BE RESPONSIBLE FOR ONE-WAY SHIPPING COSTS RELATED TO ANY SUCH RETURNS.

ORDERING ACTIVITY RESPONSIBILITIES. FOR USDX AND EDGE PRODUCTS, ORDERING ACTIVITY IS RESPONSIBLE FOR PROVIDING REMOTE ACCESS VIA BROCADE-PROVIDED DIAL-IN MODEM TO ENABLE REMOTE DIAGNOSTICS, TROUBLESHOOTING AND SOFTWARE UPDATES.

EXCLUSIONS. SUPPORT DOES NOT COVER SERVICING OF COVERED HARDWARE DAMAGED BY MISUSE, ACCIDENT, ACT OF GOD, IMPROPER INSTALLATION, MISAPPLICATION, MODIFICATION, UNSUITABLE PHYSICAL OR OPERATING ENVIRONMENT, ABNORMAL PHYSICAL OR ELECTRICAL STRESS, IMPROPER MAINTENANCE (UNLESS BY BROCADE), REMOVAL OR ALTERATION OF SWITCH OR PART IDENTIFICATION LABELS, OR FAILURE CAUSED BY A PRODUCT FOR WHICH CONTRACTOR IS NOT RESPONSIBLE. CONTRACTOR MAY CHARGE ORDERING ACTIVITY SEPARATELY FOR ANY SERVICES PROVIDED BY BROCADE RELATED TO SUCH DAMAGED HARDWARE.

HARDWARE SPECIFIC TERMS.

RMA PROCEDURE. ORDERING ACTIVITY SHALL NOT RETURN ANY PRODUCT, WHICH ORDERING ACTIVITY DETERMINES TO BE DEFECTIVE, WITHOUT A RETURN MATERIAL AUTHORIZATION NUMBER (“RMA”) ISSUED BY BROCADE. FOR EVERY PRODUCT RETURNED BY ORDERING ACTIVITY SUBJECT TO THIS AGREEMENT: (A) ORDERING ACTIVITY MUST PROVIDE CONTRACTOR WITH THE SERIAL NUMBER OF THE PRODUCT; (B) CONTRACTOR, THROUGH BROCADE, SHALL VERIFY WHETHER OR NOT PRODUCT IS WITHIN THE APPLICABLE WARRANTY PERIOD OR ORDERING ACTIVITY IS OTHERWISE ENTITLED TO RETURN OR REPLACEMENT OF PRODUCT WITHOUT CHARGE; (C) IF ORDERING ACTIVITY IS ENTITLED TO RETURN PRODUCT FOR REPAIR/REPLACEMENT WITHOUT CHARGE, THEN BROCADE SHALL ISSUE TO ORDERING ACTIVITY AN RMA; AND (II) IF PRODUCT IS NOT UNDER WARRANTY, THEN ORDERING ACTIVITY MUST ISSUE A PURCHASE ORDER FOR SERVICE TO CONTRACTOR, THROUGH BROCADE, UPON RECEIPT OF WHICH BROCADE WILL ISSUE AN RMA TO ORDERING ACTIVITY; (D) ORDERING ACTIVITY SHALL SHIP THE PRODUCT TOGETHER WITH THE RMA INFORMATION TO THE ADDRESS PROVIDED BY BROCADE; AND (E) CONTRACTOR, THROUGH BROCADE, SHALL REPAIR OR REPLACE PRODUCT. ORDERING ACTIVITY SHALL PAY FREIGHT COSTS FOR RETURN SHIPMENT BY BROCADE TO ORDERING ACTIVITY OF ANY PRODUCT CLAIMED BY ORDERING ACTIVITY TO BE DEFECTIVE BUT DETERMINED BY CONTRACTOR, THROUGH BROCADE, TO NOT BE DEFECTIVE. THE REPAIR LEAD TIME IS THIRTY (30) DAYS FROM RECEIPT OF THE RETURNED PRODUCT AT BROCADE’S REPAIR FACILITY.

WARRANTIES AND DISCLAIMERS.

SOFTWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF
SHIPMENT TO ORDERING ACTIVITY THAT THE SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE PUBLISHED SPECIFICATION THEREOF. AS CONTRACTOR'S LIABILITY AND ORDERING ACTIVITY'S REMEDY FOR A BREACH OF THIS WARRANTY, CONTRACTOR SHALL USE ITS COMMERCIALLY REASONABLE EFFORTS, IN CONTRACTOR'S SOLE DISCRETION, TO REPAIR AND/OR REPLACE SUCH NON-CONFORMING SOFTWARE OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. “SPECIFICATION” MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT. CONTRACTOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY RELATED TO ANY SECURITY SOFTWARE. ORDERING ACTIVITY ACKNOWLEDGES THAT SECURITY SOFTWARE DOES NOT GUARANTEE THE SECURITY OF ORDERING ACTIVITY’S NETWORK, AND THAT ORDERING ACTIVITY IS RESPONSIBLE FOR ALL OTHER ASPECTS OF SECURITY, INCLUDING WITHOUT LIMITATION, CORRECT INSTALLATION AND SETUP OF THE SECURITY FEATURES OF THE SOFTWARE AND ALL RELATED REQUIREMENTS, CORRECTLY CONFIGURED SECURITY POLICIES, SELECTION OF HARDWARE AND SOFTWARE (INCLUDING NETWORK SECURITY TOOLS), CORRECT INSTALLATION, CONFIGURATION, AND MAINTENANCE OF THE HARDWARE AND SOFTWARE, THE INTEROPERABILITY OF THE VARIOUS COMPONENTS OF ORDERING ACTIVITY’S NETWORK, AND A PHYSICALLY AND ELECTRONICALLY SECURE OPERATING ENVIRONMENT.

HARDWARE WARRANTY. CONTRACTOR WARRANTS TO ORDERING ACTIVITY, FOR THE WARRANTY PERIOD SET FORTH IN CONTRACTOR’S QUOTATION FOR THE APPLICABLE HARDWARE THAT EACH UNIT OF HARDWARE SHALL BE FREE OF DEFECTS IN ANY MATERIAL RESPECT IN MATERIALS AND WORKMANSHIP AND SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS FOR SUCH HARDWARE. THIS WARRANTY DOES NOT APPLY TO THOSE UNITS OF HARDWARE WHICH: (I) HAVE BEEN SERVICED OR ALTERED, EXCEPT AS EXPRESSLY AUTHORIZED BY CONTRACTOR; (II) HAVE NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH ANY INSTALLATION, HANDLING, MAINTENANCE OR OPERATION INSTRUCTIONS SUPPLIED BY CONTRACTOR; (III) HAVE BEEN SUBJECT TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE OR ACCIDENT; (IV) HAVE BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE OR TRANSPORTING; OR (V) INTEROPERATE WITH THIRD PARTY PRODUCTS, SUCH AS OPTICAL TRANSCIEVER COMPONENTS, WHICH HAVE NOT BEEN RECOMMENDED OR CERTIFIED BY CONTRACTOR. CONTRACTOR’S SOLE OBLIGATION AND ORDERING ACTIVITY’S EXCLUSIVE REMEDY FOR FAILURE OF THE HARDWARE(S) TO CONFORM TO THE WARRANTY SET FORTH IN THIS SECTION SHALL BE, AT CONTRACTOR’S EXPENSE, TO REPAIR/REPLACE SUCH DEFECTIVE HARDWARE WITHIN THE NORMAL MANUFACTURING LEAD TIMES APPLICABLE TO SUCH HARDWARE AND TO RETURN SUCH REPAIRED HARDWARE TO ORDERING ACTIVITY OR TO REFUND THE APPLICABLE PORTION OF THE FEES PAID BY ORDERING ACTIVITY TO CONTRACTOR. “SPECIFICATION” MEANS THE WRITTEN SPECIFICATIONS THAT ACCOMPANY EACH PRODUCT WHEN SOLD OR LICENSED, AS THE CASE MAY BE, PURSUANT TO THIS AGREEMENT.

NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS, AND SUPPORT ARE DELIVERED “AS IS” AND NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, ANY RELATED DOCUMENTATION OR SERVICES.

PROPRIETARY RIGHTS. BROCADE OWNS AND RETAINS FOR ITSELF ALL RIGHT, TITLE AND INTEREST IN AND TO ALL DESIGNS, ENGINEERING DETAILS, AND OTHER INVENTIONS AND MATERIALS PERTAINING TO THE PRODUCTS OR, SUPPORT SUPPLIED BY CONTRACTOR AND TO ALL DISCOVERIES, INVENTIONS, PATENTS AND OTHER PROPRIETARY RIGHTS ARISING OUT OF THE WORK DONE BY CONTRACTOR, THROUGH BROCADE, IN CONNECTION WITH THE PRODUCTS AND SUPPORT OR WITH ANY AND ALL PRODUCTS DEVELOPED BY BROCADE AS A RESULT THEREOF, INCLUDING THE SOLE RIGHT TO MANUFACTURE ANY AND ALL SUCH PRODUCTS. ORDERING ACTIVITY WARRANTS THAT IT WILL NOT DIVULGE, DISCLOSE, OR IN ANY WAY DISTRIBUTE OR MAKE USE OF SUCH BROCADE PRODUCTS OR RELATED INFORMATION, AND THAT IT WILL NOT MANUFACTURE OR ENGAGE TO HAVE MANUFACTURED SUCH PRODUCTS.

NO IMPLIED LICENSES. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS CONFERRING ANY RIGHTS BY IMPLICATION, OR OTHERWISE, UNDER ANY INTELLECTUAL PROPERTY RIGHT, OTHER THAN THE RIGHTS EXPRESSLY GRANTED IN THIS AGREEMENT.

Brocade Professional Services Terms and Conditions

Working Hours. Except for any Professional Services with explicitly stated extended work hours, all Professional Services shall be performed during normal business hours. Ordering Activity (herein also referred to as "Customer") shall inform Contractor through Brocade in advance if any off-shift services will be required.

Facilities. Professional Services may be performed on Customer’s site. Customer agrees to provide the facilities reasonably necessary for Brocade to perform the Professional Services, including a safe and suitable workspace for the Brocade employees or contractors performing the Professional Services, as well as appropriate access to Product and third party hardware, software and/or services. For security and safety reasons, a Customer representative shall be available on-site whenever Brocade employees or contractors are performing the Professional Services at such facilities.

Prerequisites. Prior to the commencement of the Professional Services, Customer agrees to take all prerequisite steps identified by Contractor through Brocade, including without limitation, (i) ensuring that all manufacturers’ labels (such as serial numbers) are in place, accessible, and legible, (ii) obtaining authorization to have Brocade service a Product that Customer does not own, (iii) licensing, purchasing and/or paying licensing fees and installing the required software and obtaining a license or appropriate permission for Brocade to access and use such software, and (iv) testing all hardware and software necessary to perform the Professional Services, and all such hardware and software documentation shall be made available to Brocade, and (v) any other prerequisites identified by Brocade. Customer acknowledges that any failure to perform the prerequisites may result in voiding the warranty, a delay in performance or additional costs for the particular service. IT IS CUSTOMER’S RESPONSIBILITY TO ENSURE THAT CUSTOMER HAS COMPLETE BACKUPS OF ALL DATA PRIOR TO COMMENCEMENT OF ANY SERVICES. CONTRACTOR OR BROCADE ASSUMES NO RESPONSIBILITY FOR LOST DATA. Contractor or Brocade will not be responsible for Customer’s failure to obtain such permissions and licenses.

Scheduling Professional Services. Promptly following receipt of Customer’s order, Contractor through Brocade shall contact Customer’s representative to schedule the Professional Services. All Professional Services must be scheduled to begin within one hundred eighty (180) days of the date of the order.

Cancellation. Unless otherwise quoted by Contractor, Customer may cancel the Professional Services at any time on thirty (30) days prior written notice to Contractor through Brocade. In such event, Customer shall pay Contractor for all Professional Services performed through the date of termination and reimburse Contractor for all expenses incurred and billable pursuant to the Customer’s order. Contractor will credit or refund any prepaid fees applicable to cancelled Professional Services not performed on the date of termination, less any volume or other discount taken to which Customer is no longer entitled.

Rights in the Software Deliverables. The following terms shall apply for any Software deliverables provided by Contractor through Brocade as part of the Professional Services. Subject to the terms and conditions of this Attachment A and payment of the applicable license fees, Brocade and its third party licensor, if applicable, grant to Customer a non-exclusive, non-transferable license to use the applicable Software deliverables in object code form solely for internal purposes and solely the purposes set forth in the relevant Brocade product documentation. Customer shall have no right to sublicense such Software deliverables or any rights related thereto.
Acceptance Procedures. Upon completion of the Professional Services, Customer shall have ten (10) days (or such other time period specified in the quotation) following the date of delivery to evaluate such Professional Services. On or before the tenth (10th) day following such delivery, Customer shall provide Contractor with either (i) a written acceptance of the Professional Services; or (ii) written notice of rejection describing in detail the deficiency that is the basis for the rejection. A deficiency is a material non-conformity of the Professional Services to the acceptance criteria stated in the applicable Contractor’s quotation or in the absence of such criteria, a material non-conformity to the description of the Professional Services set forth in the quotation. In the event that Customer rejects the Professional Services in accordance with the afore-described procedure, Contractor will use diligent efforts to correct the deficiency promptly. The Professional Services and any associated deliverables that are re-performed or re-delivered shall be subject to Customer’s acceptance in accordance with this provision. In the event Customer fails to accept or reject the Professional Services within 10 days after Contractor’s completion of the applicable Professional Services, or accept or reject re-performed Professional Services within 10 days after Contractor’s completion of the applicable Professional Services, the Professional Services shall be deemed accepted by Customer, and Customer shall have no further right to reject the Professional Services.

Right to Instruct. Brocade consultants deployed to perform any services for Customer under this Attachment A are under the exclusive supervision and instruction of Brocade. Brocade reserves the exclusive right to instruct its consultants, in particular with respect to work hours and the scope and manner of services to be performed under this Attachment A. Customer has no rights to instruct Brocade’s consultants whatsoever.

Professional Services Warranty. Contractor warrants for a period of thirty (30) days: (i) following the completion of the Professional Services, in the case where no acceptance procedure is applicable, and (ii) following acceptance of the Professional Services, otherwise, that all Professional Services will be performed in a professional and workman-like manner by appropriately trained personnel, using generally accepted industry standards and practices. As Contractor’s liability and Customer’s remedy for a breach of this warranty, if the Professional Services are not provided as warranted, Contractor will, at its sole discretion, either: (i) correct any material non-conformances in the Professional Services deliverables; (ii) re-perform the Professional Services; or (iii) credit Customer for the amount paid for the nonconforming Professional Services. This warranty does not apply to the extent any non-conformity relates to (i) any specifications, code, diagnostic or other tools, or any other materials provided by Customer; (ii) the integration, operation, modification, or use of the Professional Services or any deliverables in any manner not authorized by Contractor; and (iii) any changes to the network environment after the services were rendered. EXCEPT AS EXPRESSLY SET FORTH IN THIS ATTACHMENT A, THE PROFESSIONAL SERVICES ARE DELIVERED “AS IS” AND NEITHER CONTRACTOR NOR ITS THIRD PARTY SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Proprietary Rights. Brocade owns and retains for itself all right, title and interest in and to all designs, engineering details, and other data and materials pertaining to the Professional Services supplied by Brocade and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Brocade in connection with the Professional Services or with any and all products developed by Brocade as a result thereof, including the sole right to manufacture any and all such Products; however, Customer shall have perpetual unlimited rights to all designs, engineering details and other data and materials pertaining to the Professional Services. Customer warrants that it will not divulge, disclose, or in any way distribute or make use of such Brocade Professional Services or related information, and that it will not manufacture or engage to have manufactured such Products.

Security and Conduct. Customer shall maintain industry standard security policies, practices and procedures, and shall comply with all applicable laws and regulations and with all applicable health, safety and security rules, programs and procedures. Contractor and Brocade shall comply with all such Customer security policies, practices and procedures to the extent applicable and to the extent Brocade is made aware of such policies, practices and procedures.

Background Checks and Drug Free Workplace. Contractor through Brocade has certain procedures in place to perform background checks and to ensure a drug free workplace for its employees and contractors performing Professional Services. Upon request, Brocade will provide information related to such procedures. Customer acknowledges that certain jurisdictions do not allow or limit such checks, and Brocade will not perform such checks in these jurisdictions or for employees from these jurisdictions.
ATTACHMENT A – PRIMEKEY, INC.

General Terms and Conditions for Appliance Delivery

By both parties executing this Agreement in writing, These General Terms and Conditions shall apply to all offers and Agreements under which PrimeKey Solutions AB (the “PrimeKey”) supplies Appliances or Product (as defined below) to the undersigned Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”). No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing.

Definitions

Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

Agreement: The agreement, including appendices, entered into between the parties.

Appliance Hardware: The physical hardware Appliance unit(s) to be delivered in accordance with the Agreement.

Appliance Software: The Appliance Software Products agreed to be included in the Appliance including any Updates developed by PrimeKey and provided under a Support and Maintenance Agreement between Customer and PrimeKey Support AB.

Appliance Software Product: Each software product/module agreed to be delivered in accordance with the Agreement.

Firmware: Any software embedded in the Appliance Hardware.

Appliance: The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applications. The Appliance consists of Appliance Hardware and Appliance Software.

Product: The Appliance Hardware and/or the Appliance Software Products.

1. SCOPE OF DELIVERY

A. Quantity

Customer shall purchase and PrimeKey shall deliver the quantity of Appliances and with the content of the Appliance Software as specified in the Agreement.

B. Purchase Order(s)

Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the purchase order by a written acknowledgement. A Purchase Order shall be a separate Agreement, unless otherwise agreed. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

C. Standard Products

The Products shall be PrimeKey’s standard products. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Products operate with Customer’s equipment, software, or systems. PrimeKey reserves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or sold to Customer.

D. Serial number

PrimeKey will specify applicable serial number for the delivered Appliance.

2. PRICE AND PAYMENT TERMS

A. Prices

The price(s) for the Appliances to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey’s written acknowledgement in accordance with the GSA Schedule Pricelist. If only a fixed price is given for the Appliance it includes purchase price for the Appliance Hardware and license fee for the Appliance Software. Otherwise a price is given for the Appliance Hardware and license fee for each Appliance Software Product. Under a line of GAO (U.S. Government Accountability Office) cases based on the Supremacy Clause of the US Constitution, the Government is exempt from state and local taxes whose “legal incidence” falls on the Federal Government. The applicability of a particular tax to the Government is a case by case determination for the contracting officer. Further, FAR 52.212-4(k) provides that the contract price includes all applicable Federal, state and local taxes and duties.

B. Payment terms

PrimeKey will invoice the Customer at the time of each shipment of Appliances, or Product as the case may be, to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s), or PrimeKey
ship the Appliances to Customer freight collect according to Section 3 B. Customer shall make all payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Appliances delivered to Customer. If deliveries are authorized in installments, each shipment shall be paid for when due without regard to other scheduled deliveries. Any invoiced amount which is not paid when due shall bear late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

3. DELIVERY TERMS
A. Shipping Schedule - delay
PrimeKey shall use its reasonable efforts to ship Appliances to Customer in accordance with the shipment schedule provided by PrimeKey to Customer. Delivery dates proposed by Customer in its purchase order or other documentation shall not be binding on PrimeKey. If there is a delay in delivery caused by PrimeKey for more than 30 days, the Customer may cancel the delayed shipment through written notice to PrimeKey. Excusable delays shall be governed by FAR 52.212-4(f). The delivery schedule shall be extended automatically by a period of time equal to the time lost because of any such delay. If PrimeKey has requested a bank guarantee in the Agreement a shipment is conditioned on that PrimeKey has received the requested bank guarantee.

B. Shipment
All deliveries of the Appliances shall be Ex works PrimeKey’s facility, in accordance with the INCOTERMS 2010 of the International Chamber of Commerce.

C. Shipment Appliance Software
The Appliance Software Product will either be installed by PrimeKey on the Appliance Hardware as specified in the Agreement and shipped in accordance to clause A in this Section 3 or made available for electronic download and installation in accordance with Section 5 A. In the latter case Customer will be responsible for accessing PrimeKey’s site and downloading the Appliance Software Product. Delivery term shall be as set forth in clause B in this Section 3.

4. TITLE TO APPLIANCE HARDWARE
A. Transfer of Title
Title to the Appliance Hardware shall pass to Customer upon payment in full of the price for the Appliance. Notwithstanding any provision herein to the contrary, Customer shall take no title to any Firmware.

5. LICENSE TO APPLIANCE SOFTWARE
A. License to Appliance Software
PrimeKey grants to the Customer a perpetual, non-exclusive, non-transferable right to use the Appliance Software Product in the object code only on the number of Appliance Hardware that Customer bought a license for and only to install and use the Appliance Software Product on the hardware delivered under the Agreement (the Appliance Hardware) and to the extent that may be stipulated in other documents in the Agreement. For an Appliance Software Product that is a third party product, there may be third party supplier’s license conditions different from those of this Agreement. Nothing herein shall bind the Ordering Activity to any Appliance Software Product Third Party terms unless the terms are provided for review and agreed to in writing by all parties.

B. Restrictions
Customer agrees: (a) not to use the Appliance Software Product on any other hardware than on the Appliance Hardware except for the backup license referred to in C below, (b) not to transfer or sublicense the Appliance Software Product to any third party, (c) not to copy the Appliance Software Product except for the backup license referred to in C below and (d) to comply with the restrictions set forth in Section 6 B.

C. Back up license
If a Hardware Appliances is not used by the Customer and provided that it or part of it is subject to repair or replacement by PrimeKey under the warranty provisions clause 7 or maintenance services under a valid Maintenance agreement with PrimeKey, Customer will have after prior written notice to PrimeKey a temporary license to use the Appliance Software Product on another hardware appliance as long as such non-working Hardware Appliances is not working subject to the license conditions in these General Terms and Conditions. PrimeKey will make the Appliance Software Product available to the Customer for electronic download according to clause C Section 9 or permit the Customer to make the necessary copy of the Appliance Software Product.

6. INTELLECTUAL PROPERTY RIGHTS
A. Rights
All rights, title, ownership and interest in and to Appliance Software and derivative works thereof and to the Firmware including, but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

B. Restrictions
Except to the extent permitted by applicable law, Customer shall not reverse engineer, decompile, disassemble or otherwise translate or modify, alter or otherwise change the Appliance Software and derivative works thereof and to the Firmware.

C. Trademarks
Customer shall not alter or remove from the Products (or their packaging or documentation), or alter, any of PrimeKey’s or its suppliers’ trademarks, trade names, logos, patent or copyright notices, or other notices or mark-ings, or add any other notices or markings to the Products (or their packaging or documentation).
7. LIMITED WARRANTIES – APPLIANCE HARDWARE

A. Express Warranty for the Appliance Hardware

Subject to the provisions of this Section 7 and Section 10, PrimeKey expressly warrants that, for a period of twelve (12) months (the “Warranty Period”), all components of the Appliance Hardware shall be free from faulty workmanship and defective materials under normal use and service. The Warranty Period shall commence on the date the Appliance Hardware is shipped from PrimeKey’s facility (as evidenced by PrimeKey’s packing slip or other receipt). The warranty stated by PrimeKey in this Section 7(A) is the only express warranty provided by PrimeKey. This express warranty may be modified only by express written agreement between the parties, and may not be modified or amended by any course of dealing between the parties, or custom and practice in the industry. Customer’s remedies and PrimeKey’s aggregate liability with respect to the warranty provided by PrimeKey in this Section 7(A) are set forth in and limited by this Section 7 and Section 10. PrimeKey’s warranty does not apply to consumable items (e.g. batteries)

B. Warranty Remedy

If an Appliance Hardware fails under normal use and service during the Warranty Period due to a defect in mate-rials or faulty workmanship (“defect”), PrimeKey’s sole obligation shall be to repair or replace the Appliance Hardware, at PrimeKey’s option. Following repair or replacement, the Warranty Period shall expire at the end of the original period. Appliance Hardware and components that are replaced by PrimeKey shall become PrimeKey’s property.

C. Warranty Conditions

PrimeKey’s express warranty is strictly for the benefit of Customer and does not extend to any third party Prime-Key’s express warranty is contingent upon Customer’s payment of the purchase invoice and proper use of the Appliance Hardware , in accordance with any instructions or manuals provided by or available from PrimeKey. PrimeKey shall have no obligation under this express warranty unless Customer promptly reports the claim. PrimeKey’s obligations under this warranty are subject to PrimeKey’s examination of the Appliance Hardware and PrimeKey’s determination to its reasonable satisfaction that the claimed defect or fault actually exists and is not excluded from PrimeKey’s warranty under this Section 7. If PrimeKey determines that the Appliance Hard ware is not defective or faulty within the terms of the express warranty, Customer shall pay for all costs of han-dling, transportation and repairs at PrimeKey’s then prevailing repair rates.

D. Warranty Exclusions

PrimeKey’s express warranty shall not apply if the defect or fault is caused by any of the following after delivery by PrimeKey: accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power or environmental controls, rough handling during transportation, Customer’s failure to maintain the Product in accordance with PrimeKey’s specifications, abuses to the Product other than ordinary use, modifications by Customer, alterations or repairs by a party other than PrimeKey (unless specifically authorized by PrimeKey in writing). This express warranty will be rendered void if PrimeKey’s serial numbers, warranty data or quality assur-ance decals on the Product are removed or altered.

E. Disclaimer

THE EXPRESS WARRANTIES OF PRIMEKEY STATED IN SECTION 7(A) ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PAR-TY RIGHTS. THE EXPRESS OBLIGATION OF PRIMEKEY STATED IN SECTION 7(B) REPLACES ANY OTH-ER LIABILITY OR OBLIGATION OF PRIMEKEY ARISING OUT OF OR IN CONNECTION WITH THE DELIV-ERY, USE OR PERFORMANCE OF THE Appliance Hardware. PRIMEKEY DOES NOT INSURE THE SECURITY PROVIDED BY THE Appliance Hardware, NOR DOES IT WARRANT AGAINST IMPROVEMENTS IN THE TECHNICAL ARTS THAT MAY RENDER THE PRODUCTS INEFFECTIVE OR OBSOLET E.

8. APPLIANCE SOFTWARE - “LIMITED WARRANTY”

A. PrimeKey Support AB and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Appliance Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey Support AB warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompa-nying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Appliance Software under the Agreement. Notwith-standing this, if there is a major defect in the Appliance Software that is reported in writing within 30 days from the delivery of the Appliance Software and the defect has not been rectified according to the Support and Mainte-nance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer’s use of the concerned Appliance and PrimeKey knew or should have known of this, the Customer shall be entitled after the expiry of the deadline to notify the supplier in writing of the cancella-tion of the Agreement for the applicable Appliance. If the Customer cancels the Agreement for the concerned Appliance the Customer shall be entitled to refund of the paid price for that Appliance, which shall be the exclu-sive remedy for the cancellation and with no right to damages for Customer.

B. PrimeKey makes no warranty regarding the Appliance Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose, other than that the Appliance Soft-ware will operate in combination with the software and hardware in the Appliance. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE APPLI-CATION SOFTWARE OR THE CUSTOMER’S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER'S
USE OF THE APPLIANCE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

9. INFRINGEMENT
A. PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Appliance Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, information, and assistance to settle the claim or control the defense of any suit or proceeding. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

B. In the event that the Appliance Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is commercial reasonable either: (a) replace the infringing Appliance Software with non-infringing software programs and documentation of equivalent function and performance; or (b) modify the Appliance Software so that they become non-infringing without detracting from function or performance. If it is not commercial reasonable for PrimeKey to fulfill its obligations pursuant to the above within a reasonable time, the customer shall be entitled to a reduction of the price corresponding to the reduced value of the Appliance resulting from the infringement but not for longer period than five years from its delivery date.

C. PrimeKey’s liability for infringements of the Appliance Software does not cover any third party products or infringements caused by Customer. PrimeKey’s entire liability for infringements is limited to what is set forth in this section 9.

10. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES
A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

B. PRIMEKEY’S AGGREGATE LIABILITY ARISING OUT OF THE SALE OF A APPLIANCE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE PURCHASE PRICE FOR THAT APPLIANCE PAID BY CUSTOMER TO PRIMEKEY.

C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE PRIMEKEY PRODUCTS OR PRIMEKEY’S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE PRIMEKEY PRODUCTS. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

D. Excusable delays shall be governed by FAR 52.212-4(f).

E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Appliance absent these limitations.

11. SECRECY
A. During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such information by law, court or government order or binding stock exchange regulations. Where a party is required to disclose information in such way, it shall notify the other party to this effect prior to disclosure. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

B. A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their employees sign corresponding confidentiality undertaking.

12. APPLICABLE LAW, DISPUTES
A. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

B. Reserved.

13. EXPORT –COMPLIANCE WITH LAW
A. PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of appliance to the agreed destination to The Customer. Prior the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the “ECCN codes”) of products according to US and EU export administration regulations or the
corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every
time a non-insignificant update is provided or when new regulations come into effect
B. Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United
States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey
Products to any country without first obtaining all necessary and required licenses, consents and approvals. Customer
acknowledges that shipments of the PrimeKey Products may be subject to export laws and that such laws could delay or
preclude delivery of PrimeKey Products in the future. Customer shall, at its sole cost and expense, obtain and maintain in
effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

14. GENERAL PROVISIONS
A. The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Con-tract,
Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the
subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.
B. For purposes of the Agreement, the term "written" means anything reduced to a tangible form by a party, includ-ing a
printed or hand written document, e-mail or other electronic format.
C. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made
in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to
require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.
D. All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall
be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail service,
postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth
below. Either party may by such notice to the other change such address.
E. The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal
representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its
duties, hereunder, in whole or in part, without the prior written consent of the other Party.
F. In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal
or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and
void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid
provision shall be replaced with a valid provision which most closely approxi-mates the intent and economic effect of the
invalid provision.
G. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for
identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

General Terms and Conditions for Support/Maintenance of Appliance

These General Terms and Conditions shall apply to all on support and maintenance provided by PrimeKey Solu-tions AB
("PrimeKey") for Appliances or Product (as defined below) to the Customer.
No deviations from these General Terms and Conditions shall be valid unless expressly agreed in writing. A negotiated
Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.
PrimeKey and Customer are also referred to herein individually as a “Party” and collectively as the “Parties”.

Definitions
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings
specified below:
Appliance: The Appliance Hardware security platform unit including EJBCA, SignServer, or third party applica-tions The
Appliance consists of Appliance Hardware and Appliance Software.
Appliance Hardware: The physical hardware Appliance unit(s) to be supported and maintained in accordance with the
Support and Maintenance Agreement.
Appliance Software Product: Each software product/module agreed to be supported and maintained by PrimeKey in
accordance with the Support and Maintenance Agreement including any Releases provided by PrimeKey under the Support
and Maintenance Agreement.
Firmware: Any software embedded in the Appliance Hardware
Product: The Appliance Hardware and/or the Appliance Software Products.
Services: The services to be provided by PrimeKey under the Support and Maintenance Agreement.

Support and Maintenance Agreement: The Support and Maintenance agreement, including appendices, en-tered into
between the parties

Any definition in the main document or other appendices of the Support and Maintenance Agreement shall also apply in this
document.

1. PRIMEKEYS SERVICES OBLIGATIONS
PrimeKey shall from the Effective Date for a Product provide to Customer the support and maintenances in accordance with the terms and conditions set out in Appendix DMSHW Description of Maintenance/Support service for Appliances. PrimeKey shall maintain an organization with employees that are appropriate, qualified and competent to perform services. The Supplier shall perform the Services in a professional manner. The Services will be provided during the Business Hours as defined in Appendix DMSHW unless otherwise agreed.

2. THIRD PARTY SOFTWARE
The Services does not apply to third-party Software.

3. DEFAULT REPORTING – CUSTOMER OBLIGATIONS
The Customer shall to the Support Center as specified in Appendix DMSHW of any fault in a Product within a reasonable time from the point in time at which Customer becomes aware of the fault in question. The Customer shall provide the assistance as set forth in Appendix DMSHW.

4. END OF LIFE - APPLIANCE HARDWARE
The need to End-of-Life (EOL) a product occurs from time-to-time as technology advances make earlier versions obsolete, as components and parts become no longer available for manufacture or repair and as the resulting ability to provide acceptable support becomes severely constrained and costly. PrimeKey, at its discretion, will from time-to-time declare a Product to be in an EOL state. An EOL state encompasses multiple phases that includes providing sufficient notice to customers, providing alternatives for upgrade or migration and defining the path for eventual suspension of all Product support.

EOL announcements will be made to customers that will include dates for last time buy, upgrade or migration path options, and dates when changes to support coverage take effect.

A. Repairs
Repairs for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

B. Support
PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state. PrimeKey will continue to provide Web-based, email and telephone support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Releases, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.

5. FEES
The annual fees for the Services are set forth in Appendix PSMSHW, Price Schedule in accordance with the GSA Schedule Pricelist, and shall be paid in the currency expressed in the Price Schedule. The annual support and maintenance fee is fixed during the initial terms of this Support and Maintenance Agreement.

6. PAYMENT

A. The annual support and maintenance fee will be invoiced and paid annually, in the first instance as of the Effective Date and every six (6) months thereafter, payable thirty (30) days after receipt of the invoice by Customer.

B. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

C. Reserved.

7. OWNERSHIP AND LICENSE
The Customer’s rights and obligations regarding releases of Appliance Software Product and work performed during the Services are the same as its rights and obligations regarding the original version of the Appliance Software Product under the Delivery Agreement. Any release will be a part of the original Delivery Agreement. PrimeKey will only be responsible for any Releases provided under the Support and Maintenance Agreement according to the conditions in the Delivery Agreement.

8. CONFIDENTIAL INFORMATION

A. Definitions
Confidential Information means any and all information relating in any way (directly or indirectly) to either parties business, finances, products, processes or employees and includes any information obtained by the other party in the course of accessing the other parties computers or networks, including passwords and security procedures (“Confidential Information”). Each party shall maintain the confidentiality of such Confidential Information and shall not disclose such Confidential Information except to those of its agents and employees who need to know such information in order to perform the Services. Both during and after the term of this Support and Maintenance Agreement, such agents and employees shall hold all disclosures by the other party in strict confidence and shall not use the Confidential Information for any purpose other than in connection with the transactions contemplated in this Support and Maintenance Agreement.

B. Restrictions
During the term of this Support and Maintenance Agreement and for a period of five (5) years thereafter, the recipient shall not use the Confidential Information, except as necessary to complete the Services and shall not disclose the Confidential Information to any third party.

C. Exclusions
Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the recipient; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the Confidential Information; (d) is obtained by the recipient from a third party without obligation of confidentiality; or (e) is disclosed with the prior written approval of the disclosing party. Recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be re-leased, despite being characterized as “confidential” by the vendor.

9. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES

A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

B. PRIMEKEY’S AGGREGATE LIABILITY ARISING OUT OF THE PERFORMANCE OF SERVICES, REGARD-LESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL EXCEED THE TOTAL CONTRACT PRICE, INCLUDING AGGREGATE FEES FOR THE RELEVANT PRODUCT OR APPLIANCE, PAID BY CUSTOMER TO PRIMEKEY.

C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, PRIMEKEY’S PERFORMANCE OF SERVICES OR OF ANY OTHER OBLIGATIONS RELATING TO THIS SUPPORT AND MAINTENANCE AGREEMENT. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

D. Excusable delays shall be governed by FAR 52.212-4(f).

E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not provide the Services absent these limitations.

10. PREMATURE TERMINATION

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, PrimeKey shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11. GENERAL PROVISIONS

A. No Assignment

A Party may not assign this Support and Maintenance Agreement without the other Party’s prior written approval.

B. Notices

Notice of termination and/or any other notices shall be sent by courier, registered post or electronic message to the other party’s Coordinator at the address specified by such party. The other party shall be deemed to have received such notice:

(i) At the time of delivery, if delivered by courier;
(ii) 5 days after dispatch, if sent by regular post;
(iii) At the time of arrival at the recipient’s electronic address, if sent by electronic message.

C. Invalid Provisions

If any provision of this Support and Maintenance Agreement is held invalid or prohibited, such provision shall be invalid only to such extent without invalidating the remainder of this Support and Maintenance Agreement.

D. Modification of Support and Maintenance Agreement

This Support and Maintenance Agreement may not be modified nor may any provision hereof be waived except by a written document, duly executed by an authorized representative of each of the parties hereto, that specifically references this Support and Maintenance Agreement. No delay or omission by any party to exercise or detect any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver of any provision of this Support and Maintenance Agreement on any occasion or occasions shall not constitute a waiver of such provision on any succeeding occasion.

E. Entire Agreement

This Support and Maintenance Agreement any Customer purchase order(s) issued with respect to this Support and Maintenance Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, embody the entire understanding of the parties and shall supersede any and all previous oral agreements, understandings, letters, documents, letters of understanding, memoranda, memoranda of understanding, representations, discussions, proposals and quotes between the parties relating to the subject matter of this Agreement.

F. Counterparts

This Support and Maintenance Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

G. Coordinators
Parties will each appoint and advise the other in writing of the name and address of a Coordinator. The only official channel for communications between the parties shall be through their respective Coordinators, except as may be otherwise authorized in writing by the parties. Each party shall promptly advise the other in writing of the name and address of the successor any Coordinators which may be appointed hereunder. Changes or modifications to the terms and conditions of this Support and Maintenance Agreement are not within the duties or authority of the Coordinators.

12. APPLICABLE LAW, DISPUTES
This Support and Maintenance Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

Description of Maintenance/ Support services for PrimeKey Appliances

Definitions:
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

**Business Hours**: are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

**Major Release**: mean major enhancements to the Appliance Software Product and is marked by the first digit in the Release digits i.e Release 1.2.3. A Major Release does not include enhancements/new functionality that is sold as a separate module.

**Minor Release**: mean minor enhancements to the Appliance Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

**Maintenance Release**: mean defect corrections and flaws in the finish to the Appliance Software Product and is marked by the third digit in the Release digits i.e Release 1.2.3.

Second Line support
Third Line support
The definitions in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

1. GENERAL
A. Telephone support
Telephone support means that where there is a fault, or suspected fault, in the Appliance, PrimeKey shall assist the Customer by replying to questions from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the Business Hours.

Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installation assistance, or configuration support for third party components.

B. Problem Reporting and Tracking Procedures
Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number.

C. Services not included
Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typically the responsibility of a Product end-user and which were explained in reasonable detail in the provided product documentation, or during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

a) custom programming services;

b) on-site support, including installation of hardware or software;

C) support of any software not constituting part of the Appliance Software;

d) training;

D. Supported Releases of the Appliance Software
PrimeKey will provide support for the current Major or Minor Release and the Major or Minor Release preceding the current Release, unless otherwise is specified in the next paragraph.

If PrimeKey offers a new Major Release, then PrimeKey will support the preceding Minor Release for 12 months. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey’s sole discretion.

PrimeKey shall notify the Customer if a Major Release is not compatible with the Appliance Hardware that is a service object under the Support and Maintenance Agreement.

E. Third party software
PrimeKey’s undertaking does not apply to an Appliance Software Product that is a third party product.

F. Incompatibilities (Exception from PrimeKey’s obligations)
PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Appliance Software Product, if Customer has made unauthorized changes to the Appliance Hardware or Appliance Software Product configuration in effect as of the effective date this Agreement, or to the operational environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

G. Customer assistance
Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Appliance Software and Appliance Hardware if and to the extent such failure is a result of Customer’s failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement. Customer shall provide a description of the commands and procedures that reveal a fault.

H. Second Line support
If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Second Line support, Customer shall perform the Second Line support and PrimeKey’s shall only perform Third Line support.

2. SUPPORT SERVICES
A. Support Service Plans
If Customer reports an error in the Appliance Hardware or PrimeKey diagnose establishes that the incident is related to an Appliance Hardware defect section 4 Hardware repair services shall apply. Different support service plans related to Appliance Software and Hardware Products are provided by PrimeKey.

Support Center HOTLINE
PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:

a) Issue Tracker at https://jira.primekey.se/, or
b) email at support@primekey.com, or
c) telephone number at +46 8 522 11 660 or (888) 832-0111.

i. Standard Support Service Plan
The Support Center HOTLINE for Standard Support is available during Business Hours.

ii. Premium Support Service Plan
The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

iii. Service Response Times

<table>
<thead>
<tr>
<th>Severity</th>
<th>Standard</th>
<th>Premium</th>
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</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>8 Business Hours</td>
<td>4 hours</td>
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<tr>
<td>Severity 2</td>
<td>16 Business Hours</td>
<td>8 hours</td>
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<tr>
<td>Severity 3</td>
<td>32 Business Hours</td>
<td>24 hours</td>
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<tr>
<td>Severity 4</td>
<td>64 Business Hours</td>
<td>24 hours</td>
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B. Severities
Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. Severity 1: Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically.

Service Response: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.

ii. Severity 2: Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

Service Response: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A.
period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable workaround for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. **Severity 3:** Produces an inconvenient situation in which Appliance Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

**Service Response:** PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. **Severity 4:** Produces a noticeable situation in which the use is affected in some way that is reasonably correctable by a documentation change or by a future, regular release from PrimeKey.

**Service Response:** PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

**C. Support Incident**

PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Appliance Software Product Severity Levels 1, 2 and 3. Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:

a) Information that resolves the issue;

b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Appliance Software Product;

c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Appliance Software;

d) Information that isolates issue to a third-party product, not supported by PrimeKey.

3. **MAINTENANCE APPLIANCE SOFTWARE AND FIRMWARE**

PrimeKey will maintain the Products by providing Appliance Software Products and Firmware with Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Appliance Software Product under maintenance generally.

Releases will be provided on an as-available basis and include the items listed below:

a) Bug fixes;

b) Enhancements to keep current with the Appliance Hardware delivered under the same Delivery Agreement as the Appliance Software Products; and

c) Performance enhancements to the PrimeKey Software;

Releases do not include:

a) Platforms not included in Appliance;

b) New functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic download. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of Releases are the responsibility of Customer.

PrimeKey will not be responsible for incompatibilities as set forth in section 1.F above.

4. APPLIANCE HARDWARE REPAIR SERVICE

**A. Repair Service**

During the maintenance period, PrimeKey will repair or replace an Appliance Hardware that fails due to error, provided the Customer has obtained a valid PrimeKey RMA (Return merchandise authorization (RMA) from PrimeKey. PrimeKey will pay return shipping expenses. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current val-ue of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. The replacement device or part may be reconditioned or new. Reconditioned equipment is tested, certified, and carries the remainder of the original equipment's warranty.

**B. Maintenance Service Plans**

Different maintenance service plans related to Appliance Hardware Repair are provided by PrimeKey.

i. **Standard Maintenance Service Plan**

Defect devices or parts will be repaired or replaced within 5 working days of receipt of the product. (Turn-around times do not include shipping time)

ii. **Premium Maintenance Service Plan**

Defect devices or parts will be repaired or replaced within 2 working days of receipt of the product. (Turn-around times do not include shipping time)

iii. **Premium Maintenance Service Plan with HW+ Option**

In addition to the Premium Maintenance Service Plan, HW+ offers Customers the option for an advance replace-ment of defect devices or parts without charges. Upon an RMA approval, PrimeKey will ship a replacement part before receiving the defective part. Customer is responsible for return of the equipment within 30 days and return shipping charges. Unreturned equipment will be invoiced at then current list price.
C. Excluded items
PrimeKey’s obligations and the stated fees do not include the following, unless otherwise follows from the Specification:

a) Procurement of add-ons, consumables and other equipment;
b) Maintenance of consumables, add-ons and other equipment

5. END OF LIFE – APPLIANCE HARDWARE

The need to End-of-Life (EOL) a product occurs from time-to-time as technology advances make earlier versions obsolete, as components and parts become no longer available for manufacture or repair and as the resulting ability to provide acceptable support becomes severely constrained and costly. PrimeKey, at its discretion, will from time-to-time declare a Product to be in an EOL state.

EOL announcements will be made to customers that will include dates for last time buy, upgrade or migration path options, and dates when changes to support coverage take effect.

Repairs for End of Life Products will be performed only if components are reasonably available and replacements will be provided only as long as inventory is reasonably available.

PrimeKey will provide best efforts to support an EOL Product but will be under no obligation to provide Major, Minor, or Maintenance Releases with respect to any product during its EOL state.

PrimeKey will continue to provide support to the extent reasonably practicable without providing Major Releases, Minor Releases or Maintenance Updates, and PrimeKey provides no guarantee that a problem with a Product supported on an End of Life basis can or will be resolved.
PrimeKey License Conditions for Software

These license conditions shall apply to all offers and Agreements under which PrimeKey Solutions AB (the “PrimeKey”) supplies Software (as defined below) to the Customer. No deviations from these License Conditions shall be valid unless expressly agreed in writing. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

Definitions
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

Agreement: The agreement, including appendices, entered into between the parties regarding the license of Software.

Software means the enterprise version of EJBCA, SignServer and other PrimeKey Software. The Software includes software programs and releases provided under the Supports and Maintenance Agreement regarding the Software.

1. LICENSE

A. License grant
Subject to these PrimeKey’s license conditions PrimeKey grants to Customer a non-exclusive, non-transferable right, perpetual right to use the Software in object code form for internal purposes and not as a part of service provided to third parties.

B. Restrictions
Customer agrees that Customer shall not: (a) modify, reverse engineer or decompile, disassemble or otherwise translate the Software or alter or make derivative works thereof, unless permitted according to mandatory law; (b) remove any of PrimeKey’s proprietary notices or legends, including any PrimeKey Trademark contained in or on the Software or the documentation, without the specific prior written consent of PrimeKey; (c) make any copies of the Software or the documentation except for back up purposes; (d) sublicense, assign or otherwise transfer its rights under this Article 1.

2. SCOPE OF DELIVERY

A. Purchase Order(s)
Additional purchase orders shall not be binding on PrimeKey unless and until PrimeKey has accepted the purchase order by a written acknowledgement. These General Terms and Conditions shall apply on such purchase order. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

B. Standard Software
The Software shall be PrimeKey’s standard Software. Unless specifically stated in a separate agreement between PrimeKey and Customer, PrimeKey shall have no obligation to create special or customized versions of any such product, or to ensure that the Software operate with Customer’s equipment, software, or systems. PrimeKey reserves the right, without prior approval from or notice to Customer, to make changes to any Product (i) to meet published specifications; (ii) that do not adversely affect the performance of the Product below any published specification; or (iii) when required for purposes of safety. PrimeKey also reserves the right to make changes to any Product without any obligation to make the same changes to Software previously ordered by or sold to Customer.

3. PRICE AND PAYMENT TERMS

A. Prices
The price(s) for the Software to be delivered in accordance with the Agreement are stated in the Agreement in accordance with the GSA Schedule Pricelist. The price for additional Purchase order(s) is to be specified in PrimeKey’s written acknowledgement in accordance with the GSA Schedule Pricelist. PrimeKey shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

B. Payment terms
PrimeKey will invoice the Customer at the time of delivery of the Software to the Customer. Payment terms for all invoiced amounts shall be thirty (30) days from the receipt date of invoice(s). Customer shall make all payments due to PrimeKey WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER, and without regard to whether Customer has made or may make inspections of the Software delivered to Customer. Any invoiced amount which is not paid when due shall bear late interest at the interest rate governed by the Prompt Payment Act (31 USC 3501 et seq) and Treasury regulations at 5 CFR 1315.

4. DELIVERY TERMS

A PrimeKey will deliver the Software on electronic media, or make the Software available for electronic download within 5 working days from the date of the accepted Purchase Order. In the latter case Customer will be responsible for accessing PrimeKey’s site and downloading the Software.

B The delivery term for the Software shall be Ex works PrimeKey’s facility INCOTERMS 2010. If PrimeKey has requested a bank guarantee in the Agreement a delivery is conditioned on that PrimeKey has received the requested bank guarantee.

5. INTELLECTUAL PROPERTY RIGHTS

A. Rights
All rights, title, ownership and interest in and to Software and derivative works thereof but not limited to, all intellectual property rights therein, are and shall remain the property of PrimeKey and/or its PrimeKey except the rights expressly contained herein.

B. Trademarks
Customer shall not alter or remove from the Software (or their packaging or documentation), or alter, any of PrimeKey’s or its suppliers’ trademarks, trade names, logos, patent or copyright notices, or other notices or markings to the Software (or their packaging or documentation).

6. SOFTWARE - “LIMITED WARRANTY”
A. PrimeKey and the Customer shall enter into a Support and Maintenance Agreement. The rectification and liability for any defects in the Software shall be solely regulated and governed by the Maintenance Agreement. PrimeKey warrants that the Appliance Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Appliance Software written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Customer may not in any case make any claims against PrimeKey for any defects or problems with the Software under the Agreement. Notwithstanding this, if there is a major defect in the Software that is reported in writing within 30 days from the delivery of the Software and the defect has not been rectified according to the Support and Maintenance Agreement within 60 days from the report, the Customer may, in writing, set a reasonable final deadline for rectification. If the material defect has not been rectified when the deadline has expired and it is of substantial significance for the Customer’s use of the concerned Software, PrimeKey shall be entitled to notify the supplier in writing of the cancellation of the Agreement for the applicable Software. If the Customer cancels the Agreement for the concerned Software the Customer shall be entitled to refund of the paid price for that Software.

B. PrimeKey makes no warranty regarding the Software, expressed or implied, including but not limited to any implied warranties of merchantability and fitness for particular purpose. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO CASE WILL PRIMEKEY BE OBLIGED TO COMPENSATE THE CUSTOMER FOR DAMAGE, BE IT DIRECT OR INDIRECT, CAUSED BY MALFUNCTIONS OF THE SOFTWARE OR THE CUSTOMER’S USE OF IT, NOR IS PRIMEKEY RESPONSIBLE FOR DAMAGE WHICH MAY OCCUR AS A CONSEQUENCE OF THE CUSTOMER’S USE OF THE SOFTWARE SUCH AS LOSS OF DATA, SALES, PRODUCTION OR PROFITS OR ANY DAMAGE TO A THIRD PARTY.

7. INFRINGEMENT
A. PrimeKey undertake to defend, at its own expense, the Customer against any claim, suit or proceeding brought against any of them based on the allegation that the use of any Software within EU or United States furnished by PrimeKey under the Agreement constitutes an infringement of any intellectual property rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights. PrimeKey shall furthermore indemnify the Customer against any costs or damages that the Customer may become liable to pay as a result of a judgment or settlement. The obligation of PrimeKey only applies if the Customer has notified PrimeKey without undue delay in writing of such claim, suit or proceeding and PrimeKey given authority, information, and assistance to settle the claim or control the defense of any suit or proceeding.

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

B. In the event that the Software or any part thereof is in such suit held to constitute an infringement and/or its further use is enjoined within EU or United States, PrimeKey shall promptly, at its own expense and at its option, and to the extent it is reasonable and functional either: (a) replace the infringing Software with non-infringing soft-ware programs and documentation of equivalent function and performance; or (b) modify the Software so that they become non-infringing without detracting from function or performance.

If it is not reasonable for PrimeKey to fulfill its obligations pursuant to the above within a reasonable time, the Customer shall be entitled to a reduction of the price corresponding to the reduced value of the Software resulting from the infringement but not for longer period than five years from its delivery date.

C. PrimeKey’s liability for infringements of the Software does not cover any third party software or infringements caused by Customer. PrimeKey’s entire liability for infringements is limited to what is set forth in this section 7.

8. LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES
A. Notwithstanding anything herein to the contrary, PrimeKey shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of PrimeKey except as specifically set forth herein, or otherwise agreed to in writing.

B. PRIMEKEY’S AGGREGATE LIABILITY ARISING OUT OF THE SALE/LICENSE OF A SOFTWARE TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT THE PRICE FOR THAT SOFTWARE PAID BY CUSTOMER TO PRIMEKEY.

C. IN NO EVENT SHALL PRIMEKEY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF ANTICIPATED PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF THE SOFTWARE OR OF ANY OTHER OBLIGATIONS RELATING TO THIS AGREEMENT OR THE SOFTWARE. The foregoing limitation of liability shall not apply.
to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**D. Excusable delays shall be governed by FAR 52.212-4(f).**

**E. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that PrimeKey would not sell Software absent these limitations.**

**9. AUDIT**

At PrimeKey’s request Customer shall at least annually provide a signed certification verifying that the Software is being used pursuant to the provisions of the Agreement and a listing of the numbers of the systems on which the Software is run. In addition, PrimeKey shall be entitled periodically audit the Customer’s use of the Software to ensure that Customer are using the Software in accordance with the provisions of the Agreement. If an audit reveals that a Customer has used or permitted the use of the software in excess of the amount of licenses purchased, PrimeKey shall obtain payment from the Customer for the excessive use.

**10. SECRECY**

A. During a period of three years from the actual delivery date, neither party may, without the approval of the other party, use or otherwise divulge to a third party information concerning the internal affairs of the other party which may be regarded as a business or professional secret or information which, according to law, is covered by a duty of confidentiality. The duty of confidentiality does not extend to information which a party can show has become known to the party otherwise than in connection with the execution or performance of the Agreement, or which is in the public domain. Nor shall the duty of confidentiality apply where a party is obligated to disclose such information by law, court or government order or binding stock exchange regulations. Customer further undertakes without limitation in time to keep the Software and any and documentation and other information related to the Software strictly confidential, and not to disclose the Software to any third party, without the prior written consent of Licensor. PrimeKey recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

B. A party shall, through confidentiality undertakings with personnel or other appropriate measures, ensure compliance with the above duty of confidentiality. A party shall also ensure that retained subcontractors and their employees sign corresponding confidentiality undertakings.

**11. APPLICABLE LAW, DISPUTES**

A. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States.

B. Reserved.

**12. EXPORT –COMPLIANCE WITH LAW**

A. PrimeKey is responsible for obtaining and maintaining any export licenses required for delivery of Software to the agreed destination to the Customer. Prior to the execution of this agreement, PrimeKey is responsible to provide the relevant export control commodity numbers (the “ECCN codes”) of Software according to US and EU export ad-ministration regulations or the corresponding data according to other applicable regulations. This information shall be updated on an ongoing basis every time a non-insignificant update is provided or when new regulations come into effect.

B. Customer shall comply with all applicable laws, including export controls imposed by the Federal Government of the United States. Without limiting the generality of the foregoing, Customer agrees that it shall not export or re-export any PrimeKey Software to any country without first obtaining all necessary and required licenses, consents and approvals. Customer acknowledges that shipments of the PrimeKey Software may be subject to export laws and that such laws could delay or preclude delivery of PrimeKey Software in the future. Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

**13. GENERAL PROVISIONS**

A. The Agreement, including the schedules and exhibits hereto, together with the underlying GSA Schedule Con-tract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings relating thereto.

B. For purposes of the Agreement, the term “written” means anything reduced to a tangible form by a party, includ-ing a printed or hand written document, e-mail or other electronic format.

C. No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by both PrimeKey and Customer. The failure of either PrimeKey or Customer at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

D. All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if personally delivered or if sent by facsimile transmission, e-mail, courier or other express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth below. Either party may by such notice to the other party change such address.

E. The Agreement shall be binding upon, and inure to the benefit of, PrimeKey and Customer and their respective legal representatives, successors and permitted assigns. The parties shall not assign, sublicense or otherwise transfer any of its duties, hereunder, in whole or in part, without the prior written consent of the other Party.

F. In the event that any provisions contained in this Agreement or any part thereof shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and
void and severed from this Agreement, the remainder of this Agreement shall remain in full force and effect, and the invalid provision shall be replaced with a valid provision which most closely approximates the intent and economic effect of the invalid provision.

G. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.
Description of Maintenance/ Support services for PrimeKey Software

Definitions:
Unless the context or circumstances clearly indicate otherwise, the following words and phrases shall have the meanings specified below:

Business Hours: are the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays.

Major Release: mean major enhancements to the Software Product and is marked by the first digit in the Re-key digits i.e Release 1.2.3. A Major Release does not include enhancements/ new functionality that is sold as a separate module.

Minor Release: mean minor enhancements to the Software Product and is marked by the second digit in the Release digits i.e Release 1.2.3.

Maintenance Release: mean defect corrections and flaws in the finish to the Software and is marked by the third digit in the Release digits i.e Release 1.2.3.

Second Line support

Third Line support
The definitions in the main document and other appendices to the Support and Maintenance Agreement shall also apply in this document.

1. GENERAL

A. Telephone support
Telephone support means that where there is a fault, or suspected fault, in the Software, PrimeKey shall assist the Customer by replying to question from persons specifically appointed by the Customer, provided the time required to answer them is reasonable. Telephone Support is made only in English. Telephone support will be provided during the hours between 9am and 5pm CEST, Monday through Friday excluding legal holidays (“Business Hours”).

Telephone Support does NOT include general system infrastructure, network design or troubleshooting, installation assistance, or configuration support for third party components.

B. Problem Reporting and Tracking Procedures
Customer may use the services described herein only by making reference to the authorized Support and Maintenance Agreement number. A twenty-four (24) hour Support Center HOTLINE is provided for problem reporting, including reporting of problems outside of normal business hours.

C. Services not included
Customer agrees that it will not expect PrimeKey to handle routine support and maintenance issues that are typically the responsibility of a Product end-user and which were explained in reasonable detail during the training conducted by PrimeKey for Customer technical personnel as part of the installation and acceptance testing of the PrimeKey Products. Specifically PrimeKey support does not include any of the following:

a) custom programming services;

b) on-site support, including installation of hardware or software;

c) support of any software not constituting part of the Software;

d) training;

D. Supported Releases of the Software
PrimeKey will provide support for the current Major and Minor Release and the Major or Minor Release preceding the current Release. If Prime Key offers a Major Release PrimeKey will support the last Release in the preceding Minor Release 12 months after notice to the Customer that the support of the Major Release will cease. After this time, PrimeKey shall have no further responsibility for supporting and maintaining the prior releases, but may continue to do so in PrimeKey’s sole discretion.

PrimeKey shall notify the Customer if a Major Release is not compatible with the Software Hardware that is a service object under the Support and Maintenance Agreement.

E. Third party software
PrimeKey’s undertaking does not apply to a Software that is a third party product.

F. Incompatibilities (Exception from PrimeKey’s obligations)
PrimeKey assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software, if Customer has made changes to the Software Hardware or Software configuration in effect as of the effective date this Agreement or to the it environment approved by PrimeKey in writing and were made without prior notification and written approval by PrimeKey.

G. Customer assistance
Customer shall provide all reasonable assistance requested by PrimeKey and PrimeKey shall not be responsible for any delays or failures to support or maintain the Software if and to the extent such failure is a result of Customer’s failure to provide reasonable assistance to PrimeKey or otherwise perform its obligations under the Agreement.

Customer shall provide a description of the commands and procedures that reveal a fault.

H. Second Line support
If it is stated in the main document to the Support and Maintenance Agreement that Customer shall perform Second Line support, Customer shall perform the Second Line support and PrimeKey’s shall only perform Third Line support.

2. SUPPORT SERVICES

A. Support Service Plans

Support Center HOTLINE
PrimeKey will make available support contacts to request servicing of the Products. The initial support contacts are:

a) Issue Tracker at https://jira.primekey.se/, or
b) email at support@primekey.com, or
c) telephone number at +46 8 522 11 660 or (888) 832-0111.

i. Standard Support Service Plan
The Support Center HOTLINE for Standard Support is available during Business Hours.

ii. Premium Support Service Plan
The Support Center HOTLINE for Premium Support is available twenty-four (24) hours a day, seven (7) days a week, three-hundred-sixty-five (365) days a year.

iii. Service Response Times

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B. Severities

Upon receipt by PrimeKey through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Products, PrimeKey shall respond as provided below.

i. Severity 1: Produces an emergency situation in which the PrimeKey Product is inoperable, produces incorrect results, or fails catastrophically.

Service Response: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered as a work-around, emergency software. If PrimeKey delivers an acceptable work-around, the severity classification will drop to a Severity 2.

ii. Severity 2: Produces a detrimental situation in which performance (throughput or response) of the PrimeKey Products degrades substantially under reasonable loads, such that there is a severe impact on use; the PrimeKey Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

Service Response: PrimeKey will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within the SLA period stated in Table A. The resolution will be delivered in the same format as Severity 1 problems. If PrimeKey delivers an acceptable work around for a Severity 2 problem, the severity classification will drop to a Severity 3.

iii. Severity 3: Produces an inconvenient situation in which Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

Service Response: PrimeKey will use reasonable commercial efforts to resolve Severity 3 problems in the next Maintenance Release.

iv. Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correct-able by a documentation change or by a future, regular release from PrimeKey.

Service Response: PrimeKey will provide, if agreed by PrimeKey, as a fix or fixes for Severity 4 problems in future Maintenance Release.

C. Support Incident
PrimeKey, in its reasonable discretion, will determine what constitutes a support Incident. Typically, a support Incident is a situation where Customer needs remedial support focusing on one aspect of the Software Product Severity Levels 1, 2 and 3.

Note that Severity Level 4 from is not considered as a support Incident. One support Incident may involve multiple emails, phone consultations, and off-line research.

A Support Incident has reached resolution when Customer receives one of the following:

a) Information that resolves the issue;

b) Information on how to obtain a software solution that will resolve the issue, or information that identifies the issue as being resolved by upgrading to a new Release of the Software Product;

c) Notice that the issue is caused by a previously known, unresolved issue or an incompatibility issue with the Software;
d) information that isolates issue to a third-party product, not supported by PrimeKey.

3. MAINTENANCE
PrimeKey will maintain the Software by providing Major Releases, Minor releases and Maintenance Releases as the same are offered by PrimeKey to its licensees of the Software under maintenance generally. Releases will be provided on an as-available basis and include the items listed below:

a) Bug fixes;

b) Enhancements to keep current with the Software Hardware delivered under the same Delivery Agreement as the Software; and

c) Performance enhancements to the PrimeKey Software; but

Releases do not include:

a) Platforms not included in Software;

b) new functions such as new applications/modules.

Releases will be provided in object code or update archives and updates to related documentation will be made available for electronic download. All such deliveries shall be made by a single communication to the Agreement Coordinator. Duplication, distribution and installation of releases are the responsibility of Customer. If requested, PrimeKey will provide assistance in the installation of Releases on a time and materials basis, plus expenses.

PrimeKey will not be responsible for incompatibilities as set forth in section 1.F above.

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

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

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

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

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

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

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

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

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

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

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

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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

CATBIRD NETWORKS, INC.

CATBIRD NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

ARTICLE 1: DEFINITIONS

“Catbird” means Catbird Networks Inc., 1800 Green Hills Road Suite 113, Scotts Valley, CA 95066.

“Catbird Control Center” is a web-based management console for managing one or more Catbird Virtual Machine Appliances (as defined below).

“Catbird Virtual Machine Appliance” is software that provides security by connecting to physical or virtual network switches.

“Catbird Virtual Security Professional” or “CVSP” is a suite of training materials comprising curricula and software.

“Catbird vSecurity® Application” comprises two components: the Catbird Virtual Machine Appliance and the Catbird Control Center. The Catbird Virtual Machine Appliance operates in existing virtual infrastructures or as a standalone virtual machine using a virtual machine player technology. The Catbird Control Center provides management, data correlation, data analysis, logging and integration with other vendor products.

“Seat” means a named individual user of CVSP.

“Socket” means a CPU slot on a printed circuit board (PCB) that is designed to house a CPU (also called a microprocessor). CPU sockets are found on the motherboard of server computers.

“Software” means the Catbird vSecurity® Application and CVSP, including (a) all of the contents of the files, download packages delivered to Ordering Activity or hosted by Catbird or its distributors, resellers, OEM/MSP partners, or other business partners (collectively “Authorized Partner(s)”) and accessed by Ordering Activity, including but not limited to (i) Catbird or third party computer information or software; (ii) related explanatory materials in printed, electronic, or online form, including information on the term of Ordering Activity license (“Documentation”); and (b) upgrades, modified or subsequent versions and updates of the Software, if any, licensed to Ordering Activity by Catbird or an authorized partner as part of a maintenance contract or service subscription.

“Use” or “Using” means to access, install, download, copy or otherwise benefit from the Software.

ARTICLE 2: LICENSE GRANTS

Section 2.1 Catbird Control Center License. Contractor hereby grants Ordering Activity, as defined in GSA Order ADM4800.2H and revised from time to time, a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and use Catbird Control Center on Ordering Activity computer(s), for the sole purpose of managing Catbird Virtual Machine Appliances. Ordering Activity license is for the number ofSeats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.2 Catbird Virtual Machine Appliance License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install, and use the Catbird Virtual Machine Appliance software on Ordering Activity computer(s), for the sole purpose of implementing network security controls and virtual infrastructure monitoring within Ordering Activity network. Ordering Activity license is for the number of Sockets set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.3 CVSP License. Contractor hereby grants Ordering Activity a worldwide, perpetual, nonexclusive, nonsublicensable, nonassignable license to download, install and use CVSP for the sole purpose of Using the Catbird vSecurity® Application. Ordering Activity’s license is for the number of Seats set forth in the most recently-issued license certificate delivered to Ordering Activity by Contractor.

Section 2.4 Feedback License. Ordering Activity hereby grant to Catbird through Contractor a royalty-free, worldwide, irrevocable, perpetual license to make any and all use of any and all suggestions, enhancement requests, recommendations or other feedback provided by Ordering Activity or on Ordering Activity’s behalf relating to the Software, any portion thereof, or any Documentation and training materials associated therewith.

ARTICLE 3: USE OF THE SOFTWARE

Section 3.1 No Third-Party Grants. Ordering Activity will not sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Software or any portion thereof.

Section 3.2 No Improper Use. Ordering Activity will not (i) permit any third party to access the Software or make the Software available for access by any third party unless expressly agreed to in writing by Catbird, (ii) copy, frame or mirror any part or content of the Software, (iii) access the Software in order to build a competitive product or service, (iv) copy any features, functions or graphics of the Software, (v) Use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (vi) Use the Software to store or transmit malicious code or software, (vii) interfere with
or disrupt the integrity or performance of the Software or third-party data contained therein, (viii) attempt to gain unauthorized access to the Software or its related systems or networks, or (ix) Use the Software, alone or in combination with other components, to infringe the intellectual property rights of any third party.

Section 3.3 No Reverse Engineering. Ordering Activity will not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Software or any portion thereof. Any source code, ideas, know-how, techniques, algorithms, procedures, and any other concepts derived from any act performed in violation of this Section 3.3 shall constitute intellectual property of Catbird to which Catbird shall retain all exclusive right, title, and interest, and to which the terms of Section 4.1 shall apply.

Section 3.4 No Unlawful Use. Ordering Activity will Use the Software solely for lawful purposes. In this respect, Ordering Activity may not, without limitation (a) intercept or monitor any equipment that is not Ordering Activity’s; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Software; (c) Use the Software to cause or intend to cause embarrassment or distress to, or to threaten, harass any third party.

Section 3.5 Consent. If Ordering Activity Use of the Software is dependent upon the use of a processor and bandwidth owned or controlled by a third party, Ordering Activity acknowledge and agree that Ordering Activity license to Use the Software is subject to Ordering Activity obtaining consent from the relevant third party for such use. Ordering Activity represent and warrant that by accepting this Agreement and using the Software, Ordering Activity have obtained such consent.

ARTICLE 4: EXCLUSIVE OWNERSHIP

Section 4.1 Owned by Catbird. As between Ordering Activity and Catbird, Catbird shall own all right, title, and interest in and to the Software and any associated Documentation and training materials, including all related intellectual property rights ("IP Rights"). Nothing in this Agreement shall be construed to transfer any such IP Rights to, or to vest any such IP Rights in, Ordering Activity. Ordering Activity will not take any action to jeopardize, limit or interfere with Catbird’s IP Rights. Any unauthorized use of Catbird’s IP Rights is a material breach of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws. For the avoidance of doubt, Ordering Activity possession, installation, or Use of the Software does not transfer to Ordering Activity any title to the intellectual property in the Software, and Ordering Activity will not acquire any rights to the Software except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices that appear on and in the Software and Documentation.

Section 4.2 No Removal of Notices. Ordering Activity will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or Catbird’s rights in the Software or any associated documentation and Training Materials and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

ARTICLE 5: UPGRADES AND UPDATES

Section 5.1 Upgrades. Contractor, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Software. Contractor has no obligation to make available to Ordering Activity any subsequent versions of the Software.

Section 5.2 Updates. Contractor, in its sole discretion, reserves the right to updates security information to the Catbird vSecurity® Application. Contractor has no obligation to make available to Ordering Activity any subsequent updates to the security information contained within the Catbird vSecurity® Application.

ARTICLE 6: RESERVED

ARTICLE 7: INDEMNIFICATION, WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY

Section 7.1 Reserved.

Section 7.2 Warranty Disclaimer. CONTRACTOR MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, CONTRACTOR, ITS SUPPLIERS, AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, SATISFACTORY QUALITY, OR INTEGRATION. WITHOUT LIMITING THE FOREGOING PROVISIONS, CONTRACTOR MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

Section 7.3 Reserved.

ARTICLE 8: TERMINATION

Section 8.1 Reserved.

Section 8.2 Reserved.
Section 8.3 **Consequences of Termination.** Upon termination of this Agreement:
(a) all licenses and rights to Use the Software shall immediately terminate; (b) Ordering Activity will immediately cease any and all Use of the Software; and (c) Ordering Activity will immediately remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in Ordering Activity’s possession or under Ordering Activity’s control.

**ARTICLE 9: MISCELLANEOUS**

Section 9.1 **Export Controls.** Ordering Activity are advised that the Software is of United States origin and subject to the United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. Ordering Activity agree not to directly or indirectly export, import, download or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government). Additionally, Ordering Activity agree not to directly or indirectly export, import or transmit the Software contrary to the laws or regulations of the United States.

Section 9.2 **Government End Users.** The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any Use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Schedule Contract and shall be prohibited except to the extent expressly permitted by the terms of this Schedule Contract.

Section 9.3 **Reserved.**

Section 9.4 **Reserved.**

Section 9.5 **No Waiver.** No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

Section 9.6 **Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the Parties shall negotiate in good faith a substitute, valid, and enforceable provision that most nearly reflects the Parties’ intent in entering into this Agreement.

Section 9.7 **Catbird Customer Contact.** If Ordering Activity have any questions concerning this Agreement, or if Ordering Activity would like to contact Catbird for any other reason, please call (831) 440-8149, fax (831) 461-1611, or write: Catbird Networks, Inc., Attention: Customer Service, 1800 Green Hills Road, Suite 113, Scotts Valley, California 95066
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibits such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

CENTRIFY CORPORATION

CENTRIFY CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

GRANT. Contractor hereby grants to Ordering Activity (herein also referred to as “You” or “Your”) as licensee, a personal, nonexclusive, nontransferable license, without right of sublicense, to install, use and execute, Centrify DirecControl, together with any updates and modifications to the foregoing, if any, provided to you by Contractor (collectively “Software”). The Software is licensed solely in machine readable object code format. You may install, use and execute the component(s) of the Software on that number and type of applications and computers for which you have paid Contractor a GSA license fee. The manner of calculating the type and number of applications and computers shall be determined by the operation and configuration of the Software, the terms of the Documentation, and/or Centrify’s standard practices, unless otherwise agreed in a fully executed agreement between you and Contractor. Contractor further grants you a personal, nonexclusive, nontransferable license to install, use, execute and modify the Group Policies supplied, in their source code form, as part of the Software, solely for the purpose of modifying the Group Policies and Reports to meet your specific needs (“Modified Group Policies and Reports”). Except as provided herein, the Modified Group Policies and Reports shall be deemed to be Software hereunder.

RESTRICTIONS. The rights granted herein are subject to the following restrictions: (i) you may not copy (except for back-up purposes), modify, port, adapt, translate, localize, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except and only to the extent that it is expressly permitted by the law in effect in the jurisdiction in which you are located notwithstanding this limitation; (ii) you may not create derivative works based on the Software; (iii) you may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or Documentation; (iv) you may not transfer, lease, assign, sublicense, pledge, rent, share or distribute the Software or make it available for timesharing, service bureau or on-line use, unless previously agreed to in writing by Contractor; and (v) you may not disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Contractor.

SOFTWARE. If you receive your first copy of the Software electronically, and a second copy on physical media, the second copy may be used for archival purposes only. This Attachment A does not grant you any right to receive, or any license to, any enhancement or any other Centrify software.

TITLE. The Software and Documentation are confidential and proprietary information of Contractor and/or its suppliers. Title, ownership rights, and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This license gives you no rights to such content. This license does not convey to you an interest in or to the Software, but only grants you a limited right of use, which may be revocable in accordance with the terms of this Attachment A.

MAINTENANCE AND TECHNICAL SUPPORT. Subject to your payment of applicable GSA fees, Contractor through Centrify will provide maintenance and support services in accordance with Centrify's standard support policies. You understand that Centrify may update the software at any time. Such updates may be provided to you in due course, but Centrify has no obligations to provide such updates to you. You may decide whether to install updates to the Software unless Contractor, through Centrify expressly notifies you that a particular update is mandatory.

DISCLAIMER OF WARRANTIES. THE SOFTWARE IS PROVIDED TO YOU AS IS AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY CONTRACTOR OR ITS SUPPLIERS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, INCLUDING WARRANTIES OR CONDITIONS OF TITLE, QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATIONS OF THE SOFTWARE WILL BE UNINTERRUPTED. CONTRACTOR AND ITS SUPPLIERS DO NOT WARRANT THE ACCURACY OF THE REPORTS GENERATED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS ATTACHMENT A AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

U.S. GOVERNMENT RESTRICTED RIGHTS. If the Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the government's rights in Software and Documentation, including its rights to use, modify, reproduce, release, perform, display or disclose the Software or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in this Attachment A.

EXHIBIT A – CENTRIFY SUPPORT PACKAGES

Support Packages

Contractor through Centrify offers two customer support packages, Standard and Premium, to provide the right level of support to fit your organization’s specific needs.

Standard Support

GS-35F-0511T
Support by phone and email.
Access to Centrify’s secure Online Customer Support Portal, which includes Knowledge Base articles, case submission and tracking, and product and documentation downloads
Two designated support contacts.
An escalation process to ensure your issues are addressed in a timely manner.
Online product updates and patch downloads.

Premium Support
All Standard Support features, plus …
24 x 7 x 365 support.
Two additional designated support contacts (for a total of four).
Eligible for extended version and platform support.

After hours Incident Support
Pre-purchased Premium incidents for Standard Support customers
Expires 90 days from purchase.

How to Contact Support
Contractor through Centrify Support is accessible through multiple channels.

Online
Centrify’s secure Online Customer Support Portal provides 24-hour access to Knowledge Base articles, case submission and tracking, and product and documentation downloads. Visit: www.centrify.com/support

Phone & Email
North America (and all other areas excluding EMEA)
Phone: +1 408 542 7500
Monday – Friday 9 a.m. to 6 p.m. in your North America time zone (GMT -5 to GMT -8)
Email: support.us@centrify.com
Response times vary based on your support package and the priority level of the issue.

Europe, Middle East and Africa (EMEA)
Phone: +44 118 965 7887
Monday – Friday 9:00 to 18:00 Central European Time (GMT +1)
9:00 to 18:00 UK (GMT)
Email: support.emea@centrify.com
Response times vary based on your support package and the priority level of the issue.

Priority Levels & Response Times

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Standard Hours</th>
<th>Premium Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 Production System Down</td>
<td>4 Business Hours</td>
<td>2 Business Hours</td>
</tr>
<tr>
<td>Level 2 Development System Down</td>
<td>6 Business Hours</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Level 3 Serious Software Problem</td>
<td>8 Business Hours</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Level 4 General Usage Problem</td>
<td>24 Business Hours</td>
<td>24 Business Hours</td>
</tr>
<tr>
<td>Level 5 Feature Request</td>
<td>24 Business Hours</td>
<td>24 Business Hours</td>
</tr>
</tbody>
</table>

Note: These are standard case response times and not case resolution times. A response means that we will contact you to 1) acknowledge receiving your issue report and 2) get any additional information that we will need in order to assist you.

Escalation Procedures

Every issue report is tracked from the time you contact us until we jointly agreed that the issue has been resolved. Based on the priority of an issue, Contractor through Centrify Support escalates customer cases through our organization to ensure your business-critical issues receive a quick resolution.

In general, if you are not satisfied with the responsiveness of our Support staff, the issue can be escalated to your Regional Sales Representative. If you are still not satisfied, the issue can be further escalated to the Vice President of Support.
Product Updates

Purchasing either Standard or Premium Support entitles you to product updates at no additional charge during the term and type of the maintenance contract for all Centrify products licensed and covered by maintenance.

You can obtain the latest versions of Centrify software through our Online Customer Support Portal: www.centrify.com/support
End User License Agreement

RECITALS:

CBT Nuggets is engaged in the business of creating and selling information technology training materials, including, but not limited to, applications and platforms, individual videos within a series, entire series, series packages, supplemental materials, Learner resources, quiz questions, proprietary instances of the virtual lab and/or access to any portions thereof (the “CBT Content”). Specific to this Agreement, CBT Nuggets offers a streaming subscription to access the CBT Content offered by CBT Nuggets through its website located at http://www.cbtnuggets.com (the “Website”), the CBT Nuggets mobile applications (“Apps”), as well as other learning resources and team coaching services (collectively the “Services”). The Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Government Customer” or “Ordering Activity”) desires to access the CBT Content and, as applicable, to make the CBT Content and Services available to Government Customer’s employees and contractors (individually “End User” and collectively the “End Users”), and CBT Nuggets desires to provide the same pursuant to the terms and subject to the conditions of this End User License Agreement (“Agreement”).

AGREEMENT:

The Parties agree as follows:

GRANT OF LICENSE.

While Government Customer has an active subscription to access the CBT Content through the Website, CBT Nuggets grants Government Customer non-transferrable, non-royalty bearing, non-assignable (except as explicitly permitted herein), non-exclusive, non-sublicensable licenses to access, view and to use the CBT Content. The licenses are solely for use by Government Customer and its End Users. Government Customer may not copy, reproduce, reverse engineer, translate, port, modify or make derivative works of the CBT Content in whole or in part. Government Customer may not rent, sell, assign, lease, sublicense, market, publish, display, distribute or transfer the CBT Content in any manner not expressly authorized by this Agreement without the consent of CBT Nuggets. Government Customer shall communicate to all End Users the restrictions and limitations of the license as set forth in this Paragraph 1. Each license is a single user license and the single user license must be connected to a named End User. The email address attached to license must be specifically associated solely with that individual End User. Government Customer may reassign to a new End User any single user license that has been held by another End User for at least thirty (30) days prior to any such assignment. Upon Government Customer’s discovery and/or the request of CBT Nuggets, Government Customer agrees to promptly remedy any violation of this Paragraph 1 and to provide CBT Nuggets with sufficient evidence that Government Customer is in compliance with this Paragraph 1.

WHEN THE END USER IS AN INSTRUMENTALITY OF THE U.S., RECOURSE AGAINST THE UNITED STATES FOR ANY ALLEGED BREACH OF THIS AGREEMENT MUST BE MADE AS A DISPUTE UNDER THE CONTRACT DISPUTES CLAUSE (CONTRACT DISPUTES ACT). DURING ANY DISPUTE UNDER THE DISPUTES CLAUSE, CBT NUGGETS SHALL PROCEED DILIGENTLY WITH PERFORMANCE OF THIS AGREEMENT, PENDING FINAL RESOLUTION OF ANY REQUEST FOR RELIEF, CLAIM, APPEAL, OR ACTION ARISING UNDER THE AGREEMENT, AND COMPLY WITH ANY DECISION OF THE CONTRACTING OFFICER.
End Users connected to a valid license may access additional training resources, as provided by CBT Nuggets, including Accountability Coaching, access to the Learner Community, and other training offerings. Access to such resources are as available and dependent upon an End User’s professionalism and decorum while enaging such resources, CBT Nuggets staff, and/or other End Users through such resources or the Services.

Access to and use of the CBT Nuggets Content and Services is inextricably linked to the processing of personal data, as outlined in the CBT Nuggets Privacy Policy available at [https://www.cbt nuggets.com/privacy](https://www.cbt nuggets.com/privacy).

**Limited Warranty.** Each party warrants to the other party that it has all necessary authority to enter into and perform its obligations under this Agreement. CBT Nuggets further warrants that: (i) any Services provided under this Agreement and the Order Form will be performed in a professional manner in accordance with the prevailing industry standards; (ii) the Services will be performed substantially in accordance with any applicable CBT Nuggets documentation under normal use and circumstances; and (iii) the functionality and accessibility of the CBT Content will not be materially decreased during the term of this Agreement. Government Customer’s exclusive remedy for any breach of these warranties shall be to terminate this Agreement pursuant to Paragraph 5 herein.

**Disclaimer of Warranties.** Except as expressly provided in Paragraph 3 of this Agreement, the CBT Content and Services are provided to Government Customer on an “AS IS” and “WITH ALL FAULTS” basis. The CBT Content and Services are complex and may contain nonconformities, defects or errors. CBT Nuggets does not warrant that the CBT Content and Services will be error free. CBT Nuggets does not make any warranty, express or implied, and hereby disclaims any and all warranties, including but not limited to, warranties of merchantability and fitness for a particular purpose.

**Intellectual Property.** All right, title and interest in and to the CBT Content and Services, and the content, materials, and data contained therein, including any applicable statutory or common law trademarks and/or copyrights expressly reserved by CBT Nuggets. No portion of the CBT Content may be copied, reproduced, distributed, displayed, transferred or assigned without the express written consent of CBT Nuggets.

**TERM AND TERMINATION.**

**Term.** The term of Government Customer’s subscription period for accessing the CBT Content and the related services shall commence on the Effective Date and shall continue for the duration stated on the Order Form. Unless the Parties otherwise agree in writing, through the execution of a renewal or extension of this Agreement (“Renewal Order Form”), once any applicable subscription period has concluded, the licenses granted by this Agreement shall immediately terminate and Government Customer shall have no further right to access, review or use in any manner any CBT Nuggets content, including the CBT Content.

**Termination for Cause.** When the End User is an instrumentality of the United States, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Act. During any dispute under the Disputes Clause, CBT Nuggets shall proceed diligently with performance of this Agreement, pending final resolution for relief, claim, appeal, or action arising under this Agreement, and comply with any decision of the Contracting Officer.

**Effect of Termination of Services.** Upon expiration of Government Customer’s subscription authorized under the Order Form or, as applicable, the Renewal Order Form, Government Customer shall immediately discontinue all access and use of the CBT Content. Neither Party shall be liable for any damages resulting from a termination of this Agreement in accordance with this Paragraph 5. Those sections of this Agreement, which by their nature should survive, shall survive.

**Governing Law and Venue.** In the event of any dispute or claim relating to or arising out of this Agreement shall be governed by, and construed and interpreted in accordance with United States Federal law, and any action seeking legal or equitable relief will be brought and adjudicated only in the courts of the United States.

**MISCELLANEOUS PROVISIONS.**

**Notices.** Notices may be provided by either electronic or physical mail as provided in the Order Form. If no email address is stated, then physical mail shall be the only method of providing notice. The person(s)/department(s) identified in the Order Form will receive notices on behalf of their respective party. Each
Party may change the person(s)/department(s) to which notices shall be sent by providing written notice to the other Party.

**Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Entire Agreement.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) and the CBT Nuggets Privacy Policy sets forth the entire understanding between CBT Nuggets and Government Customer with respect to the subject matter hereof, and supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. No other rights are granted hereunder except as expressly set forth in this Agreement.

**Order of Precedence, Conflicting Terms.** In the event of any conflict between the terms contained in the Agreement and the Order Form, the terms of the Order Form shall take precedence.

**Compliance with Laws.** Both Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the CBT Content under this Agreement to the extent permitted by United States Federal law and does not limit the sovereignty of the United States.

**STANDARD TERMS.**

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The vendor shall state separately on its invoices taxes excluded from the fees, and the Government Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

The vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor. When the end user is an instrumentality of the U.S. Government, neither this Agreement, the Order Form, nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

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

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract, and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DGs and Attachments U.S.C. § 1496 (Patent and copyright cases))). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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

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

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

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

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

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

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

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

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Licensed Configuration” means to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of users, devices or nodes (an internal computing device with an IP address) on the trusted side of the network or that is trying to traverse the firewall, and the numbers of cores, or the maximum throughput capacity stated, or the code generated from the master installation, or any other hardware or software specifications, as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. If the Product purchased by You does not come with a License Key then the Licensed Configuration shall be the minimum configuration allowed for the Product by Check Point upon which the licensing fee was based.

“Licensed-server” means the server or appliance (defined by the host ID identified by You to Contractor through Check Point when obtaining the License Key) which enables the Product to operate in accordance with the Licensed Configuration. “License Key” means the code provided to You by Contractor through Check Point, which enables the Product to operate on the Licensed-server or appliance for the specified Licensed Configuration.

“Product” means the object code copy of the software program, including Third Party Software, provided to You, together with the associated original electronic media and/or associated hardware devices (“Hardware Products”) and all accompanying manuals and other documentation, if available, and together with all enhancements, upgrades, and extensions thereto that may be provided by Contractor through Check Point to You from time to time.

“Standard User” means You indicated in Your purchase order or in requesting the License Key that You intend to use the Products on Your own behalf, or You obtained the products from a Managed Service Provider, reseller, vendor or any other intermediate supplier.

“Third Party Software” means any software programs provided by third parties contained in the Product.

“Third Party Software Provider” means the third party that has the right to provide and grant licenses for the use of Third Party Software.

“You” or “Your” means Ordering Activity.

2. LICENSE AND RESTRICTIONS:

License. Contractor hereby grants only to You, a non-exclusive, non-sublicensable, non-transferable perpetual license (with the exception of (i) the license shall not be perpetual if the Product is designated for a limited time period only, in which case the license shall terminate at the expiration of the applicable period; and (ii) with regards to any Hardware Product, the license shall be valid only as part of and for the life of the originally designated Hardware Product) to install and use the copy of the Product in accordance with the relevant end user documentation provided by Contractor only on the Licensed-server and only for the Licensed Configuration. You have no right to receive, use or examine any source code or design documentation relating to the Product.

Standard User Restrictions. If You are a Standard User, the Products are licensed to You solely for use by You to provide policy management for Your own operations. To the extent applicable, You may reproduce the downloaded or installed Product for the purpose of connecting only with a duly licensed Check Point product, in accordance with the functionality, as described in the accompanying documentation for which You have paid the applicable fees to Contractor, and only within the designated limits of Your Product license for which You have purchased and provided to users, according to the restricted, maximum, authorized number of users, computer instances (means a computing unit individuated by an instance of an operation system), or copies of the Product (as the case may be) that can be used and installed at any given time. No Product, nor any portion thereof, may be used by or on behalf of, accessed by, re-sold to, rented to, or distributed to any other party.

General Restrictions. Except for copies solely for back-up or disaster recovery purposes or as may be permitted by applicable law, You may not copy the Product, in whole or in part. You must reproduce and include the copyright notice and any other notices that appear on the original Product on any back up copy. You agree not to allow others to use the Product and You will not use the Product for the benefit of third parties. You acknowledge that the source code of the Product, and the underlying ideas or concepts, are valuable intellectual property of Check Point and You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decipher, reverse translate, decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms or file formats or programming or interoperability interfaces of the Products by any means whatsoever. You will not develop methods to enable unauthorized parties to use the Product, or to develop any other product containing any of the concepts and ideas contained in the Product not independently developed by You. You will not (and will not direct any third party to) modify Product or incorporate any portion of Product into any other software or create a derivative work of any portion of the Product. You will not (and will not direct any third party to) remove any copyright or other proprietary notices from the Product. Your use of the Product may require the purchase of separate licenses to use particular features, functionalities, operations, or capabilities.

Specific Restrictions. The Product is licensed to You based on the applicable Licensed Configuration purchased, as set forth in the Licensed Configuration definition in Section 1. The License permits the use of the Product only in accordance with the Product specifications as declared by You in Your purchase order, or request for License Key, and upon which the licensing fee was based. It is
a violation to create, set-up or design any hardware, software or system which alters the number of readable IP addresses, users, number of cores or exceeds the maximum throughput capacity presented to the Product with the intent, or resulting effect, of circumventing the Licensed Configuration.

**Disabled License-server.** The License Key You obtain from Contractor through Check Point enables the Licensed-server which enables You to use the Licensed Configuration of the Product. If your Licensed-server is disabled for any reason, Check Point may, at its sole discretion, issue You another License Key which will enable You to operate this Product on a substitute Licensed-server. In this event, You agree not to use the Product on the original Licensed-server nor its License Key.

**Customization for Product with VPN Functionality.** For a Product with VPN functionality, customization is permitted to allow the inclusion of a button on the left side of the authentication challenge/response dialog, and the insertion of text in the authentication success and authentication failure dialog boxes; provided, however, that the Product is used to communicate with a Check Point VPN-1 gateway licensed to the entity using the Product and the customization may not contain any reference to a competitive gateway or to Check Point products or services without Contractor's prior written approval.

**Check Point Data Loss Prevention (“DLP”) Blade, DLP-1 Product Family and Document Security Product Family.** If you are using any of these products, in many countries you may be required to advise users that their data, actions taken on the data, and web traffic may be inspected. Please consult the Check Point user guide and local laws as applicable.

**Third Party Violation.** In purchasing a Product, You are acknowledging that Contractor through Check Point may need to make a determination for You on the potential effect the identified programs may have on Your system. You agree that the Product may automatically delete and/or restrict access to certain programs and/or provide to You the customized ability to delete and/or restrict access to certain programs. The deletion and/or restriction of access to any of these programs may be in violation with other license agreements that You have knowingly or unknowingly agreed to. The deletion and/or restriction of these programs and the potential violation of a third party license is Your responsibility. Check Point has no ability to verify what, if any, third party agreements You may have agreed to.

**Inspecting Encrypted Traffic.** Certain Check Point products and/or features may enable the inspection of encrypted traffic. The ability to define the inspection rules is provided to You and You may define it based on your organizational needs. However, it shall be Your sole responsibility to comply with all applicable laws and regulations in defining Your inspection rules and privacy regulations. You understand that this feature enables decrypting the traffic at the gateway in order to inspect it, after which it is re-encrypted before it is sent to the server.

3. **TITLE AND INTELLECTUAL PROPERTY:**

All right, title, and interest in and to the Product shall remain with Check Point and its licensors. The Product is protected under international copyright, trademark and trade secret and patent laws. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

4. **LIMITED WARRANTY, WARRANTY DISCLAIMERS:**

**Limited Software Warranty.** Contractor warrants to You that the encoding of the software program on the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its user manual, as it exists at the date of delivery, for a period of ninety (90) days. Contractor's liability and Your remedy under this warranty shall be, at Contractor's option, either: (i) return of the price paid to Contractor for the Product, resulting in the termination of the purchase order, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CONTRACTOR DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. CONTRACTOR DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so the above limitations may not apply to You. This warranty gives You specific legal rights.

5. **PRE-RELEASE VERSIONS:**

**License Grant.** With respect to any pre-release version of a Check Point product, including a Beta or an Early Availability product (all collectively referred to herein as a “Beta Product”) that may be provided to You by Contractor through Check Point from time to time, at its sole discretion, Contractor grants You a non-transferable and non-exclusive license to use the Beta Product for evaluation purposes only. The license is designed to provide You with early operational experience with the Beta Product and to provide Check Point with specified information regarding Your experiences with the installation and operation of the Beta Product. The license shall be in effect for a limited period as determined by Check Point and certain other restrictions may apply. You may be asked to sign a separate agreement pertaining to the Beta Product.

**No Obligations.** Contractor has no obligation to provide support, maintenance, upgrades, modifications, or new releases for a Beta Product. Owing to the experimental nature of the Beta Product, You are advised not to rely exclusively on the Beta Product for any reason. YOU AGREE THAT THE BETA PRODUCT AND RELATED DOCUMENTATION ARE BEING DELIVERED "AS IS" WITHOUT WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CONTRACTOR BE LIABLE TO YOU OR ANY OTHER PERSON FOR DAMAGES, DIRECT OR INDIRECT, OF ANY NATURE OR EXPENSES INCURRED BY YOU IN CONNECTION WITH THE BETA TESTING. YOUR REMEDY SHALL BE TO TERMINATE THE BETA TEST AND THIS LICENSE BY WRITTEN NOTICE TO CONTRACTOR.
EXHIBIT A – CHECK POINT HARDWARE WARRANTY:

1. LIMITED HARDWARE WARRANTY:

Contractor warrants that the hardware components of its Hardware Product shall be free from material defects in design, materials, and workmanship and will function, under normal use and circumstances, in accordance with the documentation provided, for a period of one (1) year from the date of activation of the Hardware Product. If the Hardware Product has not been activated, the warranty will be valid for fifteen (15) months from the date of Contractor’s shipment of the Hardware Product (“Warranty Period”).

After the Warranty Period, certain return material authorization (“RMA”) services, as provided by Contractor through Check Point (which are not covered under this warranty), are available for all Hardware Products pursuant to a purchased and active Check Point support agreement.

Ordering Activity’s (herein also referred to as “You” or “Your”) remedy, and Contractor’s liability for defective hardware components, shall be that Contractor through Check Point, upon confirmation of a defect or failure of a hardware component to perform as warranted, shall at its sole option, either repair or replace the nonconforming hardware component or return of the price paid for the Hardware Product. All replacement parts furnished to you under this warranty shall be refurbished and equivalent to new, and shall be warranted as new for the remainder of the original warranty period. If a hardware failure occurs in the first 30 days from the product’s software activation, Contractor through Check Point will replace it with new part or full unit as may be needed. All defective parts, which have been replaced, shall become the property of Check Point. All defective parts that have been repaired shall remain Your property. This warranty gives You specific legal rights.

2. EXCLUSIONS:

The foregoing warranties and remedies shall be void as to any Hardware Products damaged or rendered unserviceable by one or more of the following: (1) improper or inadequate maintenance by anyone other than Contractor or Contractor’s authorized agents, (2) software or interfacing supplied by anyone other than Contractor, (3) modifications, alterations or additions to the Hardware Products by personnel not certified by Contractor or Contractor’s authorized agents to perform such acts, or other unauthorized repair, installation or opening or other causes beyond Contractor's control, (4) unreasonable refusal to agree with engineering change notice programs, (5) negligence by any person other than Contractor or Contractor's authorized agents, (6) misuse, abuse, accident, electrical irregularity, theft, vandalism, fire, water or other peril, (7) damage caused by containment and/or operation outside the environmental specifications for the Hardware Products, (8) alteration or connection of the Hardware Products to other systems, equipment or devices (other than those specifically approved by Contractor) without the prior approval of Contractor, or (9) any use that is inconsistent with the user manual supplied with the Hardware Product. The warranty period is not extended if Contractor through Check Point repairs or replaces a warranted product or any parts. Contractor may change the availability of limited hardware warranties, at its discretion, but any changes will not be retroactive.

3. HARDWARE RETURN PROCEDURES:

If a Hardware Product or one of its component parts does not function as warranted during the warranty period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide either return and replacement service or replacement with a refurbished part/unit for the Hardware Product under the type of warranty service Check Point designates for that Hardware Product. A defective Hardware Product or one of its component parts may only be returned to Check Point upon Check Point's prior written approval. Any such approval shall reference an RMA number issued by an authorized Check Point service representative. To request an RMA number, you or your local Check Point Certified Solution Provider (“CCSP/CSP/ACS/P”) must contact Check Point's Technical Assistance Center (“TAC”) and open a Service Request. You should always register the Hardware Product in your Check Point User Center account. If you do not register the Hardware Product with Check Point, you may be required to present proof of purchase as evidence of your entitlement to warranty service. The Hardware Product's identification number will be required for all RMA cases.

Transportation costs, if any, incurred in connection with the return of a defective Hardware Product to Contractor through Check Point shall be borne by You. Any transportation costs incurred in connection with the redelivery of a repaired or replacement item to You by Check Point shall be borne by Check Point; provided, however, that if Check Point determines, in its sole discretion, that the allegedly defective item is not covered by the terms and conditions of the warranty or that a warranty claim is made after the warranty period, the cost of the repair by Check Point, including all shipping expenses, shall be reimbursed by You.

4. HARDWARE REPLACEMENT PROCEDURES:

Contractor through Check Point will attempt to diagnose and resolve your problem over the phone or web. Upon determination of the hardware issue is related to a malfunction of one of the Hardware Product components, an RMA process will be initiated by Check Point's TAC. Check Point's TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement.

For Warranty Replacement service, it is required that you deliver the faulty unit to a location Contractor through Check Point designates, and provide courier name and tracking number to Check Point’s TAC. After the Faulty unit is returned to Check Point, Check Point will use commercially reasonable efforts to ship the replacement hardware within seven (7) business days. Actual delivery times may vary depending on Your location. Check Point’s TAC will send the required hardware to the Hardware Product’s physical location, as it appears in your User Center and as verified with You when opening the Support Service Request.

For Hardware Advanced Replacement, support options Standard, Standard Onsite, Premium, and Premium Onsite are available for
customers who have purchased the Hardware Product support plan with Contractor.

5. HARDWARE RETURN PROCEDURES:

If a defective Hardware Product covered under warranty fails to operate within thirty (30) days from its activation, but no more than one hundred and twenty (120) days from the date of Contractor’s shipment of the Hardware Product, Contractor through Check Point will provide expedited replacement of a new unit within two (2) business days from Check Point fulfillment hub, following confirmation of any such failure. Customers outside of the fulfillment hub region should allow for additional transit time due to international customs clearance.

6. ADDITIONAL RESPONSIBILITIES:

You agree:

Before Contractor or its partner exchanges a Hardware Product or part, to remove all features, parts, options, alterations, data and attachments not under warranty service and ensure that the Hardware Product is free of any legal obligations or restrictions that prevent its exchange.

To obtain authorization from the owner to have Contractor or its partner service a Hardware Product that you do not own.

Where applicable, before service is provided:

- Follow the service request procedures that Contractor or its partner provides;
- Backup and secure all programs and data in the Hardware Product;
- Inform Contractor or its partner of changes in the Hardware Product physical location.

To provide Contractor or its partner with sufficient and safe access to your facilities to permit Contractor to fulfill its obligations.

To ship back the faulty Hardware Product (or replaceable unit) suitably packaged according to the guidelines as Contractor through Check Point specified in the letter shipped with the RMA, to the Check Point designated location.

You shall ship the faulty Hardware Product once TAC approves the RMA and provide the courier name and tracking number to TAC before Contractor through Check Point processes the RMA.

If you are a customer who has purchased the support plan with Contractor covering Advanced Replacement Service, You will ship the faulty Hardware Product within five (5) business days of the arrival of the RMA.

To securely erase from any Hardware Product you return to Contractor through Check Point for any reason all programs and data not provided by Check Point with the Hardware Product. You acknowledge that in order to perform its responsibilities under this Limited Hardware Warranty, Check Point may ship all or part of the Hardware Product or its software to third party locations around the world, and you authorize Check Point to do so.

EXHIBIT B - CHECK POINT DIRECT SUPPORT PROGRAM:

DEFINITIONS:

“Advance Hardware Replacement” means a Hardware replacement service for Ordering Activities who have purchased Hardware Support, whereby after Check Point TAC approves an RMA, Check Point delivers a replacement to Ordering Activity’s Site before returns the faulty hardware to Check Point.

“ACE Partner” means an authorized Check Point partner who is staffed with Check Point Certified Professionals and Appliance Certified Experts (ACE) in accordance with Check Point ACE Partner requirements.

“Activation Date” means the date a License Key is registered for activation of Software within the Check Point User Center.

“Appliance” shall have the meaning set forth herein for the term “Hardware”.

“Business Day” means normal working day in the time zone where the Ordering Activity is located.

“Certified Professional” means an individual who has passed the appropriate current Check Point Certification Test(s) to demonstrate technical competency. The current minimum requirement of a Certified Professional is a Check Point Certified Security Expert (CCSETM) for the current Major Release of Network Software, Check Point Certified End Point Expert (CCEPE) for End Point Software and Check Point Appliance Certified Expert (CCSE ACE) for current Major Release of Hardware.

“Check Point” means Check Point Software Technologies, Inc.

“Ordering Activity” means the party identified as the purchasing organization.

“Designated Contacts” means Ordering Activity named contacts, engineering resource individuals, who are established person-specific email addresses in the User Center account associated with the Customer Support contract. It is expected that these contacts will be Check Point Certified Professionals.
“Device Number” means a unique identifier of a hardware device, which can be located in a label on a Hardware Product. Check Point uses Media Access Control (MAC) Address, Serial Number (SN), or Service Tag Number (STN) as a Device Number, depending on the type of Hardware.

“Documentation” means user and technical manuals provided by Check Point for use with the Software and Hardware.

“Endpoint Security Product(s)” means Check Point product(s) with an Endpoint device security focus.

“Enhancement” means all Software changes, including new releases, new versions, product improvements, system modifications, updates, upgrades, Service Packs, Feature Packs, field modifications, and all Hardware changes, including official Check Point Hardware product enhancements and accessories.

“Error” means an Error in the product, which degrades the product as defined by the Severity definitions, as compared to Check Point published functionality and performance specifications.

“Hardware” means a computing device and/or its component with a specific function and limited configuration ability. The Hardware is sold by Check Point for the purpose of executing the specific Check Point Software supplied with it.

“Information” means any idea, data, program, technical, business, or other intangible information, however conveyed.

“Intellectual Property” means Patents, copyrights, trademarks, and/or trade secrets whose owners have rights at law or in equity to exclude others from exploiting such property.

“Level 1 Support” means the ability to provide general pre and post-sales product information; hardware and software configuration; questions on upgrade Support; collect relevant technical problem identification information; perform base problem determination; provide basic Support on the standard products, protocols and features; replace Field Replaceable Units (FRUs) or whole Hardware units.

“Level 2 Support” means the ability to provide Level 1 Support plus the ability to resolve the majority of misconfigurations, troubleshoot and simulate complex configuration, hardware, and software problems; perform Hardware diagnostics to determine Hardware malfunction; support problem isolation and determination of product specification defects; provide lab simulation and interoperability testing for new software and hardware releases prior to being deployed into a Ordering Activity production network; define an action plan; provide advanced Support on all products, protocols and features; have the ability to analyze traces, diagnose problems remotely, and provide Ordering Activity with complete steps to reproduce a problem.

“Level 3 Support” means the ability to provide Level 1 and Level 2 Support plus the ability to provide software enhancements such as patches and Hotfixes, fixing or generating workarounds that address software bugs; troubleshoot bugs that were not diagnosed during Level 2 Support; work with Ordering Activities to resolve critical situations, and building action plans with Ordering Activities to address complex issues.

“License Key” means code provided by Check Point, which activates the Software and enables the Software to operate.

“Major Release” means the current issuance of Software and/or Hardware that is designated by Check Point, as a change in the number or name, signifying a new product level, e.g. Check Point VPN-1 NG with Application Intelligence, NGX, or NGX R65. Hot Fix Accumulators (HFAs), Hotfixes, and/or Feature Packs do not constitute a Major Release change.

“Network Security Product(s)” means Check Point product(s) with network security focus.

“Previous Sequential Release” means Release of Software or Hardware, which has been replaced by a subsequent version of the product.

“Release” means Major Release of the same product.

“Problem Resolution” means the use of reasonable commercial efforts to resolve the reported problem. These methods may include (but are not limited to): configuration changes, patches that fix an issue, replacing a failed hardware, reinstalling the software, etc.

“Respond” means addressing the initial request and taking ownership of the issue.

“Response Time” means the amount of time elapsed between the initial contact by Ordering Activity to Check Point TAC and the returned response to Ordering Activity by Check Point support staff.

“RMA” means Return Material Authorization (RMA), the process of replacing a faulty Hardware or a component of a Hardware product. The process must be authorized by Check Point TAC.

“Service Request (SR)” means a single issue opened with Check Point TAC. The SR number identifies the Service Request. The format for the unique SR number can be as follows: 1-nnnnnnnnn or 11-nnnnnnnn ("n" is a digit).

“Severity” Definitions for Network Security product(s):

“Severity 1” means
(a) an Error with a direct security impact on the product;
(b) an Error isolated to Software or Appliance in a production environment that renders the product inoperative or causes the product to fail catastrophically; e.g., critical system impact, system down;
(c) a reported defect in the licensed product in a production environment, which cannot be reasonably circumvented, in which there is an emergency condition that significantly restricts the use of the licensed product to perform necessary business functions; or
(d) inability to use the licensed product or a critical impact on operation requiring an immediate solution.

“Severity 2” means
(a) an Error isolated to Software or the Appliance that substantially degrades the performance of the product or materially restricts business; e.g., major system impact, temporary system hanging;
(b) a reported defect in the licensed product, which restricts the use of one or more features of the licensed product to perform necessary business functions but does not completely restrict use of the licensed product; or
(c) ability to use the licensed product, but an important function is not available, and operations are severely impacted.

“Severity 3” means
(a) an Error isolated to the Software or Appliance that causes only a moderate impact on the use of the product; e.g., moderate system impact, performance/operational impact;
(b) a reported defect in the licensed product that restricts the use of one or more features of the licensed product to perform necessary business functions, while the defect can be easily circumvented; or
(c) an Error that can cause some functional restrictions but it does not have a critical or severe impact on operations.

“Severity 4” means
(a) a reported anomaly in the licensed product that does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions; this is a minor problem and is not significant to operation; or
(b) an anomaly that may be easily circumvented or may need to be submitted to Check Point Research and Development as a request for enhancement.

“Severity” Definitions for Endpoint Security product(s):

“Severity 1” means
(a) an Error with a direct security impact on the product; or
(b) an Error isolated to Software, for which there is no reasonable Workaround, which renders the product inoperative, causing the end-point devices to fail catastrophically, affecting more than 1000 end point devices or 35% of deployed client base (in any case more than 100 affected end-point devices) within a production environment (not pre-deployment or staging) where end-point devices have been interrupted and not recovered; e.g., severe and general deployment wide system impact, systems are down, making end-point devices unable to perform (even with reduced performance) necessary business operations even after a change of, and/or addition of procedures, configurations, applications, tools and/or data.

“Severity 2” means
(a) an Error isolated to Software, for which there is no reasonable workaround, which substantially degrades the usability of the end-point devices, restricting the usage of and/or access to one or more necessary business functions without completely restricting the use of the licensed product, affecting more than 500 end-point devices or 25% of deployed client base (in any case more than 50 affected end-point devices) within a production environment (not pre-deployment or staging) where the end-point devices and/or Software may have been interrupted but recovered, in part or completely; e.g., end-point devices are operative but with limited capacity, substantially impacting the end-point devices’ ability to perform one or more necessary business functions; end-point devices and/or Software are operative, but an important product function is unavailable or not operating; end-point devices and/or Software may have been interrupted but recovered, in part or completely; inability to connect to the Internet/Intranet; or
(b) an Error causing severe Software deployment/upgrade problems without prohibiting necessary business operations, affecting more than 500 end-point devices or 25% or more of the actual/intended client base (at least 50 devices affected); it may, or may not, be possible to circumvent the error, e.g., inability to install and/or upgrade product, without prohibiting the endpoint devices ability to perform necessary business operations; or business operations are not prohibited but may run with reduced performance.

“Severity 3” means
(a) an Error isolated to Software, for which there is a reasonable Workaround, or an Error that causes only a minor impact on the end-point client. Restriction in usage of one or more features of the licensed product with minor impact of necessary business functions. The Error can cause some functional restrictions but it does not have a critical or severe impact on operations, e.g., the endpoint device is operational but may experience performance or operational limitations; or
(b) an Error isolated to Software only affecting one or a limited number of individual end-point devices, that is not common for the installed end-point device population; it may, or may not, be possible to circumvent the error, e.g., an individual end-point device(s) is encountering issues not common for deployed end-point device client base.

“Severity 4” means a reported anomaly in the licensed product that does not substantially affect endpoint ability to perform normal business operations. This is a minor problem and does not constitute any significant limitation to products ability to allow normal business operation. An anomaly may be easily circumvented, e.g., a product cosmetic anomaly or documentation flaw; end-point devices and/or Software may have been interrupted but recovered.

“Site” means the physical location where System(s) are installed as specified by Ordering Activity in Ordering Activity’s User Center account.

“Software” means the object code version of the intangible information constituting one or more computer or apparatus programs and the informational content of such programs, together with any Documentation supplied in conjunction with, and supplementing such
programs, the foregoing being provided to Ordering Activity by way of electronic transmission or by being fixed in media furnished to Ordering Activity.

“Software Subscription” means registered access to modifications, corrections, and/or updates to Software; including Hot Fix Accumulators (HFAs), security fixes, Feature Packs, and/or major upgrades, provided to Ordering Activity by unlimited web download access or by mail upon Ordering Activity’s request. Software Subscription is a deliverable for all Support Contracts.

“Shelf Spare Unit(s)” means Check Point Hardware unit(s) that is stored at Ordering Activity’s Site and which is reserved for Hardware replacement usage only in case of failure of Ordering Activity’s Hardware which is covered under Check Point On-Site Hardware Support Plan.

“Support” means the technical Support and Hardware replacement services provided by Check Point directly to Ordering Activity as set forth in this Agreement.

“System(s)” means the Hardware, Software and Documentation that have been provided to Ordering Activity by Check Point or Check Point’s authorized resellers/partners.

“TAC” means Check Point Technical Assistance Center, which is staffed by Check Point Support personnel providing assistance with diagnosis and resolution of defects and/or failures in Check Point products.

“Workaround” means a change in the followed procedures or data to avoid error without substantially impairing use of the product.

CHECK POINT SUPPORT OBLIGATIONS:

Upon Contractor’s acceptance of a valid purchase order, and corresponding payment for that Support offering selected, Ordering Activity will be entitled to receive Support according to the features and benefits provided under that offering, subject to these terms and conditions.

Technical Support:

For Ordering Activities covered under a valid Check Point Support offering, technical Support will be provided pursuant to the terms of this Section “TECHNICAL SUPPORT.” Contractor through Check Point agrees to provide Support, where appropriate, to Ordering Activity, which may include but is not limited to, the following actions:

(a) Provide Ordering Activity with access to product update releases, related Documentation and knowledge articles, upon general commercial release;

(b) Provide Ordering Activity with access to TAC Technical Representatives, who will work with Ordering Activity to diagnose issues, and provide Problem Resolutions, including escalating the issue through TAC management as needed.

Hardware Replacement. For Ordering Activities covered under Hardware Support, Contractor through Check Point will use commercially reasonable efforts to provide Hardware replacement in accordance with the terms set forth in the Section “HARDWARE REPLACEMENT.”

On-site Hardware Support. For those Ordering Activities whose Hardware Support level includes an on-site service feature, upon Ordering Activity’s request, after TAC determines that the hardware issue is related to a malfunction of one of the Hardware components, and after a repair action plan has been defined, Contractor through Check Point will use commercially reasonable efforts to dispatch a Check Point Certified Onsite Technician or ACE Partner to the Site in accordance with the terms and timeframes of such plan as set forth on Exhibit A. Provision of on-site support is subject to the following limitations:

(a) On-site Hardware Support is limited to Advance Hardware Replacement only; it does not include on-site service for Software troubleshooting or any Software related issues.

(b) On-site Hardware Support service may not dispatch a certified technician on-site to help set up the RMA unit outside of Check Point’s normal on-site service areas (http://www.checkpoint.com/services/onsite-availability.html). Under those situations, Check Point may provide a Shelf Spare solution under specific conditions to ensure a rapid unit replacement at the Ordering Activity’s site. Ordering Activity will need to sign up for this service under a separate Shelf Spare Replacement Agreement.

(c) On-site service response times may be dependent upon the Ordering Activity’s Site address for the Hardware, the timely arrival of replacement parts at Ordering Activity’s Site, and accessibility to the Site. On-site Hardware Support is effective one (1) month from the day it was purchased.

On-site Software Support for Critical Severity 1 issues. For those Ordering Activities covered under Elite Support, the Ordering Activity shall contact Check Point TAC directly by telephone. After TAC confirms that the matter is a Severity 1 issue, TAC and the Ordering Activity will work diligently, with highly skilled, experienced engineers to resolve the critical situation and to restore operation. In the case the criticality of the issue remains or no progress is made, after four (4) hours, Contractor through Check Point will use commercially reasonable efforts to dispatch a local engineer to Ordering Activity’s Site. If no local resources are available, travel arrangements will be made for the next available flight to the Ordering Activity’s Site. The engineer will remain on-site until the issue is no longer defined as critical (an acceptable resolution or workaround was achieved) or up to three (3) days, with travel and expense included. Provision of on-site critical Severity 1 case support under Elite Support is subject to the following limitations:
(a) An Elite Ordering Activity is entitled up to three (3) visits on-site a year as required to resolve critical Severity 1 cases.

(b) On-site critical case Support is limited to Software Support only, and does not include on-site service for Hardware issues and Hardware replacement.

(c) On-site critical case Support may not be available for some Check Point Software products or in some geographic regions, and may require a set-up period before it can be made available to Ordering Activities.

(d) For Elite support service for critical issues, which requires fast arrival to the site, Contractor through Check Point will cover all locations which are accessible within 12 hour elapsed commercial travel time from G7 countries hubs (US (mainland), UK, Germany, Italy, France, Japan, and Canada). In some remote locations, entry certifications requirements might add additional time to the engineer arrival on site.

(e) It is necessary that Elite Ordering Activities commit the necessary resources around the clock (24x7) in working with Check Point TAC and/or the engineer towards Problem Resolution of Severity 1 Errors.

Support Lifecycle.

(a) Contractor through Check Point provides Support on the then-current Major Release and the Previous Sequential Release of all the Software products covered under a valid Software support plan. Check Point will also provide commercially reasonable technical assistance on all Software Products for a minimum of four (4) years, starting from the general availability date of the product’s Major Release version. General availability date’ is defined as the date on which a product is officially made available for purchase, but Problem Resolution may be limited to the current Major Release of the product.

(b) Contractor through Check Point usually ends Software Support for a Major Release version only when the second subsequent major version has been released, or at least four (4) years have elapsed since the release of the major version in question. Check Point will provide End of Support notification for discontinued Software to Ordering Activity through an announcement posted on the Check Point Software Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/support_periods.html.

(c) Contractor through Check Point provides a comprehensive support lifecycle for its Hardware. Check Point TAC is available for Technical Assistance for up to five (5) years after Check Point’s new appliance availability announcement. The supported version includes the combination of the exact Hardware model number and the specification with the Check Point Software installed on it.

(d) For Software or Operating System installed on Check Point Hardware:
   a. The then-current Major Release of the Software that was installed on the Hardware is fully supported until one (1) year after Check Point’s new appliance availability announcement.
   b. Maintenance releases/bug fixes are supplied for up to three (3) years after new appliance availability announcement. These fixes may require a Software upgrade by the Ordering Activity.
   c. Fixes and Software upgrades will be supplied to handle support issues for up to five (5) years after Check Point’s new appliance availability announcement. New Software releases may require the purchase of Hardware upgrades by the Ordering Activity.
   e. Contractor through Check Point provides Hardware Replacement for up to five (5) years after Check Point’s new appliance availability announcement. Hardware shall be repaired or replaced with same or similar products when needed, at Check Point’s discretion.
   f. Contractor through Check Point will provide the date of Check Point’s new appliance availability announcement and End of Support notification for discontinued Hardware to Ordering Activity through an announcement posted on the Check Point Appliance Support Timeline website at URL: http://www.checkpoint.com/services/lifecycle/appliance_support.html.
   g. Contractor through Check Point reserves the right to modify Support Lifecycle policy at any time; notifications regarding changes in policy will be posted on the websites.

Nonconformance. If Contractor through Check Point determines the problem is due to nonconformance to published specifications of a Software version, or another substantial Check Point related problem, then under Check Point’s Support plan, Check Point shall provide any Software fix for the reported nonconformance that may be available at the time the problem is reported. If no such fix is available, Check Point will use commercially reasonable efforts to remedy such nonconformance, which may include a Workaround or other temporary fix to the Software.

Exclusions.

Support does not include the following items or actions:

(a) Step-by-step installation of Software or Service Packs;

(b) Onsite services (unless Ordering Activity’s level of Support, as purchased, includes this feature), Professional Services, or Educational Services;

(c) Modification of software code, security-policy configuration, audits, or security design.
Contractor through Check Point shall have no obligation to Support:

(a) An altered, damaged, or modified product or any portion of the product incorporated with or into other software, hardware, or products not specifically approved by Contractor through Check Point;

(b) Product problems caused by Ordering Activity negligence, misuse, misapplication, or use of the product other than as specified in the Check Point user manual, or any other causes beyond the control of Contractor through Check Point;

(c) Product installed on any computer hardware that is not supported by Contractor through Check Point;

(d) Product not purchased from the Contractor's then-current GSA Price List;

(e) Products subjected to unusual physical or electrical stress, misuse, negligence or accident, or used in ultra-hazardous activities;

(f) Products that are past their End-of-Support date.

Contractor through Check Point shall have no obligation to Support Ordering Activity if:

(a) Appropriate payment for Support has not been received by Contractor; or

(b) Ordering Activity’s annual Support term has expired without renewal.

Reporting Non-Check Point Errors to Ordering Activity. Upon working the Service Request under normal processes, and with appropriate management review, if at that point Contractor through Check Point believes that a problem reported by Ordering Activity may not be due to an error in the Check Point product, Check Point will notify Ordering Activity. At that time, Ordering Activity may: (a) instruct Check Point to proceed with problem determination at Ordering Activity’s possible expense as set forth herein; or (b) instruct Check Point that Ordering Activity does not wish the problem to be pursued at Ordering Activity’s possible expense.

If Ordering Activity requests that Contractor through Check Point proceed with problem determination at Ordering Activity’s possible expense and Check Point determines that the error was not due to the error in the product, Ordering Activity shall pay Contractor, at the Contractor’s Check Point then-current GSA rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Ordering Activity shall not be liable for:

(a) problem determination or repair to the extent the problems are due to anomalies in the Check Point product; or

b) work performed after Ordering Activity has notified Contractor through Check Point that it no longer wishes problem determination to be continued at Ordering Activity’s possible expense (such notice shall be deemed given when actually received by Check Point).

If Ordering Activity instructs Contractor through Check Point that it does not wish the problem pursued at Ordering Activity’s possible expense or such determination requires effort in excess of Ordering Activity instructions, Check Point may, at its sole discretion, investigate the anomaly with no liability thereof.

ORDERING ACTIVITY OBLIGATIONS:

Staffing. All Ordering Activity personnel contacting Contractor through Check Point for Support must be fully trained on both the Major Release of the Check Point Software and/or Hardware and the current issue for which Ordering Activity requires assistance.

Named Designated Contacts. Ordering Activity agrees that contact with Contractor through Check Point will be through the specified number of Designated Contacts. Ordering Activity is responsible for specifying and updating valid Designated Contacts in the Check Point User Center with person-specific email addresses. Ordering Activity agrees that access to any Support deliverable, Software Subscription downloads and SecureKnowledge will be through these Designated Contacts, not any alias. The ability to add additional contacts may be purchased per the prevailing Support Plan program guidelines.

Network Access. To the extent possible, and as requested by Contractor through Check Point, Ordering Activity understands that it may be necessary to provide Check Point or its authorized Technical Representative access to the affected network environment for any Severity 1 issue, or when Check Point determines that its Technical Representative needs to access Ordering Activity’s network in order to remotely diagnose an issue. Ordering Activity understands that if access is not provided as requested by Check Point, problem determination will be slower or impaired.

Configuration Files. Ordering Activity agrees to maintain a backup of the configuration that can be used to restore the Hardware.

System Information. Ordering Activity must provide to Contractor through Check Point information for each System under a Support Plan by registering all products in the Ordering Activity’s User Center Account with accurate details:

(a) Product License Key or Device Number;

(b) Physical Site location of the Hardware product; and

(c) Site contact person.
If Ordering Activity physically moves any Hardware from the original Site to another location, Ordering Activity must inform Contractor through Check Point of such change immediately with updated Site location and contact. It is Ordering Activity’s responsibility to update such change in the Ordering Activity’s User Center Account. Prior to Check Point’s receipt of such notification from Ordering Activity, Check Point shall not be liable for any lapses in service coverage or Hardware delivery delays with respect to such Hardware.

Backup and Removal of Data. To reconstruct lost or altered Ordering Activity files, data, or programs, Ordering Activity must maintain a separate backup system or procedure that is not dependent on the Software or Hardware products under Support.

Where applicable, before receiving Hardware Replacement Services or before disposal or return of Hardware to Contractor through Check Point, Ordering Activity agrees to:

(a) backup and secure all programs and data contained in the Hardware;

(b) securely erase all programs and data not provided by Contractor through Check Point with the Hardware product. Ordering Activity acknowledges that, to perform its responsibilities under this Replacement Service, Check Point may ship all or part of the Hardware product or its Software to third party locations around the world, and Ordering Activity authorizes Check Point to do so; and

(c) remove all features, parts, options, alterations, and attachments not provided by Contractor through Check Point with the Hardware product, and ensure that the Hardware is free of any legal obligations or restrictions that prevent its exchange.

On-site Access. Where applicable, Ordering Activity agrees to provide Contractor through Check Point or its authorized partner with sufficient and safe access to Ordering Activity’s facilities in order to permit Check Point to fulfill its obligations.

Shelf Spare Units. In the event that Ordering Activity has purchased Hardware Support with a Shelf Spare Replacement solution, Ordering Activity agrees that Contractor through Check Point shall, at all times, remain the sole owner of the Shelf Spare Unit(s) stored at the Ordering Activity’s premises. Ordering Activity agrees that each Shelf Spare Unit stored at Ordering Activity’s on-site location is to be used ONLY in case of Hardware failure approved by Check Point’s TAC. Each Shelf Spare Unit’s on-site location will be required to take an inventory of Hardware physically in stock on a quarterly basis and provide the results to the Check Point Logistics at logistics-reports@checkpoint.com. If it has been determined that the Shelf Spare Unit on-site location does not have the relevant Check Point inventory in stock and the missing inventory cannot be found or accounted for, or if the inventory is damaged as result of Ordering Activity’s practices, the item shall be considered lost, and Check Point shall have the right to seek reimbursement from the Ordering Activity at the standard Check Point list price.

In the case that Contractor through Check Point will certify a local ACE Partner or subcontractor to provide the on-site Replacement Service, Check Point shall have the right to ask the Ordering Activity to send, at Check Point’s expense, the Shelf Spare Unit from the Ordering Activity premises to the relevant partner at any time. In case this Support Plan is not renewed, Ordering Activity agrees to send the Shelf Spare Unit back to Check Point, or pay the full Check Point list price of a new unit.

HARDWARE REPLACEMENT:

Hardware Return Procedure. If a Hardware product or one of its component parts does not function during the Hardware Support period, and such nonconformance can be verified by Contractor through Check Point, Check Point, at its election, will provide Advance Hardware Replacement service with a refurbished part/unit for the Hardware under the type of Hardware Support Plan Check Point designates for that Hardware. A defective Hardware product or one of its component parts may only be returned to Check Point upon Check Point’s prior written approval. Any such approval shall reference a Returned Material Authorization (“RMA”) number issued by an authorized Check Point service representative. To request an RMA number, Ordering Activity must contact Check Point TAC and open a Service Request. Ordering Activity should always register the Hardware Product in Ordering Activity’s Check Point User Center account. If Ordering Activity does not register the Hardware Product with Check Point, Ordering Activity may be required to present proof of purchase as evidence of entitlement to Hardware Support service. The Hardware Product’s Device Number will be required for all RMA cases.

Hardware Replacement Procedure. For Order Activities who have purchased Support for their Hardware, Contractor through Check Point will attempt to diagnose and resolve problem over the phone or web. Upon determination that the Hardware issue is related to a malfunction of one of the Hardware components, an RMA process will be initiated by Check Point TAC. Check Point TAC will either issue a replacement of the faulty part (like Power Supply, Fan, Hard Disk, etc.) or a full Unit Replacement. Check Point will send the required hardware to the Site location, as it appears in Order Activity’s User Center and as verified with Order Activity when opening the Support Service Request, in accordance with the Hardware Support Plan Check Point designates for that Hardware.

Order Activity must ship back the faulty Hardware product (or replaceable unit) suitably packaged according to the guidelines, as specified by Contractor through Check Point in the RMA letter shipped with the replacement, to a location that Check Point designates; return shipment of the faulty Hardware should be made within five (5) business days of the arrival of the replacement or approval of the RMA for Shelf Spare Unit usage.

TECHNICAL SUPPORT:

Web-based Support. Check Point web-based Support available at URL: https://support.checkpoint.com provides the Ordering Activity access to:

(a) Documentation, containing product documentation, release notes, troubleshooting guides and technical white papers about Check Point Software and Hardware products, as releases become generally commercially available.
(b) SecureKnowledgeSM, a self-service knowledge base, restricted repository of thousands of technical documents as well as tools covering everything from planning installation and upgrades, to understanding error messages and fixing specific known issues. Technical solutions, how-to’s, and troubleshooting documents written by Check Point engineers and technical staff are added daily. Ordering Activity may have Advanced or Expert Access in accordance with their Support level and the specifications of this Agreement. When a solution is identified to solve an issue, Check Point TAC may share this solution with Ordering Activity via email or verbal communication.

(c) Software Subscription Downloads, restricted download site for the sole use of the Supported Ordering Activity; includes latest product upgrades, Hot Fix Accumulators (HFAs), Feature Packs, security fixes, tools, and utilities for the contract term. Software Subscription guarantees that Check Point solutions are kept as current as possible through the latest product enhancements and capabilities.

For Major Product releases, Ordering Activity may request Contractor through Check Point to ship a Media Kit that includes Software upgrade package.

(d) Product Forums, containing shared knowledge of Check Point products and solutions within an online community of customers, partners and employees, as well as news on Check Point products and technologies. Support Ordering Activities can view and post on the discussion threads in all Forums.

Contact TAC. Ordering Activity’s access to TAC should be either by telephone, by web request, or by live chat.

(a) By Telephone: Contact the nearest TAC (refer to URL: http://www.checkpoint.com/services/contact/index.html.) An Automatic Call Distribution System will prompt Ordering Activity to select appropriate Support Plan options. After Ordering Activity is directed to a TAC Technical Representative, Ordering Activity’s email address must be provided. Once TAC verified Ordering Activity is a Designated Contact and account has a valid Support contract, TAC will inquire information about the issue and create a Service Request in the Check Point database.

(b) By Web Request: Log into User Center, under the “Support” Tab, select the “Create Service Request” link. Complete the request form with all of the appropriate information about the issue and submit the request. A Service Request will be generated in the Check Point database.

PLEASE NOTE: DO NOT submit a Service Request for a Severity 1 issue via the Web request form. For a Severity 1 case, please contact Contractor through Check Point by telephone and select the appropriate options for your support.

(c) By Live Chat: Log into User Center, under the “Support” Tab, select “Live Chat” icon. Live Chat is for quick and simple questions about Check Point products and services. Any issue requires troubleshooting must be submitted by telephone or by web request.

(d) By Email: Contractor through Check Point does not allow opening a Service Request via email. All requests should be opened by Telephone or by web request. Correspondence on an open Service Request may be made via email, as long as the Ordering Activity Designated Contact writes a reply to emails received from Check Point TAC.

Availability and accessibility of TAC is in accordance with the specifications of this Agreement, subject to the situations set forth in Section 8.1 Force Majeure.

<table>
<thead>
<tr>
<th></th>
<th>Standard</th>
<th>Premium</th>
<th>Elite</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAC Availability</td>
<td>5x9 Business Day</td>
<td>7x24 Every Day</td>
<td>7x24 Every Day</td>
</tr>
<tr>
<td>Unlimited Service Requests</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Technical Support Procedures. Under Check Point’s Software support plan, Check Point TAC utilizes a multi-tier support model for Problem Resolution. When initial contact with TAC is made, a Technical Representative or Web Service Request Tool will validate Ordering Activity information, contract information, Device Number, and gather details relevant to the question or issue. A unique Service Request (SR) number will be assigned and delivered to the Ordering Activity Designated Contact, either verbally, via Web request, or via email. This SR number will be used to track any given issue from initial contact to final Problem Resolution. If appropriate, an issue will be reproduced in the Check Point Test Lab. Additional testing and problem duplication may take place in a network laboratory environment. Further investigation, including additional troubleshooting or debugging activity may be required. Based on the results of the Test Lab investigation, an issue may be resolved, or, if an anomaly is identified, elevated to the appropriate Check Point Team for final Problem Resolution.

Contractor through Check Point agrees to use commercially reasonable efforts to work with the Ordering Activity for Problem Resolution for an issue in accordance with the specifications of these terms. Timely efforts must be made by all parties involved. If communication from Ordering Activity ceases without notice, after five (5) business days, Check Point may, upon notice, close a Service Request due to inactivity on the part of the Ordering Activity. A Service Request may be reopened within thirty (30) consecutive days. this issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new Service Request will be opened, and all pertinent materials may need to be resubmitted before work can continue.

Severity Level Response Time and Resource Commitment. Contractor through Check Point agrees to use commercially reasonable efforts to respond to Ordering Activity requests based on the Severity of the issue as follows:
<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Response Time (in accordance with Support Plan)</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard</td>
<td>Premium</td>
</tr>
<tr>
<td>Severity 1</td>
<td>30 minutes</td>
<td>30 minutes</td>
</tr>
<tr>
<td></td>
<td>Check Point and Ordering Activity will commit the necessary resources around the clock for Problem Resolution to obtain workaround or reduce the severity of the Error.</td>
<td></td>
</tr>
<tr>
<td>Severity 2</td>
<td>4 Hours</td>
<td>2 Hours</td>
</tr>
<tr>
<td></td>
<td>Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution to obtain workaround or reduce the severity of the Error and alternative resources during non Standard Business Hours.</td>
<td></td>
</tr>
<tr>
<td>Severity 3</td>
<td>4 Hours</td>
<td>4 Hours</td>
</tr>
<tr>
<td></td>
<td>Check Point and Ordering Activity will commit full-time resources during normal business hours for Problem Resolution, to obtain workaround or reduce the severity of the Error.</td>
<td></td>
</tr>
<tr>
<td>Severity 4</td>
<td>4 Hours</td>
<td>4 Hours</td>
</tr>
<tr>
<td></td>
<td>Check Point and Ordering Activity will provide Resources during normal business hours for Problem Resolution.</td>
<td></td>
</tr>
</tbody>
</table>

Note: Contractor through Check Point does not guarantee the resolution of a problem within the times specified.

For Severity definitions for Network Security Product(s) or Endpoint Security Product(s), refer to the Section “DEFINITIONS,” “Severity” Definitions for Network Security Product(s) and “Severity” Definitions for Endpoint Security product(s).

The response times set forth in this Section constitute targeted goals of the Technical Support to be provided by Contractor through Check Point to Ordering Activity, and it is understood that Check Point shall use commercially reasonable efforts to respond to Ordering Activity requests within the target times set for the relevant Severity levels. The parties acknowledge the potentially idiosyncratic nature of any issue, and agree that any sporadic failure to meet targeted times shall not constitute a breach of Check Point Support obligations under this Agreement.

Escalation Process and Procedure.

(a) Ordering Activity-initiated Escalation: Under Check Point’s Support plan, some work items (especially those associated with critical situations) may need to be expedited. When this becomes the case, Ordering Activity shall notify Check Point TAC of the critical situation. If TAC determines that sufficient information has been provided by Ordering Activity and the escalation is accepted, Check Point will work with Ordering Activity on providing the appropriate solution. The escalation begins in accordance to Check Point standard business practices. Upon request, Check Point may provide an action plan to Ordering Activity that may include (but is not limited by): problem statement, next action items to resolve the issue and time estimates on these action items.

(b) Check Point Internal Escalation Process: When TAC determines an issue needs internal escalation, the issue receives a combination of increasing levels of engineering expertise and managerial attentions in accordance with Check Point standard business practice. Except for the case of a Ordering Activity-initiated Escalation in accordance with Section 5.5 (c) below, that issue need not be escalated to a higher managerial level until the Severity of the issue increases or progress toward resolution ceases or is unduly delayed.

(c) Management Escalation: If Ordering Activity feels that the issue is not moving forward in an appropriate timeframe to closure, and/or an issue requires managerial attention, for immediate escalation, Ordering Activity can either request Technical Representative to connect the Ordering Activity to a Team Leader or contact the Team Leader of the Technical Representative handling the case directly. Team Leader’s contact details are located at the bottom of the Service Request email. Regardless of the total elapsed time of an outstanding Service Request, the point of escalation shall be initiated at the Technical Representative level, escalated to the Team Leader(s), followed by TAC Manager(s), the TAC Director(s), and then the TAC Vice President. For the most current list of Check Point TAC Escalation Management contacts, refer to Escalation Management link in Service Request Web tool in the User Center.

CHECK POINT DIRECT SUPPORT PLAN DESCRIPTIONS

Check Point Support Offerings. In order to meet the needs of its enterprise Ordering Activities, Contractor through Check Point offers its Enterprise Support program for the support of Check Point Software products. This provides a total support service solution directly to enterprise/business customers. Below, are the program levels available under Check Point’s direct Enterprise Support program:

<table>
<thead>
<tr>
<th>Direct Enterprise Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Software Subscription</td>
</tr>
<tr>
<td>Enterprise Standard</td>
</tr>
<tr>
<td>Enterprise Premium</td>
</tr>
<tr>
<td>Enterprise Elite</td>
</tr>
</tbody>
</table>

Support Plan Descriptions.
Enterprise Software Subscription: Enterprise Software Subscription ensures uninterrupted security and protection for all Check Point products, with access to critical hot fixes, service packs, and major upgrades for a full year. Take advantage of the latest security features as soon as they're available, protecting your business and your investment while maximizing your ROI with Check Point solutions.

Ensure continuous security with access to critical hot fixes and service packs
Maximize ROI and investment with access to major upgrades and enhancements

Enterprise Standard Support: Check Point Enterprise Standard Support delivers all the benefits of Enterprise Software Subscription with comprehensive, unlimited support from our experienced and certified security experts. With online tools and extensive resources devoted to Check Point security, you can count on Check Point to resolve your mission-critical issues quickly and efficiently:
Software Subscription - Access critical hot fixes, service packs, and major upgrades.
Ensure business continuity with 5x12 business day Web, Chat and Phone support and 4 hour committed response
Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate, and track Service Requests online including active notifications via email or SMS
Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on new materials posted in your subject area.
Appliance Support
Replacement units shipped same business day; delivery usually within 2-3 business days
Efficient hardware diagnosis using advanced tools
Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts
Optional Upgrade to Standard Onsite Support
5x8x Next Business Day onsite service
Delivery and basic installation of replacement hardware by a certified engineer
Available in over 250 locations world wide

Enterprise Premium Support: Check Point Enterprise Premium Support delivers all the benefits of Enterprise Software Subscription with comprehensive, 7x24 unlimited support from our experienced and certified security experts. With online tools, global 7x24 service centers, and committed 30 minute response times, you can count on Check Point to resolve your mission-critical issues quickly and efficiently.
Software Subscription - Access critical hot fixes, service packs, and major upgrades.
Protect your business with unlimited, comprehensive support from experienced engineers and 30 minute response with Fast Path to premium desk
Ensure mission-critical support with 7x24 support and 30 minute committed TAC response for severity 1 issues and 2hour response for severity 2
Free use of Check Point support center tools – Sophisticated tools to initiate, manage, collaborate upon, and track Service Requests online including active notifications via mail or SMS
Reduce support time and costs with Advanced Access to SecureKnowledge, get auto notification on any new material which posted in your subject area.
Appliance Support
Replacement units are shipped by Next Flight-Out/ Express Delivery (in mainland US and European Union), Appliances are shipped during normal business hours and could arrive during off hours or next business day until 9AM.
Efficient hardware issue diagnosis using advanced tools
Return Materials Authorization (RMA) process by Check Point TAC (Technical Assistance Center) Hardware experts
Optional upgrade to Premium On-site Support
7x24 hours onsite service
Delivery and basic installation of replacement hardware by a certified engineer
Available in over 250 locations world wide

Enterprise Elite Support: Check Point Elite delivers 7 x 24 x 365 support plus on-demand expert care wherever you need it. With committed response times, advanced self-help tools and priority handling, Elite Support will minimize business downtime and keep your network running.
24-hour on-demand onsite engineer to resolve critical software cases
Fastest Response Times – 30 minutes for Priority 1 and 2 cases
Priority case handling and fast path escalations
Increased productivity and uptime with expert knowledge transfer, tools and techniques
Appliance Support
Next flight out hardware replacement service
Enhanced Return Material Authorization (RMA) processing
Elite Onsite Support
Extends the benefits of Elite Support with 4-hour RMA onsite hardware care for the fastest logistics. Check Point provides the delivery and basic installation of replacement hardware by a certified engineer with 4 hours following RMA determination.

Direct Enterprise Support Price Calculation: The cost of Enterprise Support is calculated using the account rate multiplied by the sum of product list price within the included account(s). Product list price is determined based on the product value in the current Check Point Price List. The account rate is based on the sum of product price list for all products included under the Enterprise Support contract. The applicable GSA discount will then be applied to the Ordering Activity:
Appliance Support: Check Point Appliance Support provides comprehensive solution for HW & SW support, including diagnosis, resolution and parts/unit replacement services when applicable, according to SLAs corresponding with Check Point's support programs.

Direct Appliance Support (EBS) – List price of the support is calculated by multiplying the applicable rate in the below table, times the list price of the applicable appliance. The applicable GSA discount will then be applied to the Ordering Activity. The exception is for legacy 2 blade appliances, list price is established as explained in the below table:

<table>
<thead>
<tr>
<th>Appliance classification</th>
<th>Standard</th>
<th>Standard RMA Next business day on-site**</th>
<th>Premium*</th>
<th>Premium RMA 4 hours on-site**</th>
<th>Elite***</th>
<th>Elite RMA 4 hours on-site**</th>
</tr>
</thead>
<tbody>
<tr>
<td>High End</td>
<td>12%</td>
<td>CPES-SS-STANDARD-ONSITE</td>
<td>17%</td>
<td>23%</td>
<td>20%</td>
<td>26%</td>
</tr>
<tr>
<td>Mid Range</td>
<td>12%</td>
<td>CPES-SS-STANDARD-ONSITE</td>
<td>17%</td>
<td>25%</td>
<td>20%</td>
<td>28%</td>
</tr>
<tr>
<td>Low End</td>
<td>12%</td>
<td>CPES-SS-STANDARD-ONSITE</td>
<td>17%</td>
<td>30%</td>
<td>20%</td>
<td>33%</td>
</tr>
<tr>
<td>2 Blade appliance xx2 series (like UTM-1 272,572 or NGX non Total Security)</td>
<td>12%</td>
<td>Standard account rate</td>
<td>17%</td>
<td>Premium account rate + 10%</td>
<td>Elite account rate</td>
<td>Elite account rate + 8%</td>
</tr>
</tbody>
</table>

* Next Flight Out/Express Delivery is available in the European Union and mainland US. Appliances are shipped during normal business hours and may arrive during off hours or next business day until 9AM.

** Onsite services are provided world wide by Check Point certified technicians. For available locations [click here](#).

*** Emergency engineer dispatch for critical software issues [for more info click here](#).

For other locations contact Check Point Onsite services.

Note: Onsite Hardware Support becomes effective one (1) month from the day it was purchased.

Note: All other Check Point appliances that do not appear in the Appliance Classification table receives regular account rate and no onsite service is available.

Note: customers may upgrade support for specific appliances based on their operational needs regardless to the customer's User Account Service Level Agreement.

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**Appliance classification:**

<table>
<thead>
<tr>
<th>Appliance Range</th>
<th>Security Gateway Appliances</th>
<th>VSX-1</th>
<th>Dedicated Gateways</th>
</tr>
</thead>
<tbody>
<tr>
<td>High End</td>
<td>12400 Appliances 12600 Appliances 21400 Appliances 61000 Appliances Power-1 5075 / 5077 Power-1 9075 / 9077 Power-1 11xxx series IP 1285 / 1287 IP 2455 / 2457</td>
<td>VSX-1 12400 VSX-1 12600 VSX-1 21400 VSX-1 3070 VSX-1 9075 VSX-1 9090 VSX-1 11xxx series VSX-1 112xx series</td>
<td>DLP-1 9571 IPS-1 9070 IPS-1 5070 Connectra 9072</td>
</tr>
<tr>
<td>Mid Range</td>
<td>4600 Appliances 4800 Appliances</td>
<td>Smart-1 5 Smart-1 25</td>
<td>VSX-1 12200 DLP-1 2571 IPS-1 2070</td>
</tr>
<tr>
<td><strong>Low End</strong></td>
<td><strong>12200 Appliances</strong></td>
<td></td>
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<tr>
<td>-------------</td>
<td>---------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 274 / 276 / 278</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 574 / 576 / 578</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>UTM-1 1073 / 1075 / 1076 / 1078</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>UTM-1 2073 / 2075 / 2076 / 2078</td>
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<tr>
<td></td>
<td>UTM-1 3073 / 3075 / 3076 / 3078</td>
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<tr>
<td></td>
<td>IP 295 / 297</td>
<td></td>
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<tr>
<td></td>
<td>IP 395 / 397</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>IP 565 / 567</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IP 695 / 697</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Low End</strong></th>
<th><strong>2200 Appliances</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4200 Appliances</td>
</tr>
<tr>
<td></td>
<td>UTM-1 134 / 136 / 138</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Low End</strong></th>
<th><strong>SG86</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>* On-site services for SG82 &amp; SG86 include only product replacement (w/o a technician).</td>
</tr>
<tr>
<td></td>
<td>The above special support-rates apply to Software Blades based Appliances with 3 blades (and above), NGX based UTM-1 Total Security and Power-1 Appliances only.</td>
</tr>
<tr>
<td></td>
<td>For NGX UTM-1 non Total-Security Appliances, please use the regular account rate.</td>
</tr>
<tr>
<td></td>
<td>UTM-1 Edge RMA is shipped Next Business Day for all SLAs.</td>
</tr>
<tr>
<td></td>
<td>Regular account rates apply to all other Check Point appliances that do not appear in the above table (e.g. UTM-1 Edge) and no on-site services are available (excluding 2 Blade appliances or NGX non Total Security).</td>
</tr>
<tr>
<td></td>
<td>For IAS (Integrated Appliance Solutions) support offering and rates contact Check Point Onsite Services.</td>
</tr>
<tr>
<td></td>
<td>For UTM-1 xx50 series, you can purchase only Premium/Standard/Elite Support, On-site Services are not available (unless it is on-site renewal).</td>
</tr>
</tbody>
</table>
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

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

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

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

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

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

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Affiliate" means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and "control" means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

"Effective Date" means the date this Agreement is fully executed by both Parties.

"Intellectual Property Rights" means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

"Fees" means the Service fees charged by Licensor to Customer, as set forth in the Quote and applicable purchase order in accordance with the GSA Pricelist.

"Named User" means the license is tied to a specific individual named user so that the license may only be used by that individual named user.

"Quote" means the quotation document provided by Licensor setting out the quantity and type of Service licenses purchased by Customer.

"Service" means the Codebashing e-learning cloud-based interactive application security tutorial service.

"Term" means the term of this Agreement, as further forth in Section 6.1.

LICENSE GRANTS AND RESTRICTIONS.

License Grants. Licensor grants the Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity") a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term and according to the number of Named User licenses set out in the Quote and applicable purchase order, to permit licensed users to access the Service and to view and use the reports generated by the Service for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the source code of the Service. The Named User license is activated upon the first log-in of the Named User and may not be transferred thereafter to another Named User.

Title; Intellectual Property Rights. The Service is licensed, not sold, and this Agreement does not convey any right, title or ownership in the Service to Customer other than the limited rights and licenses set out herein. The Service and its associated documentation shall remain the sole property of Licensor. All Intellectual Property Rights evidenced by or embodied in or related to the Service, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor. Licensor reserves all rights not expressly granted hereunder.

Restrictions. Customer may not: (a) use the Service in excess of the number of Named User licenses authorized by Licensor (for paid use, according to the number of Named User licenses purchased, as set out in the purchase order); (b) work around any technical limitations in the Service or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the Service; (d) attempt to derive the source code of the Service; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the Service to any third party, including Customer’s Affiliates; (f) transfer, assign or permit the sharing of license keys or product codes to a third party, including Customer’s Affiliates; (g) attempt to access the Service outside of the interfaces provided by Licensor; or (h) provide access to the Service (or any part thereof) or the output generated by the Service to any individual who does not hold a valid license to use the Service.

Additional Terms and Restrictions. Customer agrees that: (a) all use of the Service shall be in compliance with all applicable laws; (b) the Service is being supplied only for Customer’s internal use; (c) Customer is prohibited from granting any sublicenses to use the Service; and (d) Customer may not copy, transfer or communicate the Service or any part thereof to any third party, including Customer’s Affiliates, or the public in violation of this Agreement.

DATA USAGE.

Data Usage. The Service collects usage data, analytics data, and the usernames and email addresses of the users of the Service (the "Data"). Licensor and its authorized third party service providers will use the Data for the purpose of providing the Service to Customer. Licensor may also use the Data to improve the Service and for the internal business purposes of Licensor and its Affiliates.

SUPPORT.

Description of Support. Service availability and uptime is set out in Exhibit A. Licensor will provide support for the Service during the Term in accordance with the service level agreement attached hereto as Exhibit B.

RESERVED.

TERM AND TERMINATION

Term. This Agreement shall be effective during the license term set out in the purchase order, unless renewed by written agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

Effect of Termination. Customer’s access to the Service shall immediately terminate upon expiration of the Service Term or the termination of this Agreement, and any reports or data generated in connection with the Service will no longer be available for viewing/download. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the Service. Licensor shall have no liability due to the Customer’s inability to access or use the Service after expiration of the Service Term or termination of this Agreement.

Survival of Certain Provisions. The Parties’ rights and obligations contained in Sections 2.2 ("Title; Intellectual Property Rights"); 6.3 ("Effect of Termination"); and 8.0 ("General Provisions"); as well as any obligations to make payments of Fees or other amounts accrued or due hereunder prior to termination, shall survive any termination of this Agreement.

DISCLAIMER OF WARRANTIES.
LIMITED WARRANTY. Licensor warrants that the Service will, for a period of sixty (60) days from the date Customer is first provided access to the Service, perform substantially in accordance with Service written materials accompanying it subject to Customer’s use of the Service in accordance therewith. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE IS MADE AVAILABLE BY LICENSOR ON AN “AS IS” AND “AS AVAILABLE” BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED AND/OR ERROR FREE.

LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE SERVICE WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

RESERVED.

EXCLUSIVITY OF WARRANTIES. CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER’S USE OF THE SERVICE AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THIS AGREEMENT.

GENERAL PROVISIONS.

Exclusions. The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to this Agreement. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

Headings and Wording. Section and/or paragraph headings used in this Agreement are for reference purposes only and shall not be used in the interpretation hereof. No provision of this Agreement shall be construed against either Party as the drafter thereof.

Assignment. This Agreement may not be assigned, delegated or transferred by either party without the other party’s written consent, and any such action shall be void and without effect.

Restricted Parties. Customer represents and warrants that it is not a “Restricted Party,” which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a “Prohibited Territory”) or (b) on the U.S. Department of Commerce Denied Person’s List, Entity List, or Unverified List; the U.S. Department of the Treasury’s list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State’s List of Debarred Parties. Customer shall not distribute, transfer or permit access to any Licensor software or service to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

Entire Agreement. This Agreement, including any Exhibits, Quotes, and purchase orders incorporated by reference, and the underlying GSA Schedule Contract constitute the entire agreement between Licensor and Customer, and any and all written or oral agreements relating to the license of Licensor’s Software existing between Licensor and Customer, including but not limited to any Software evaluation licenses, are expressly terminated as of the Effective Date. Customer acknowledges that it is not entering into this Agreement on the basis of, and has not relied on, any representations not expressly contained in this Agreement.

No Waiver. The failure of either Party to enforce at any time, or for any period of time, the provisions of this Agreement shall not be interpreted to be a waiver of such provisions or of the right of such Party to enforce each and every such provision.

Partial Invalidation. In the event that any provision of this Agreement shall be held by law, or found by a court or other tribunal of competent jurisdiction to be unenforceable, the unenforceable provision shall be severed and the remaining provisions of this Agreement shall remain in full force and effect. In such an event, Licensor and Customer agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

Relationship of Parties. The Parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall create a principal-agent, partner, or other relationship between the Parties for any purpose or in any sense whatsoever, or create any form of joint enterprise whatsoever between the Parties.

No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Licensor and Customer. No third party shall be deemed to be a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

Amendment. This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each Party.

Contracting Entity. For Customers located in the United States of America, “Licensor” is defined as Checkmarx, Inc.

Exhibit A

SERVICE LEVEL AGREEMENT – UPTIME AND AVAILABILITY

Service Level Standard: Licensor will provide no less than ninety-nine point five percent (99.5%) Services Availability, as calculated on an annual basis, subject to the Exclusions below.

“Availability” shall mean the portion (in percentage terms) of Uptime that the Hosted Services are Available for Use (as defined below):

Uptime = (Total Time (24/7)) – (Scheduled Maintenance Windows)

% Availability = (Uptime – Time Unavailable) / Uptime

“Available for Use” shall mean that all of the supported functions and features of the Services are capable of sending and receiving data to and from the Internet.

“Service Level Period” means 24x7: 24 hours a day, 7 days a week, 365 days a year.

“Time Unavailable” shall mean any period of time during the applicable Service Level Period that the Services are not Available for Use, except for the Exclusions set forth below. Time Unavailable - Exclusions

Time Unavailable shall not include the aggregate amount of time during which the Services are not Available for Use due to: Scheduled maintenance, provided that such scheduled maintenance occurs during scheduled maintenance windows, currently between the hours of Friday 10:00 pm and Sunday 11:00 pm, Eastern US Time (the “Scheduled Maintenance Window”):
Emergency maintenance – Licensor may perform any reasonably required, emergency maintenance work outside of the Scheduled Maintenance Window with one (1) hour prior electronic mail or other notice to Customer; Interruptions in third party networks that prevent Internet users from accessing the Service, provided that the data center is served by redundant connections to the internet from multiple internet service providers; Scheduled or emergency maintenance performed by the infrastructure provider.

For clarity, any time during which the Services are not Available for Use due to interruptions in electric power services serving the Hosting Environment shall not be excluded from Time Unavailable. ‘Scheduled Downtime’ shall mean the total minutes during the year represented by the Scheduled Maintenance Window. ‘Uptime’ shall mean the total minutes during the year less the total minutes represented by the Scheduled Downtime.

DEFINITIONS

‘Bug’ means an error condition that causes the Service to fail to operate. ‘Normal Business Hours’ means Monday through Friday, 09:00 – 17:00, Customer’s local time, excluding public holidays. ‘Resolution Time’ means the time elapsed until a Workaround or permanent solution to a Bug has been provided in accordance with the resolution timelines set out below, according to the severity classification. ‘Workaround’ means a temporary error correction or change in operating procedure allowing Customer to continue to use the Service until a long-term solution has been provided.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement, which is incorporated herein by reference.

SUPPORT

During the Term of the Agreement and subject to Customer’s payment of applicable Fees:

Licensor will provide technical support and assistance with respect to the Service, including: (i) clarification of functions and features; and (ii) technical support and assistance in the operation of the Service. Licensor shall provide support during Normal Business Hours via telephone and email to Customer’s Support Contact Designee. Licensor shall not be responsible for providing support for matters not directly involving problems with the Service, such as Customer network connectivity issues, interfaces with other systems, and third party products (software and/or hardware).

RESPONSE AND RESOLUTION SCHEDULE

Customer will initially classify each Bug in the Service based on the following schedule, and thereafter report such Bug or error to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Customer; however, the final classification of the priority level will be determined by Licensor in accordance with the table below:

<table>
<thead>
<tr>
<th>PRIORITY LEVEL</th>
<th>CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>Fatal: Bug preventing all use of the Service.</td>
</tr>
<tr>
<td>Priority 2</td>
<td>Severe Impact: Bug disabling major functions from being performed. This condition exists when the Service is partially inoperative, but is still usable by Customer and the impact is one of inconvenience.</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Minimal Impact: Includes all other Bugs. This condition generally exists when the Service is usable and the problems consist of inconveniences or minor failures involving individual components of the system.</td>
</tr>
</tbody>
</table>

Upon receipt of Customer’s service ticket initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Customer to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

<table>
<thead>
<tr>
<th>PRIORITY LEVEL</th>
<th>RESOLUTION TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>1 to 2 business days</td>
</tr>
<tr>
<td>Priority 2</td>
<td>3 to 6 business days</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Licensor’s discretion</td>
</tr>
</tbody>
</table>
CUSTOMER’S OBLIGATIONS DURING THE SERVICE TERM PERIOD.

Customer shall notify Licensor of any Bugs and errors by sending an email to support@checkmarx.com. Customer shall appoint one support contact designee who will be Licensor’s single point of contact for support requests. Customer shall provide Licensor with all reasonably requested reasonable cooperation and assistance as required to provide support in accordance with the response times set out above. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Customer’s failure to provide reasonable cooperation, support and assistance to Licensor.

All support services are provided remotely. If Customer requires the use of specific remote connectivity software, it is customer’s responsibility to license and operate such software. Remote Customer support shall be provided via WebEx or other mutually agreed means.

CHECKMARX OPEN SOURCE ANALYSIS (“OSA”) AGREEMENT

This Checkmarx Open Source Analysis Agreement (the “Agreement”) is made by and between the applicable Checkmarx entity identified below (“Licensor”), and the customer entity identified above (“Customer”) (as defined herein, each a “Party”, and collectively the “Parties”).

DEFINITIONS.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and “control” means the direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

“Intellectual Property Rights” means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

“OSA Solution” means the cloud-based open source management solution provided to users of the licensed Checkmarx software by Licensor and its designated third party service provider(s). Depending on the configuration licensed by Customer, the OSA Solution may consist of a cloud-based open source management solution accessed using the licensed Checkmarx software (“CxOSA”), or CxOSA together with a stand-alone solution operated by the OSA Service Provider (“CxOSA-WS”).

“Quote” means the quotation document provided by Licensor setting out the quantity and type of OSA Solution licenses purchased by Customer.

LICENSE GRANTS AND RESTRICTIONS.

License Grants. Subject to Customer’s compliance with these OSA Terms, Licensor grants Customer a limited, non-exclusive, nontransferable, non-sublicensable, revocable license during the OSA Term and according to the number and type of OSA Solution licenses as set out in the Quote and applicable purchase order, to: (a) for CxOSA, to permit licensed users of the Checkmarx software to access the object code form of the OSA Solution through the applicable Checkmarx software interfaces; (b) for CxOSA-WS, to additionally access the object code form of the OSA Solution through the applicable OSA Service Provider interfaces; and (c) for either CxOSA or CxOSA-WS (as applicable) to view and use the reports generated by the OSA Solution for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the OSA Solution source code.

Title; Intellectual Property Rights. The OSA Solution is licensed, not sold, and these OSA Terms do not convey any right, title or ownership in the OSA Solution to Customer other than the limited rights and licenses set out herein. The OSA Solution and documentation shall remain Licensor’s or the OSA Service Provider’s property, as applicable. All Intellectual Property Rights evidenced by or embodied in the OSA Solution, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor and the OSA Service Provider, as applicable. Licensor reserves all rights not expressly granted hereunder.

Restrictions. Customer may not: (a) use the OSA Solution in excess of the number and type of licenses authorized by Licensor (for paid use, as set out in the Quote); (b) work around any technical limitations in the OSA Solution or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the OSA Solution; (d) attempt to derive the source code of the OSA Solution; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the OSA Solution to any third party; (f) use the OSA Solution to provide code scanning or audit services to a third party, or make the OSA Solution available in a service bureau or any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of license keys or product codes to a third party; (h) make available to any third party any analysis of the results of the operation of the OSA Solution, including benchmarking results, without the express written consent of Licensor; (i) attempt to access the OSA Solution outside of the software interfaces provided by Licensor and/or the OSA Service Provider; or (j) provide access to the OSA Solution or the output generated by the OSA Solution to any individual who does not hold a valid license to use the OSA Solution.

DATA USAGE.

Data Usage. The OSA Solution transmits technical data to the OSA Service Provider as required to provide the OSA Solution to Customer (the “Data”). No source code of the Customer is sent to the OSA Service Provider. For CxOSA-WS, Customer must provide a customer ID and email addresses to the OSA Service Provider for authentication purposes.

OSA Service Provider. The cloud-based open-source analysis service powering the OSA Solution is operated by a third party service provider under contract to Licensor (the “OSA Service Provider”). The OSA Service Provider is contractually obligated to handle all Data on a confidential basis and to use the Data only in connection with providing the OSA Solution to Customer. Licensor reserves the right to change OSA Service Providers from time to time.

SUPPORT.

Description of Support. Licensor will assist with basic e-mail (Level 1) support to assist Customer with its use of the OSA Solution. Advanced (Level 2 and Level 3) support for the OSA Solution shall be provided by the OSA Service Provider. All support shall be provided in accordance with the service level agreement entered into between Licensor and the Customer in connection with the licensed Checkmarx software.
TERM AND TERMINATION.
Term. These OSA Terms shall be effective during the OSA Solution term set out in the Quote and applicable purchase order (the “Term”), unless renewed by agreement of the Parties or earlier terminated according to the termination provisions set out in the underlying GSA Schedule Contract.

Reserved.
Effect of Termination. Customer’s access to the OSA Solution shall immediately terminate upon expiration of the Term or the termination of these OSA Terms in accordance with the Contract Disputes Act, and any reports or data generated in connection with the OSA Solution will no longer be available for viewing/download. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the OSA Solution. Licensor shall have no liability due to the Customer’s inability to access or use the OSA Solution after termination of these OSA Terms or expiration of the Term. In the event of termination, Customer’s sole and exclusive remedy shall be the refund of any unused OSA Fees remaining as of the date of termination.

DISCLAIMER OF WARRANTIES.
WARRANTY DISCLAIMERS. THE OSA SOLUTION IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE OSA SOLUTION WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE OSA SOLUTION WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE OSA SOLUTION WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

EXCLUSIVITY OF WARRANTIES AND LIMITATIONS OF LIABILITY. CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER'S USE OF THE OSA SOLUTION AND ANY CLAIM ARISING OUT OF OR IN RELATION TO THESE OSA TERMS.

GENERAL PROVISIONS.
Governing Law and Venue. These OSA Terms shall be governed by and interpreted in accordance with the Federal laws of the United States. The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to these OSA Terms. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to these OSA Terms and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

Miscellaneous Terms. Should any provision of these OSA Terms be held to be invalid, such provision shall be replaced with a valid provision implementing the intent of the parties at the time of the signing of these OSA Terms. These OSA Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) supersede any previous agreements or representations, either oral or written regarding the OSA Solution. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these OSA Terms. These OSA Terms may be amended only by an instrument in writing signed by both parties. Customer or Licensor may not transfer or assign its rights or obligations under these OSA Terms to any third party without the prior written approval of the other party, and any such purported assignment shall be null and void. All notices given under these OSA Terms shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by facsimile transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by international courier service (FedEx, UPS, DHL).

Contracting Entity. For Customers located in the United States of America, “Licensor” is defined as Checkmarx, Inc.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

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

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

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

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

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

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

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

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

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

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims
Public Access to Information. All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MASTER LICENSE AND SERVICES AGREEMENT

This Master License and Services Agreement ("Agreement") is entered into by and between the Ordering Activity purchasing under the GSA Schedule Contract ("Customer" or "Ordering Activity"), and Chef Software Inc. a Delaware corporation ("Chef").

Definitions. Capitalized terms used herein have the following definitions:

“Affiliate” means any entity that is controlled by or under common control with Customer, where "control" means the ability whether directly or indirectly to direct the affairs of another by means of ownership, contract or otherwise.

“Chef Proprietary Item” means any Software Usage and Technical Support Data, work, materials, or other tangible or intangible property used by Chef in the course of its performance under this Agreement or any Order Form that is (i) not a Deliverable; or (ii) developed by Chef independently of this Agreement. Inclusion of any Chef Proprietary Item in a Deliverable does not change its character as a Chef Proprietary Item.

“Confidential Information” means any proprietary information received by the other party during, or prior to entering into, this Agreement that is identified as confidential at the time of disclosure or that a party reasonably should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, the Software and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

“Documentation” means any on-line help files, instruction manuals, operating instructions and user manuals created and provided by Chef that describe the use of the Software and either accompany the Software or are available at https://docs.chef.io and https://www.habitat.sh/docs/overview

“Habitat Supervisor” means a process manager in Chef Habitat™ that (i) starts and monitors the child app service defined in a package; and (ii) receives and acts upon configuration changes from other Habitat Supervisors to which it is connected.

“Intellectual Property Rights” means patent rights (including without limitation patent applications and disclosures), copyrights (including without limitation rights in audiovisual works and moral rights), trade secrets, trademarks, know-how, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“License Fee” means fees paid to Chef from Customer in exchange for Customer’s right to use the Software as provided in this Agreement.

“License Term” means the term during which Customer is permitted to use the Software, as described in the applicable Order Form.

“License Unit” means a specific type of numeric quantity used in an Order Form to establish the extent and amount of Customer’s license to Software. “License Unit” includes Node, Resource, and Service Instance.

“Node” means each individual component of Customer’s system - physical or virtual (i.e., server, workstation, IP router, Virtual Machine, or other device or component) that is assessed, installed, configured, updated, scanned and/or managed through the use of Chef Infra.

“Order Form” means a separate document that references this Agreement and is signed by both Parties.

“Professional Services” means any professional services performed by Chef for Customer pursuant to any Order Form.

“Target” means each instance of infrastructure, software, configuration, or other technical resource that is the compliance target of one or more Chef Inspec profiles used by Customer.

“Service Instance” means each single instance of an application service that has been packaged by Chef Habitat and is deployed to any environment, including but not limited to application services that are (a) managed by Habitat Supervisors, or (b) downstream of a pipeline that integrates the Habitat Builder service.

“Services” means, collectively, Professional Services and Support Services.
“Software” means the applicable software made available by Chef and referenced on an Order Form, including all updates, libraries, gems, databases, plug-ins, messaging services, authentication sub-functions, certificate management, and environments provided by Chef to Customer during the applicable License Term.

“Support Services” means the technical support services described at https://www.chef.io/service-level-agreement/ or in any Order Form.

License Grant and Support. During the applicable License Term, and subject to Customer’s compliance with the terms and conditions of Sections 4, 6, 13, 16, and 18, Chef grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable license to (i) install and use the Software only for the internal use of Customer (“License”), (whether on premises or in the cloud, and including any information technology infrastructure for the benefit of Customer’s customers) and limited to the number of License Units for which Customer is current in the payment of the applicable License Fee and, (ii) to use the Documentation only for its internal operation and use.

Support. During the applicable License Term, Chef will provide Customer Support Services for the Software as listed at https://www.chef.io/service-level-agreement at the “Standard” level, or as otherwise described in the applicable Order Form.

Third Party Support. Customer may also elect, at its discretion, to obtain separate support by a third party for all or some of its licensed Software (“Administered License Units”).

Customer agrees that it will provide Chef the following information in connection with all Administered License Units for all periods that it is using a third party to support Administered License Units during the applicable License Term:

Customer identification number/name with third party
Number of Administered License Units for the prior month as of the 10th day of each following Month

The License Term for the Software is independent of any support term for Administered License Units that Customer may elect with a third party.

Failure by Customer to provide the information in this Section 2(b) will be a material breach of this Agreement.

Third Party Software. The Software includes components under license from third parties, including open source licenses (the “Third Party Components”). Third Party Components are subject to the terms of their accompanying open source licenses. Please see https://www.chef.io/3rd-party-licenses/ for more details. For avoidance of doubt, Chef’s warranty of the Software includes all Third Party Components to the extent embedded in, and used by, the Software.

Restrictions. The License is limited. Except as otherwise expressly permitted in this Agreement, Customer will not: (a) copy or use the Software in any manner except as expressly permitted in this Agreement; (b) use or deploy the Software in excess of the License Units for which Customer has paid the applicable License Fee; (c) transfer, sell, rent, lease, commercialize, lend, distribute, or sublicense the Software to any third party; (d) reverse engineer, disassemble, or decompile the Software (except to the extent such restrictions are prohibited by law); (e) alter or remove any proprietary notices in the Software; (f) make available to any third party the functionality of the Software or any license keys used in connection with the Software; or (g) use the Software for any purpose that is unlawful or prohibited by this Agreement or otherwise. If Customer does not comply with the License terms or the foregoing restrictions, Chef may terminate the applicable License in accordance with the contract Disputes Clause (Contract Disputes Act).

Proprietary Rights.

Software and Documentation. Other than the License granted in Section 2, Chef and its licensors retain all right, title and interest in and to the Software and Documentation and all components thereof, including all patent, copyright, trademark, and trade secret rights, whether such rights are registered or unregistered, and wherever in the world those rights may exist and in any derivatives, modifications and enhancements thereto (collectively, the “Chef Rights”). Customer will not commit any act or omission or permit or induce any third party to commit any act or omission, inconsistent with the Chef Rights. Chef or its licensors own all graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, “look and feel”, and arrangement of the Software and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found in the Software (collectively, the “Chef Marks”). This Agreement does not permit Customer to distribute any product or service using the Chef Marks, including in connection with any Third Party Components. Chef will retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Chef.

Proprietary Items. Customer will have or obtain no rights in Chef Proprietary Items (or in any modifications or enhancements to them or any derivative work within the meaning of the US Copyright Act) except that, to the extent the Chef Proprietary Items are incorporated into a Deliverable, Chef will grant Customer a License in such Chef Proprietary Items to use them as part of (but not unbundled from) the Deliverable. All other Intellectual Property Rights in and to the Chef Proprietary Items will remain in and/or are hereby assigned to Chef.

Fees and Payment Terms:
License Fee. An Order Form will state the specific License Fee and the number of License Units licensed to deploy or use the Software. License Fees are based on Software purchased, not actual usage (subject always to Section 15). The number of License Units purchased cannot be decreased during the relevant License Term. License Fees will be paid in accordance with any different billing frequency stated in the applicable Order Form.

Professional Services Fee. For Professional Services fees designated as “fixed fee”, Chef will invoice Customer upon execution of the applicable Order Form. For Professional Services not designated as fixed fee, Chef will invoice monthly in arrears based on actual hours worked during the preceding month. Unless the applicable Order Form provides otherwise, Professional Services Fees designated as “fixed fee.”

Costs and Expenses. Ordering Activity Licensee agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

Payments. Unless otherwise provided in an Order Form, all payments of fees or charges payable to Chef under this Agreement will be made in United States dollars and are due in full within thirty (30) days from the invoice receipt date. Customer will provide complete and accurate billing and contact information to Chef and will notify Chef of any changes to such information.

Late payments. Late payments (other than amounts disputed in good faith by Customer) will bear interest at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. All fees payable under this Agreement are net amounts and are payable in full.

Taxes. Chef shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Delivery and Acceptance.

Acceptance. Chef will make the Software available to Customer electronically. Software will be deemed to be delivered to Customer’s billing address unless Customer provides written notice of an alternative delivery address. The Software will be deemed accepted immediately upon delivery. Acceptance (if any) of Deliverables will be specified in an Order Form.

Term and Renewal; Termination.

Term of Agreement. The term of this Agreement (the “Term”) will commence on the Effective Date and will continue until terminated as provided herein. Except as otherwise provided in Section 8(c) below, termination of this Agreement will not affect any outstanding Order Form, and this Agreement will remain in effect until all Professional Services and Deliverables to be provided thereunder have been completed and/or the applicable License Term has expired per the terms of such Order Form.

Early Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Chef shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Effect of Termination.

Upon termination of this Agreement, Customer will discontinue all representations that it is a Customer of Chef. Termination of the Agreement will not terminate an Order Form unless the basis for termination also prevents full performance under such Order Form and the non-breaching party includes notice of termination of such Order Form in its notice of termination of the Agreement.

Upon termination of an Order Form, the following will apply in respect of that specific Order Form only:

the parties will cooperate to affect an orderly, efficient, effective and expeditious termination of the parties’ obligations under that Order Form;
Chef will have no obligation to perform any Services under the terminated Order Form after the effective date of the termination; Customer will pay to Chef any fees, allowed reimbursable expenses, compensation or other amounts payable for Services performed under the terminated Order Form prior to the effective date of the termination; all licenses granted by Chef thereunder will automatically cease as of the effective date of termination of such Order Form, and if Customer has no other applicable Software License, Customer must uninstall any installed Software, cease using all Software and destroy or return all copies of the Software to Chef; and certify in writing that all known copies thereof, including backup copies, have been destroyed or disabled in all forms and types of media as of the effective date of termination; and upon Customer’s termination of an Order Form as provided in Section 8(b), Chef will, subject to Section 10 and Section 11 of this Agreement, pay to Customer the following:
a pro rata portion of applicable License Fees following the effective date of termination through the expiration of the applicable License Term; and
Professional Services fees designated as “fixed fee” that have not been performed as of the effective date of termination.

Upon termination of this Agreement and completion, termination or expiration of all outstanding Order Forms, each party will promptly return to the other all of the other party’s Confidential Information within its possession or control and will certify in writing that it has complied with its obligations to return all such Confidential Information.

The following shall survive termination of this Agreement for any reason: any and all liabilities accrued before the effective date of termination; and the provisions of this Agreement concerning proprietary rights, indemnity, disclaimers of warranty, limitation of liability, payment of fees and governing law.

**Professional Services.** Chef will perform the Professional Services detailed in any Order Form. Order Forms will set forth a description of the work to be performed, fees, time schedules and other special terms and conditions applicable to the particular project. Each Order Form will become effective only upon acceptance by both parties hereto as evidenced by signature of an authorized representative of each party on the applicable Order Form. Chef will perform the Professional Services using its employees, subcontractors or agents, as Chef in its sole discretion deems appropriate. Chef will remain responsible to Customer for the actions of its employees, subcontractors or agents when so used.

**Customer Responsibilities.** Customer understands its business needs and has determined independently that the Deliverables and Professional Services will meet its needs.

**Intellectual Property Ownership.** Should the Professional Services set forth in an Order Form result in any reports, work product or other tangible items identified in an Order Form as a deliverable (“Deliverables”), unless otherwise provided in an Order Form, Chef grants to Customer a worldwide, non-exclusive, non-transferable, non sub-licensable license to use the Deliverables for Customer's internal use. Other than the limited license to the Deliverables contained herein or as otherwise set forth in an Order Form, Chef will own and retain all right, title and interest, express or implied, in and to any Deliverables created during the course of providing the Professional Services and to all other works of authorship of any kind or nature prepared, created or conceived by Chef in the performance of the Professional Services, exclusive of any Confidential Information of Customer incorporated therein. Chef will not own or have any right, title or interest in or to the Confidential Information of Customer, whether by assignment, license or otherwise.

**Residuals/Items of General Knowledge.** Chef may use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its professional services practice in the course of providing the Professional Services, including information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Chef. In no event will Chef be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables, provided this is done without use of Customer’s Confidential Information.

**Warranty.**

**Software Warranty.** Chef warrants that the Software will perform in all material respects as specified in its accompanying Documentation under normal use for the duration of the Warranty Period. This warranty extends only to Customer. To the maximum extent permitted by applicable law, Customer’s exclusive remedy for a breach of this limited warranty is to return any allegedly defective Software, and Chef, at its option, will replace it or refund any fee paid for the Software, provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. Chef's sole obligation under the limited warranty set forth in this Section 10(a) is to use its reasonable efforts to correct or replace any non-conforming Software once Chef has been made aware of such non-conformance or, in Chef's sole discretion, to terminate this Agreement (in which event, Customer will immediately stop using the Software) and refund the License Fees paid by Customer to Chef up through the effective date of such termination.

**Services Warranty.** Chef warrants to Customer for a period of sixty 60 days after Customer acceptance of Services or Deliverables or initial receipt of or access to the Software, as applicable (the “Warranty Period”) that: (i) the Services will be performed in a good and workmanlike manner; and (ii) the Deliverables will conform in all material respects to applicable specifications identified in an Order Form. Chef’s sole obligation under the limited warranty set forth in this Section 10(b) is to use commercially reasonable efforts to correct any Services or Deliverables that do not comply with the warranties set forth in this Section 10(b) (e.g., by reperformance of any nonconforming Services or modifying any noncomplying Deliverables); provided that Customer gives Chef written notice of the noncompliance within the Warranty Period. If, after the expenditure of commercially reasonable efforts, Chef is unable to correct the noncompliance, Chef may choose to refund an equitable portion (e.g., based upon the value of Customer's actual use of, or any benefits received by Customer) of the fee paid by Customer for such Deliverables or Services, whereupon the same will be deleted from the Deliverables or Services and no longer considered a part thereof.

**Exclusions.** The warranties under Sections 10(b) and 10(a) do not apply to any noncompliance resulting from any: (i) use not in accordance with this Agreement or any applicable Order Form, including Customer operation or use of the Software or Deliverables other than in accordance with applicable documentation or design or on hardware not recommended, supplied or approved by Chef; (ii) modification, damage, misuse or other action of Customer or any third party; (iii) combination with any goods, services or other items provided by Customer or any third party; or (iv) combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software. Further, Chef does not warrant that the Software or Deliverables or any other items furnished by Chef under this Agreement or any Order Form are free from non-material bugs, errors, defects or deficiencies.

**Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTIONS 10(a) AND 10(b) ABOVE, THE SOFTWARE, DELIVERABLES, AND ANY SERVICES PROVIDED UNDER
THIS AGREEMENT ARE PROVIDED “AS IS”, WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, WARRANTIES CONCERNING THE USE, INTEROPERABILITY, OR PERFORMANCE OF THE SOFTWARE. CHEF DISCLAIMS ANY AND ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. CHEF DOES NOT WARRANT THAT THE SOFTWARE, DELIVERABLES, OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

Indemnification

Indemnification by Chef. Chef will indemnify Customer and will pay any costs or damages that may be finally awarded in respect of any third party claims, proceedings, costs or damages, including actual attorneys’ fees and court costs and expenses in any such third party action, proceeding or case, and agreed settlements to the extent that the Software or Deliverables infringe any United States patent, or any copyright, trademark or other proprietary right of such third party; provided that Customer: (i) promptly notifies Chef of the claim; (ii) gives Chef all necessary information regarding the claim; (iii) reasonably cooperates with Chef; and (iv) allows Chef to control the defense and all related settlement negotiations; provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Software or Deliverables), then such settlement will require the Customer’s prior written consent, which consent will not be unreasonably withheld. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Injunction. If an injunction is sought or obtained against Customer’s use of Software or Deliverables as a result of a third party infringement claim or in Chef’s opinion is likely to be enjoined, Chef may, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software or Deliverable, (ii) replace or modify the affected Software with substantially equivalent software functionality so that it does not infringe, or, if either (i) or (ii) is not commercially feasible in Chef’s opinion, (iii) terminate the License and promptly refund Customer a pro-rata portion of any prepaid License Fees based on the remainder of the License Term.

Exclusions. Chef will have no liability for any infringement claim (a) based on modifications to the Software or Deliverables made by a party other than Chef or third party acting on behalf of Chef, if a claim would not have occurred but for such modifications, (b) based on the use of other than the then-current, unaltered version or release of the Software or Deliverables, unless the infringing portion is also in the then-current, unaltered version or release; (c) based on the use, operation or combination of the Software or Deliverables with non-Chef programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination; (d) attributable to any Third Party Components; (e) based on Customer’s use of the Software or Deliverables other than in accordance with this Agreement or the applicable Documentation; or (f) based on combination of the Software with any distribution or binary not provided by Chef, even if the distribution or binary is derived from the same source code as the Chef Software.

Sole Remedy. THE TERMS OF THIS SECTION 11 CONSTITUTE THE ENTIRE LIABILITY OF CHEF, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY INDEMNIFICATION CLAIMS OF ANY KIND.

Reserved.

Limitation of Liability

Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED SPECIFICALLY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, DELIVERABLES, OR THE SERVICES PROVIDED BY CHEF HEREUNDER INCLUDING, WITHOUT LIMITATION, DAMAGES OR OTHER LOSSES FOR LOSS OF USE, LOSS OF BUSINESS, LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

Aggregate Liability. IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO CHEF UNDER THIS AGREEMENT.

General. THESE LIMITATIONS APPLY EVEN IF THIS SECTION 12 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE
EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, THE LIABILITY OF THE PARTIES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

Exclusion – Violations of Law. The limits in Section 12(a) and Section 12(b) above do not apply to damages incurred by a party due to the other party’s violation of applicable laws. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Confidentiality and Privacy. Customer and Chef will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party will protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party’s Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event will use less than reasonable care. The terms of this Confidentiality section will survive termination of this Agreement. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party’s option, promptly return or destroy (and provide written certification of such destruction) the disclosing party’s Confidential Information, save once copy for archival and dispute resolution purposes.

Data Protection. If the General Data Protection Regulation (“GDPR”) applies to Customer then the following terms will apply:

Definitions: In this Section 14, the following terms will have the following meanings:

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Processing” (and “Process”) and “Special Categories of Personal Data” will have the meanings given in Applicable Data Protection Law;

“Applicable Data Protection Law” will mean: (i) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC); and (ii) on and after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679).

“Standard Contractual Clauses” means the contractual clauses set out in Exhibit 1 to this Agreement.

Processing of Data:

Applicability. This Section 14 will apply only to the extent Customer is established within the EEA or Switzerland and/or to the extent Chef processes Personal Data of Data Subjects located in the European Economic Area (“EEA”) or Switzerland on behalf of Customer.

Relationship of the parties: The Customer (the “Controller”) appoints Chef as a processor to Process the Personal Data that is the subject of the Agreement (the “Data”) for the purposes described in this Agreement and any Order Form (or as otherwise agreed in writing by the parties) (the “Permitted Purpose”). Chef will comply with the obligations that apply to it under Applicable Data Protection Law. The Ordering Activity is not bound by the GDPR.

Prohibited data: The Customer will not disclose any Special Categories of Data to Chef for processing.

Purpose Limitation: Chef will process the Data as a Processor as necessary to perform its obligations under this Agreement and any Order Form, and in accordance with the documented instructions of Customer (the “Permitted Purpose”), except where otherwise required by any EU (or any EU Member State) law applicable to Chef. The duration of the Processing, the nature and purpose of the Processing, the types of Data and categories of Data Subjects Processed under this Agreement are further specified in Appendix 1 to the Standard Contractual Clauses.

International transfers: Chef will not transfer the Data (nor permit the Data to be transferred) outside of the EEA unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorization in accordance with Applicable Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission. The following transfer mechanisms listed below will apply, in the following order of precedence, to any transfers of Data under this Agreement from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Laws and Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Laws and Regulations: (1) EU-U.S. and Swiss-U.S. Privacy Shield Framework self-certifications (if applicable); (2) The Standard Contractual Clauses set forth in Exhibit 1 to this Agreement.

Confidentiality of Processing: Chef will ensure that any person it authorizes to process the Data (an “Authorized Person”) will protect the Data in accordance with Chef’s confidentiality obligations under this Agreement.
Security: Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Chef will implement technical and organizational measures to protect the Data (1) from accidental or unlawful destruction, and (2) loss, alteration, unauthorized disclosure of, or access to the Data (a "Security Incident").

Sub-Processing: The Customer consents to Chef engaging third party sub processors to process the Data for the Permitted Purpose provided that: (1) Chef maintains an up-to-date list of its sub processors; (2) Chef imposes data protection terms on any sub processor it appoints that require it to protect the Data to the standard required by Applicable Data Protection Law; and (3) Chef remains liable for any breach of this Clause that is caused by an act, error or omission of its sub processor. The Customer may object to Chef's appointment or replacement of a sub processor, provided such objection is based on reasonable grounds relating to data protection. In such event, Chef will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If Chef is unable to make available such change within a reasonable period of time, which will not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Chef without the use of the objected-to new Sub-processor by providing written notice to Chef. Chef will refund Customer any prepaid fees covering the remainder of the term of such Order Form(s) following the effective date of termination with respect to such terminated Services, without imposing a penalty for such termination on Customer.

Cooperation and Data Subjects' Rights: Customer is not required to respond to any request from a Data Subject under any Applicable Data Protection Law unless required by a Federal Law of the United States. Chef will provide reasonable and timely assistance to the Customer to enable the Customer to respond to: (1) any request from a Data Subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (2) any other correspondence, inquiry or complaint received from a Data Subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Chef, Chef will promptly inform the Customer providing full details of the same.

Data Protection Impact Assessment: If Chef believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it will inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Applicable Data Protection Law.

Security Incidents: If Chef becomes aware of a confirmed Security Incident (as defined in Section 14(b)(vii) above), it will inform the Customer without undue delay and will provide reasonable information and cooperation to the Customer so that the Customer can fulfill any data breach reporting obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Chef will further take such any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and will keep the Customer informed of all material developments in connection with the Security Incident.

Deletion or Return of Data: Upon termination or expiration of the Agreement, Chef will (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement will not apply to the extent that Chef is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data Chef will securely isolate and protect from any further processing except to the extent required by such law.

Audit: The Customer acknowledges that Chef is regularly audited by independent third party auditors. Upon request, Chef will supply a summary copy of its audit report(s) to the Customer, which reports will be subject to the confidentiality provisions of this Agreement. Chef will also respond to any written audit questions submitted to it by the Customer, provided that the Customer will not exercise this right more than once per year.

Software Usage Tracking.

If and when Customer adds additional License Units to its License, Customer will pay to Chef for such additional License Units added to any License. Upon Chef's request (such request not to be made more than twice during any 12 month period without good cause), Customer agrees to promptly deliver to Chef (i) any usage files and reports generated by the Software to permit Chef to verify the number of License Units actually used by Customer during the applicable License Term; and/or (ii) a certification signed by one of Customer's officers regarding the number of License Units actually used by Customer during the applicable License Term. Notwithstanding the foregoing, Customer agrees to reasonably cooperate with Chef to verify the number of License Units actually used by Customer during the applicable License Term. If Chef confirms that Customer has exceeded the number of License Units for the applicable License Term, in addition to any other remedies available under this Agreement or applicable law, Customer agrees to pay the then-current License Fees in accordance with the GSA Schedule Pricelist for the additional License Units used by Customer. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

Unless Customer chooses to disable telemetry features in the Software, Customer consents to Chef receiving data and information directly from the Software for the sole purpose of obtaining information regarding Customer’s use of the Software (i.e., when Customer installs an update or upgrade), as well as any Software bugs, errors, and other similar technical support issues. Chef will only use such data and information (“Software Usage and Technical Support Data”) for its own business purposes, including but not limited to the purposes of (i) providing the Support Services; and (ii) to gather information about how Customer uses the Software, which may be combined with information about how others use the Software, in order to help Chef better understand trends and Customers' needs in...
order to better consider new features, and (iii) improving the Software and Customer's use experience. Chef will use Software Usage and Technical Support Data solely in aggregate, anonymized form and solely for Chef's own business purposes. For instructions on how to disable Chef's access to the Software Usage and Technical Support Data, please refer to the Software Documentation or contact Chef Support.

**Export Compliance**. As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer will be solely responsible for compliance with any such import, use, or export restrictions.

**FCPA, and No Unlawful Payments.** Neither the Customer nor any of its subsidiaries nor, to the Customer's knowledge, any other person associated with or acting on behalf of the Customer or any of its subsidiaries, including, without limitation, any director, officer, agent, employee or affiliate of the Customer or any of its subsidiaries ("Representatives") has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action; (b) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (c) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (d) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder; or (e) Reserved. Further, Customer will, and will cause its Representatives to, comply with, as applicable the FCPA, including maintaining and complying with all policies and procedures to ensure compliance with these laws.

**Additional Obligations.** Each Party will comply with all applicable local, state, national, and international laws and regulations with respect to its rights and obligations under this Agreement. Customer further agrees that its purchase under this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Chef regarding future functionality or features of the Software.

**U.S. Government.** The Software is "Commercial Computer Software" as defined under FAR 52.227-14. For all other government entities, use, duplication, or disclosure of the Software and Documentation by the U.S. Government is subject to restrictions set forth in 52.227-14, as applicable.

**General.**

Excusable delays shall be governed by FAR 52.212-4(f).

Neither party may assign this Agreement except upon the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's voting securities or the assets governed by this Agreement in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

Customer consents to Chef's use of the Customer name for marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. All waivers must be in writing and signed by both parties.

All notices permitted or required under this Agreement will be in writing and will be delivered in person, by confirmed facsimile, overnight courier service or mailed by first class, registered or certified mail, postage prepaid. Such notice will be deemed to have been given upon receipt.

This Agreement will be governed by the Federal laws of the U.S.A.

The parties expressly agree that the UN Convention for the International Sale of Goods (CISG) or the Uniform Computer Information Transactions Act (UCITA) will not apply.

Any amendment or modification to the Agreement must be in writing signed by both parties.
In the event of a conflict between this Agreement and other applicable documents between the Parties, such documents will apply in the following descending order of precedence: (i) Order Form; (ii) this Agreement; (iii) other applicable agreements. In the event of a conflict between any terms of this Agreement or terms of an Order Form and the terms and conditions attached to or otherwise forming part of any Purchase Order issued by Customer (collectively, “Purchase Order Terms”), the terms of the negotiated Purchase Order will control or supersede the Agreement and/or Order Form. This Agreement supersedes the terms of any shrinkwrap or click-through license agreement included in any package or downloadable version of the Software.

Each of the parties has caused this Agreement to be executed by its duly authorized representatives as of the Effective Date.

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other’s behalf without the other’s prior written consent.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
Cigent End-User Agreement

This End User Agreement (this “Agreement”, also referred to elsewhere as “EULA”) is an agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity” and Cigent Technology, Inc., a Delaware corporation (“Cigent”). This Agreement governs orders placed by Customer (defined below) to access and use Cigent’s On-Premise Software, Cloud Services and/or Professional Services (and any updates and modifications thereto).

BY ISSUING AN ORDER TO CIGENT (OR ITS AUTHORIZED CHANNEL PARTNER), CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL (“YOU”) ACTING ON BEHALF OF CUSTOMER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT HAVE AUTHORITY TO BIND CUSTOMER, OR IF YOU OR CUSTOMER DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND CUSTOMER MAY NOT USE THE PRODUCTS.

This Agreement consists of, collectively, this base agreement, the terms and conditions detailed in the Product Addendum and the applicable Policies attached hereto as Exhibit 1. In the event of any conflict between the terms and conditions set forth in the base Agreement and those set forth in the Product Addendum, the terms and conditions of such Product Addendum shall control.

DEFINITIONS

Unless otherwise indicated in this Agreement, the following terms, when capitalized, shall have the following meaning: “Professional Services” means, as applicable, Professional Services and Maintenance and Support Services. “Channel Partner” means, as applicable, the authorized reseller, distributor, or other authorized third party that markets and sells the Products. “Cloud Services” means the Web-based application services made generally available by Cigent on a subscription basis and identified on the applicable Order. “Customer” means the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document executing this Agreement and to the extent specified on any Order hereunder its affiliates (including parents, subsidiaries and other entities controlling or under common control with any of such entities) or its authorized third party service providers; provided however, that, in each case, Customer shall be solely responsible for ensuring
compliance with the applicable terms and conditions of the Agreement and Customer shall remain liable for any breach of such terms and conditions by its affiliates and third party service providers. “Customer Data” means all Customer-specific and Customer-identifiable data submitted to or collected by the Products by or on behalf of Customer. “Delivery” means the date Cigent provides access to the keys to Customer for On-Premise Software, or the date Cigent provides Customer with log-in access to the Cloud Services. “Documentation” means, as applicable, the functional specifications, user guides, “help” pages, installation instructions, descriptions or technical requirements created and provided by Cigent generally to its customers, either in documentary form or via Product information websites. “Endpoint” means all Customer device(s) on which the Endpoint Software (defined below) is installed and in accordance with the Documentation, including, but not limited to, laptops, desktops, tablets, point of sale devices and servers. “Feedback” means suggestions, enhancement requests, recommendations or other input provided to Cigent regarding the Products. “Fees” means amounts payable for the Products to which the Customer subscribes under this Agreement in accordance with the GSA Schedule Pricelist. “Maintenance and Support” means the maintenance and support services detailed in the Cigent Maintenance and Support Policy located on the Policies Page (defined below). “On-Premise Software” means: (i) Cigent’s proprietary software products as specified on Order(s); and/or (ii) Cigent’s proprietary endpoint software required for use with certain Products, and which is installed on Customer Endpoints (“Endpoint Software”). “Order” means an order form issued by Customer for the purchase of the applicable Products, or a Customer or Channel Partner purchase order, as applicable. “Policies” means the policies and documents applicable to Cigent and the Products, that are attached hereto. “Product Addendum” means the product addendum attached hereto as Exhibit 1 and incorporated herein by reference, which contains product-specific terms and conditions. “Product(s)” means, as applicable, the Cloud Services, On-Premise Software, and Professional Services, as applicable, to which Customer subscribes under this Agreement. “Professional Services” means, if applicable, training, implementation or Product-related services specified on the Order(s) or detailed in a Statement of Work. “Subscription Term” means the period of time Customer is authorized to use Products, as identified on an Order. “Statement of Work” means, if applicable, any written, mutually signed work statement that references this Agreement or an Order and which details activities and terms relating to Professional Services.

ORDERS; FEES; TAXES; PAYMENT TERMS.
–Orders
Customer shall place Orders directly with Cigent or with a Channel Partner, as applicable. The terms relating to Fees, taxes and payment terms detailed in this Section 2 apply solely to Orders placed directly with Cigent. Corresponding terms for Orders placed with a Channel Partner shall be agreed to by and between Customer and such Channel Partner.

–Fees
The Fees for Products shall be set forth in the Order in accordance with the GSA Schedule Pricelist.

–Taxes
Provider shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

–Payment Terms
The Fees for each Order are payable net thirty (30) calendar days from the receipt date of invoice unless otherwise as specified in the applicable Order and in accordance with the GSA Schedule Pricelist. Unless otherwise agreed to in writing by Cigent or the Channel Partner, all payments hereunder shall made in U.S. dollars and are free from all setoffs.

PRIVACY AND SECURITY

–Privacy and Security
As further described in Cigent’s Privacy Policy which is located on the Policies Page attached hereto, Cigent will take commercially reasonable and appropriate technical and organizational measures designed to protect Customer Data against unauthorized access, accidental loss or damage, and unauthorized destruction. The security provided by Cigent shall be in accordance with Cigent’s information security policies included on the Policies Page and good industry practices relating to protection of the type of data typically processed by Cigent. Cigent’s European Union General Data Protection Regulation Policy is located on the Policies Page.
- Data Processing

The parties acknowledge that Customer Data may contain personal data (as defined under applicable data protection laws) and Cigent shall process such data in accordance with the documented instructions of Customer and Customer Data is handled in accordance with applicable Government data security requirements regarding the collection, processing and protection of personal data, and in accordance with this Agreement. Customer hereby consents to Cigent’s processing of Customer Data, including personal data, for the purposes of carrying out its obligations under this Agreement, and for other lawful purposes in accordance with applicable laws and regulations. Customer is responsible for obtaining any required consents from individual data subjects relating to the use of the Products.

- Disclosure of Personal Data

Cigent will not disclose personal data outside of Cigent or its controlled subsidiaries except: (i) as Customer directs; (ii) as described in this Agreement; or (iii) as required by law. The Product may include optional functionality provided by third party processors. In the event Customer chooses to utilize such functionality, Customer will be provided advance notification in the Product of the processing details. Following such notification, Customer may choose to: (a) refrain from utilizing the applicable functionality, in which case such processing will not occur; or (b) proceed with the functionality, in which case Cigent will be authorized to process in accordance with the details provided. Cigent is responsible for its third party processor compliance with Cigent’s obligations in the Agreement and shall ensure that such third parties are bound by written agreements that require them to provide at least the level of data protection required of Cigent by the Agreement.

- Threat Intelligence Data Collection

Certain Cigent Products may collect data relating to malicious or potentially malicious code, attacks, and activities on Customer Endpoints (“Threat Intelligence Data”). Threat Intelligence Data is collected by Cigent for analysis and possible inclusion in a threat intelligence feed utilized by certain Products. Prior to inclusion in any threat intelligence feed, Threat Intelligence Data will be: (i) reduced to a unique file hash or to queries or general behavioral descriptions that can be used to identify the same or similar malicious or potentially malicious code in Customer’s systems and other Cigent customer systems; and/or (ii) be anonymized and made un-attributable to any particular
Customer or individual. Cigent may distribute Threat Intelligence Data to its customers at its discretion as part of its threat intelligence data feed. Customer agrees that Threat Intelligence Data is not Customer Data, and Cigent may retain, use, copy, modify, distribute and display the Threat Intelligence Data for its business purposes, including without limitation for developing, enhancing, and supporting products and services, and for use in its threat intelligence feed provided such Customer Data is handled in accordance with applicable Government data security requirements.

RIGHTS; CUSTOMER RESTRICTIONS

–Rights in Cigent Products
Cigent reserves all rights to the Products and all intellectual property relating thereto not specifically granted in this Agreement. All Products under this Agreement are provided under subscription and not sold, and shall remain the sole and exclusive property of Cigent.

–Feedback
If Customer or any users provide Cigent with any Feedback, Cigent may use and exploit such Feedback at its discretion without attribution of any kind. All Feedback is provided by Customer without warranties. Customer shall have no obligation to provide Feedback. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

–Rights in Customer Data
As between Customer and Cigent, except as otherwise set forth in this Agreement, all right, title and interest in and to the Customer Data is owned exclusively by Customer.

–Customer Restrictions
Except as may otherwise be explicitly provided for in this Agreement, Customer shall not, and shall take reasonable steps to ensure its Administrative Users (defined below) do not: (i) sell, transfer, rent, copy (other than for archival or backup purposes), reverse engineer (except as allowed by and in compliance with applicable law), reverse compile, modify, tamper with, or create derivative works of the Products, (ii) use the Products to operate a service bureau, outsourcing, sublicensing, or similar business for the benefit
of third parties; (iii) use the Products other than in connection with Customer’s internal business; (iv) remove any copyright and trademark notices incorporated by Cigent in the Products; (v) cause or permit others to access or use the Products in order to build or support, and/or assist a third party in building or supporting, software or services competitive to Cigent; (vi) perform or disclose any of the following security testing on the Products (including any Cloud Services environment or associated infrastructure): network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing or penetration testing; or (vii) use the Products to: (a) perform any activity that is unlawful, or that interferes with any use of the Products or the network, systems and/or facilities of Cigent or its service providers; (b) store, process, publish or transmit any infringing or unlawful material, or material that constitutes a violation of any party’s privacy, intellectual property or other rights; or (c) perform any activity intended to circumvent the security measures of Cigent or its service providers. Customer is responsible for all administrative access by its personnel and, if applicable, its service providers (“Administrative Users”) through its login credentials, for controlling against unauthorized access, and for maintaining the confidentiality of usernames and passwords. If Customer becomes aware of any breach of this Section 4.4, Customer will notify Cigent and remedy the situation immediately, including, if necessary, limiting, suspending or terminating an Administrative User’s access to the Products.

REPRESENTATIONS AND WARRANTIES

–Mutual Representation and Warranties
Each party represents and warrants to the other that: (i) it has the legal right and authority to enter into this Agreement and perform its obligations hereunder; and (ii) it will not introduce into the Products any virus, worm, Trojan horse, time bomb, or other malicious or harmful code (excluding, however, any legitimate mechanism to disable operation of the Products after the expiration of a Subscription Term).

–Threat Intelligence Feeds
The information provided via any threat intelligence feed is provided on an “AS-IS” and “AS-AVAILABLE” basis only.

–Endpoint Software
For Products that utilize Endpoint Software, Cigent warrants that the Endpoint Software will conform in all material respects to the specifications detailed in the Documentation at the time of Delivery and, if Customer is entitled to receive Maintenance and Support Services, any Updates provided for the Endpoint Software will be compatible with the then-current Cloud Services or version of On-Premise Software, as applicable.

--Professional Services Limited Warranty

Cigent warrants that the Professional Services will be performed in a professional and workmanlike manner consistent with industry standards for similar types of services. For any breach of the foregoing limited warranty, Customer’s exclusive remedy shall be to terminate the applicable Professional Services and receive and refund any prepaid but unused Fees applicable to the non-compliant Professional Services.

--Cigent Products

The warranty for specific Cigent Products is detailed in the Product Addendum. The limitation on warranties in Section 5.6 below, the exclusion of certain warranties in Section 5.7 below, and the disclaimer of actions set forth in Section 5.8 below, also apply to any warranties set forth in the Product Addendum.

--LIMITATION ON WARRANTIES

Cigent warranties are for the benefit of Customer only and are void if: (i) the Products are integrated by Customer with third party products, unless integrated in accordance with the applicable Documentation; (ii) the Products are altered by anyone other than Cigent or an authorized representative of Cigent; (iii) the Products are improperly installed, maintained or accessed by anyone other than Cigent or an authorized representative of Cigent; (iv) Customer is utilizing a version of the On-Premise Software no longer supported by Cigent; or (v) the Products are used in violation of the applicable Documentation or Cigent’s instructions or this Agreement.

--EXCLUSION OF CERTAIN WARRANTIES

Except for warranties detailed in the Product Addendum, the foregoing warranties are in lieu of and exclude all other express and implied warranties, including but not limited to, warranties of merchantability, title, fitness for a particular purpose, non-infringement, error free operation or non-intrusion due to hacking or other similar means of unauthorized access. No written or oral representation, made by Cigent personnel or
otherwise, which is not contained in this Agreement or identified in the Purchase Order, Statement of Work, or similar document, will be deemed to be a warranty by Cigent or give rise to any liability of Cigent whatsoever. Customer acknowledges that it is impossible under any available technology for any products to identify and eliminate all malware or potential threats.

–DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES

Cigent does not and cannot control the flow of data to or from Cigent’s network and other portions of the internet, and accordingly Cigent disclaims any and all warranties and liabilities resulting from or related to a failure in the performance of internet services provided or controlled by a third party other than any contractor or agent of Cigent hereunder.

LIMITATION OF LIABILITY

–NO CONSEQUENTIAL DAMAGES

Except for in relation to: (i) a breach of Section 9 (Confidentiality); (ii) a party’s violation of the other party’s intellectual property rights; or (iii) a party’s indemnification obligation in this Agreement; notwithstanding any provision of this Agreement to the contrary, in no event shall either party or its suppliers, officers, directors, employees, agents, shareholders, or contractors (“Related Parties”) be liable to the other party for consequential, incidental, special, punitive or exemplary damages (including but not limited to lost revenues, profits or data, or costs of business interruptions other economic loss) arising from or in connection with any cause including but not limited to breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or any other economic losses, even if the other party is advised of the possibility of such damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS

–LIMIT ON LIABILITY

Except for liability arising from: (i) a breach of Section 9 (Confidentiality) below; (ii) a party’s violation of the other party’s intellectual property rights; (iii) a party’s indemnification obligation in this Agreement; or (iv) a party’s fraud, willful misconduct or violation of Section 10.9; the maximum cumulative liability of a party and its related parties for any and all claims in connection with this Agreement or the subject matter hereof, including but not limited to claims for breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or otherwise, shall in no circumstance exceed the fees paid to Cigent for the applicable Product(s) giving rise to the liability.

INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

Cigent shall have the right to intervene to: (i) defend and indemnify Customer and its officers, directors, employees and agents from and against all claims and causes of action arising out of an allegation that the Products (hereinafter the “Indemnified Product[s]”) infringe a third party copyright, trademark, patent, or other intellectual property right; and (ii) pay the resulting cost and damages finally awarded against Customer by a court of competent jurisdiction or the amount stated in a written settlement signed by Cigent, as long as Customer gives Cigent: (a) prompt written notice of such claim or action; (b) the right to control and direct the investigation, preparation, defense, and settlement of the action; and (c) reasonable assistance and information with respect to the claim or action. If a final injunction is obtained against Customer’s right to continue using the Indemnified Product or, if in Cigent’s opinion an Indemnified Product is likely to become the subject of a claim, then Cigent may, through negotiated agreement, either: (1) obtain the right for Customer to continue to use the Indemnified Product; or (2) replace or modify the Indemnified Product so that it no longer infringes but functions in a materially equivalent manner. If Cigent determines that neither of these alternatives is reasonably available, then Cigent may terminate this Agreement and refund any prepaid unused Fees applicable to the infringing Indemnified Product. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. This section shall not apply to infringement or misappropriation claims arising in whole or in part from: (A) designs,
specifications or modifications originated or requested by Customer; (B) the combination of the Indemnified Products or any part thereof with other equipment, software or products not supplied by Cigent if such infringement or misappropriation would not have occurred but for such combination; or (C) Customer’s failure to install an update or upgrade, where same would have avoided such claim. THE FOREGOING STATES CIGENT’S ENTIRE OBLIGATION AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ACTUAL OR POTENTIAL THIRD PARTY INFRINGEMENT CLAIMS OR CAUSES OF ACTION.

TERMINATION

–Termination for Cause

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cigent shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

–Effect of Termination

Upon the effective date of termination of the Agreement or an Order: (i) Cigent will immediately cease providing the applicable Cloud Services and/or Professional Services; (ii) Customer will immediately cease use of any On-Premise Software and remove such On-Premise Software from its systems; and (iii) any and all of Customer's current and, in the case of termination for cause by Cigent, payment obligations under this Agreement immediately become due for Fees incurred prior to and including the termination date. In the event of termination for cause by Customer, Cigent will refund any prepaid, unused Fees pro rata from the date of termination.

CONFIDENTIALITY

–Confidential Information

As used in this Agreement, “Confidential Information” means all information of either party that is not generally known to the public, whether of a technical, business or other nature, that is disclosed by one party to the other party or that is otherwise learned by
the recipient in the course of its activities with the disclosing party, and that has been identified as being proprietary and/or confidential or that the recipient reasonably ought to know should be treated as proprietary and/or confidential under the circumstances of disclosure.

When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. Cigent recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor. The Customer agrees to give Cigent adequate prior notice of the request and before releasing Cigent’s Confidential Information to a third party, in order to allow Cigent sufficient time to seek injunctive relief or other relief against such disclosure.

–Exceptions

The obligations of either party pursuant to this Section 9 shall not extend to any information that: (i) recipient can demonstrate through written documentation was already known to the recipient prior to its disclosure to the recipient; (ii) was or becomes known or generally available to the public (other than by act of the recipient); (iii) is disclosed or made available in writing to the recipient by a third party having a bona fide right to do so; (iv) is independently developed by recipient without the use of any Confidential Information; or (v) is required to be disclosed by process of law, provided that the recipient shall notify the disclosing party promptly upon any request or demand for such disclosure.

MISCELLANEOUS

–Notices

Any notice under this Agreement must be in writing and sent by certified letter, receipted commercial courier or e-mail transmission (acknowledged in like manner by the intended recipient) to the respective addresses shown on the Order(s), and shall be deemed given on the date received by the recipient, except that Cigent may provide notice of changes to Policies, if required, via written announcement on its customer portal, which shall be deemed given on the date of such announcement. Any party may from time to time change such address or individual by giving the other party notice of such change in accordance with this Section.
–Export Control
Customer acknowledges that any Products and Confidential Information provided under this Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the Products or Confidential Information in violation of U.S. export regulations. Without limiting the foregoing: (i) each party warrants and represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports; and (ii) Customer shall not permit individuals to access or use the Products in violation of any U.S. or United Nations export embargo, prohibition or restriction.

–Usage
Upon request, Customer agrees to certify to its compliance with the quantity and usage restrictions set forth in this Agreement and any Order for On-Premise Software, or to allow Cigent or its approved designee to inspect Customer's data processing systems and records to verify such compliance. Cigent may review Customer's usage of the Cloud Services to determine Customer's compliance with the quantity and usage restrictions of this Agreement and any Order. Cigent will promptly notify Customer if Cigent (or a Customer certification) determines that Customer's usage of the Products exceeds purchased quantities, and if so, Customer shall promptly pay to Cigent additional Fees applicable to such prior over-usage, and either: (i) immediately discontinue any such overuse; or (ii) purchase such additional quantities to cover Customer's actual usage going forward, at Cigent's then current charges.

–Applicable Law
This Agreement shall be governed by the Federal laws of the United States of America, excluding: (i) reserved; (ii) the United Nations Convention on Contracts for the International Sale of Goods; and (iii) the Uniform Computer Information Transactions Act (UCITA) as adopted by any state

–Assignment
Neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld). The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for
securing such approval are set forth in FAR 42.1204. Any assignment in contravention of this provision shall be null and void. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

–Non Waiver
The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

–Relationship of the Parties
Cigent is an independent contractor. The provisions of this Agreement shall not be construed to establish any form of partnership, agency or other joint venture of any kind between Customer and Cigent, nor to constitute either party as the agent, employee or legal representative of the other.

–Force Majeure
Excusable delays shall be governed by FAR 52.212-4(f).

–Compliance with Laws
Cigent will comply with all laws and regulations applicable to it and its provision of the Products. Cigent is not responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not generally applicable to information technology service providers. Cigent does not determine whether Customer Data includes information subject to any specific law or regulation. Customer must comply with all laws and regulations applicable to it and its use and possession of the Products.

–Severability
Any provision of this Agreement that is unenforceable shall not cause any other remaining provision to be ineffective or invalid.

–Modification of Agreement
Except as set forth herein, no addition to or modification of this Agreement shall be binding on either of the parties hereto unless reduced to writing and executed by authorized representatives of each of the parties.

–Modification of Cloud Services and Policies

Notwithstanding anything to the contrary in this Agreement, from time to time at its sole reasonable discretion Cigent may make upgrades, changes and/or improvements to: (i) the Cloud Services, in order to enhance the Cloud Services generally and/or remedy any issues with the Cloud Services; or (ii) the Policies, in order to address changes to Products or applicable laws or regulations. Notwithstanding the foregoing, except as is required as a result of changes to applicable laws or regulations, Cigent will not modify any Cloud Services or Policies in any way designed to: (a) materially degrade the Cloud Services or Policies; or (b) add additional material obligations for Customer.

–Survival

All provisions of this Agreement that reasonably may be interpreted or construed as surviving termination of this Agreement shall survive the termination of this Agreement.

–Counterparts; Electronic Signature

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The parties hereby consent to electronic signature as a binding form of execution of this Agreement and related documents.

–Evaluation and Beta Use Terms and Conditions

Cigent may, at its sole discretion and upon mutual written agreement of the parties, grant Customer the right to use the Products for evaluation or beta testing purposes in accordance with the terms of this Agreement. Notwithstanding anything to the contrary anywhere in this Agreement, the following terms and conditions shall also apply to (and supersede any conflicting terms in the event of a conflict) Customer’s evaluation or beta use of the Products: (i) the Products may be used solely for Customer’s internal assessment of the capabilities, performance, and suitability of the Products and in no event for production use; (ii) the Products ARE PROVIDED “AS IS” WITHOUT WARRANTIES OF ANY KIND, and Cigent disclaims all warranties, support obligations, and other liabilities and obligations for Customer’s evaluation or beta use of the
Products; and (iii) Customer agrees to defend, indemnify and hold harmless Cigent from all claims, damages, and losses, howsoever arising and whether direct, indirect, or consequential, including all legal fees and expenses, arising from Customer’s evaluation or beta use of the Products.

–Ultrahazardous Activities

The Products are not designed or intended for use in any hazardous environment requiring fail-safe performance or operation in which the failure of the Products could lead to death, personal injury, or property damage, including without limitation the design or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems (or the on-line control of equipment in any such environment.) Customer hereby agrees that it will not use the Products in such environments.

–Entire Agreement; English Language Controls

This Agreement comprises all the terms, conditions and agreements of the parties hereto with respect to the subject matter hereof and supersedes all other negotiations, proposals, or agreements of any nature whatsoever, unless otherwise specifically provided. Any contradictory or pre-printed terms and conditions that Customer may provide in connection with an Order shall be deemed null and void. This Agreement and all Orders, notices, or other documents given or to be given under this Agreement will be written in the English language only.

EXHIBIT 1: PRODUCT ADDENDUM

Part 1: Additional Terms and Conditions Specific to Cloud Services

1. Cloud Services

This Product Addendum Part 1 applies for all Cigent Cloud Services.

Grant of Rights for Cloud Services

During the applicable Subscription Term, Cigent will make the then-current version of the Cloud Services available to Customer, and hereby grants Customer the right to access and use the Cloud Services for the number of Endpoints identified in an Order.
For clarity, the Cloud Services may include and require the use of the Endpoint Software.

Cloud Services Warranty
Cigent warrants that the Cloud Services will conform in all material respects to the specifications detailed in the applicable Documentation during the Subscription Term. If the Cloud Services do not comply with this warranty, Cigent will (at its option), as Customer’s sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the Cloud Services so that they comply with this warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant Cloud Services.

Service Level Warranty
Cigent warrants that the Cloud Services will be available in accordance with the Cigent Service Level Agreement (“SLA”), which is attached as an addendum. The SLA states Customer’s sole and exclusive remedy for any breach of this Service Level Warranty.

Suspension
In the event of a breach or suspected breach of any of the restrictions in Section 4.4 of the body of the Agreement, Cigent reserves the right to temporarily suspend Customer’s Cloud Services if reasonably necessary to prevent harm to Cigent, Customer, other customers, and/or Cigent’s partners, vendors and suppliers, with such notice and for such period as may be reasonable in the context of the prospective harm.

Cigent for Networks
In the event Customer purchases a subscription to Cigent for Networks, this Product Addendum Part 1 applies in its entirety, and: (i) Customer hereby consents to the transfer of Customer Data, including, if applicable, personal data, as necessary, for the purposes of processing such data in accordance with this Agreement; and (ii) references to “Endpoints” shall be deemed references to “CPUs” as applicable.

Part 2: Additional Terms and Conditions Specific to On-Premise Software

On-Premise Software
This Product Addendum Part 2 applies for all Cigent On-Premise Software.

Grant of Rights for On-Premise Software
Customer is granted for the Subscription Term specified in the applicable Order(s) a worldwide, non-exclusive, non-assignable (except pursuant to a permitted assignee under the Agreement), non-transferable right to: (i) install and use (in accordance with the Documentation and for internal business purposes only) the applicable On-Premise Software (including Endpoint Software) on the number of servers and/or Endpoints specified in the applicable Order(s); and (ii) copy and run the applicable On-Premise Software for testing and disaster recovery purposes.

On-Premise Software Warranty
Cigent warrants that for a period of ninety (90) days from Delivery, the On-Premise Software will conform in all material respects to the specifications detailed in the Documentation. If the On-Premise Software does not comply with this warranty, Cigent will (at its option), as Customer's sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the applicable On-Premise Software so that it complies with this warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant On-Premise Software Product (if any).

Updates and Upgrades
Cigent may release patches, bug fixes, updates, upgrades, maintenance and/or servicepacks (“Updates”) for the On-Premise Software from time to time, which may be necessary to ensure the proper function and security of the Products. Cigent is not responsible for performance, security, warranty breaches, support or issues encountered in connection with the Products that result from Customer's failure to accept and apply Updates within a reasonable timeframe.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

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

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

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

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

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

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

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

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CISCO SYSTEMS, INC.

CISCO SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS


IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. IT IS VERY IMPORTANT THAT YOU CHECK THAT YOU ARE PURCHASING CISCO SOFTWARE OR EQUIPMENT FROM AN APPROVED SOURCE AND THAT YOU, OR THE ENTITY YOU REPRESENT (COLLECTIVELY, THE "CUSTOMER") HAVE BEEN REGISTERED AS THE END USER FOR THE PURPOSES OF THIS CISCO END USER LICENSE AGREEMENT. IF YOU ARE NOT REGISTERED AS THE END USER YOU HAVE NO LICENSE TO USE THE SOFTWARE AND THE LIMITED WARRANTY IN THIS END USER LICENSE AGREEMENT DOES NOT APPLY. ASSUMING YOU HAVE PURCHASED FROM AN APPROVED SOURCE, DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. CISCO SYSTEMS, INC. OR ITS AFFILIATE LICENSING THE SOFTWARE ("CISCO") IS WILLING TO LICENSE THIS SOFTWARE TO YOU ONLY UPON THE CONDITION THAT YOU PURCHASE THE SOFTWARE FROM AN APPROVED SOURCE AND THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT, MADE AVAILABLE AT THE TIME OF YOUR ORDER, OR POSTED ON THE CISCO WEBSITE AT www.cisco.com/go/terms (COLLECTIVELY THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY.

BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU ARE REPRESENTING THAT YOU PURCHASED THE SOFTWARE FROM AN APPROVED SOURCE AND BINDING YOURSELF TO THE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND. OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM AN APPROVED SOURCE, AND APPLIES ONLY IF YOU ARE THE ORIGINAL AND REGISTERED END USER PURCHASER. FOR THE PURPOSES OF THIS END USER LICENSE AGREEMENT, AN "APPROVED SOURCE" MEANS (A) CISCO; OR (B) A DISTRIBUTOR OR SYSTEMS INTEGRATOR AUTHORIZED BY CISCO TO DISTRIBUTE / SELL CISCO EQUIPMENT SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS; OR (C) A RESELLER AUTHORIZED BY ANY SUCH DISTRIBUTOR OR SYSTEMS INTEGRATOR IN ACCORDANCE WITH THE TERMS OF THE DISTRIBUTOR'S AGREEMENT WITH CISCO TO DISTRIBUTE / SELL THE CISCO EQUIPMENT, SOFTWARE AND SERVICES WITHIN YOUR TERRITORY TO END USERS.

THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S USE OF THE SOFTWARE (DEFINED BELOW), EXCEPT TO THE EXTENT: (A) THERE IS A SEPARATE SIGNED CONTRACT BETWEEN CUSTOMER AND CISCO GOVERNING CUSTOMER'S USE OF THE SOFTWARE, OR (B) THE SOFTWARE INCLUDES A SEPARATE "CLICK-ACCEPT" LICENSE AGREEMENT OR THIRD PARTY LICENSE AGREEMENT AS PART OF THE INSTALLATION OR DOWNLOAD PROCESS GOVERNING CUSTOMER'S USE OF THE SOFTWARE. TO THE EXTENT OF A CONFLICT BETWEEN THE PROVISIONS OF THE FOREGOING DOCUMENTS, THE ORDER OF PRECEDENCE SHALL BE (1) THE SIGNED CONTRACT, (2) THE CLICK-ACCEPT AGREEMENT OR THIRD PARTY LICENSE AGREEMENT, AND (3) THE AGREEMENT. FOR PURPOSES OF THE AGREEMENT, "SOFTWARE" SHALL MEAN COMPUTER PROGRAMS, INCLUDING Firmware AND COMPUTER PROGRAMS EMBEDDED IN CISCO EQUIPMENT, AS PROVIDED TO CUSTOMER BY AN APPROVED SOURCE, AND ANY UPGRADES, UPDATES, BUG FIXES OR MODIFIED VERSIONS THERETO (COLLECTIVELY, "UPGRADES"), ANY OF THE SAME WHICH HAS BEEN RELICENSED UNDER THE CISCO SOFTWARE TRANSFER AND RELICENSING POLICY (AS MAY BE AMENDED BY CISCO FROM TIME TO TIME) OR BACKUP COPIES OF ANY OF THE FOREGOING.

License

Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees to an Approved Source. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by an Approved Source with the Software in any manner (including on CD-Rom, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable purchase order which has been accepted by an Approved Source and for which Customer has paid to an Approved Source the required license fee (the "Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer and used for Customer's internal business purposes. No other licenses are granted by implication, estoppel or otherwise.

For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise
expressly provided under the Agreement, Customer shall only use the Software in connection with the use of Cisco equipment purchased by the Customer from an Approved Source and Customer shall have no right, and Customer specifically agrees not to:

- transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on Cisco equipment not purchased by the Customer from an Approved Source or on secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction or except to the extent that Cisco is legally required to permit such specific activity pursuant to any applicable open source license;
- publish any results of benchmark tests run on the Software;
- use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco;
- disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

Software, Upgrades and Additional Copies

NOTwithstanding ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS AN APPROPRIATE LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE TO AN APPROVED SOURCE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT SUPPLIED BY AN APPROVED SOURCE FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

Proprietary Notices

Customer agrees to maintain and reproduce all copyright, proprietary, and other notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco.

Term and Termination

The Agreement and the license granted herein shall remain effective until terminated. Customer may terminate the Agreement and the license at any time by destroying all copies of Software and any Documentation. Customer's rights under the Agreement will terminate immediately without notice from Cisco if Customer fails to comply with any provision of the Agreement. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer, all restrictions and limitations imposed on the Customer under the section titled "General Limitations" and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

Customer Records. Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees, plus the reasonable cost of conducting the audit.

Export, Re-Export, Transfer and Use Controls

The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under the Agreement are subject to export controls under the laws and regulations of the United States ("U.S.") and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, import, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other with such information necessary to ensure compliance with any applicable terms and conditions upon which Cisco makes such information available. Information regarding compliance with export, re-export, transfer and use may be located at the following URL:

www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/about/export_compliance.html

U.S. Government End User Purchasers

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement. Use of either the Software or Documentation or both constitutes agreement by the Government that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.

Identified Components; Additional Terms

The Software may contain or be delivered with one or more components, which may include third-party components, identified by Cisco in the Documentation, readme.txt file, third-party clickaccept or elsewhere (e.g. on www.cisco.com) (the "Identified Component(s)") as being subject to different license agreement terms, disclaimers of warranties, limited warranties or other terms and conditions (collectively, "Additional Terms") than those set forth herein. You agree to the applicable Additional Terms for any such Identified Component(s).
Limited Warranty
Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an Approved Source other than Cisco, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from an Approved Source by a Customer who is the first registered end user. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to the Approved Source supplying the Software to Customer, within the warranty period. Cisco or the Approved Source supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions
This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; (f) any Software not posted on Cisco's Software Center; (g) any Software that Cisco expressly provides on an "AS IS" basis on Cisco's Software Center; (h) any Software for which an Approved Source does not receive a license fee; and (i) Software supplied by any third party which is not an Approved Source.

DISCLAIMER OF WARRANTY
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OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF CISCO OR ANY APPROVED SOURCE OR THEIR SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THE MIDDLE EAST, AFRICA, ASIA OR OCEANIA, IN NO EVENT WILL CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, BE LIABLE FOR ANY LOSSES, REVENUE, LOST PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWEVER ARISING, INCLUDING, WITHOUT LIMITATION, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF, IN EACH CASE, CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT FULLY APPLY TO YOU. THE FOREGOING EXCLUSION SHALL NOT APPLY TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH: (I) DEATH OR PERSONAL INJURY, (II) FRAUDULENT MISREPRESENTATION, OR (III) CISCO'S LIABILITY IN CONNECTION WITH ANY TERMS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

Customer acknowledges and agrees that Cisco has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

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For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any Purchase Order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Product warranty terms and other information applicable to Cisco products are available at the following URL: www.cisco.com/go/warranty

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Cisco Supplemental EULAs (SEULAs) as provided on September 24, 2013

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SUPPLEMENTAL END USER LICENSE AGREEMENT

This Supplemental End User License Agreement (This “AGREEMENT”) supplements and amends the terms of the Cisco Systems, Inc. (“CISCO”) End User License Agreement available at the following web address: http://www.cisco.com/go/eula (the “EULA”). This AGREEMENT FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MERAKI LLC AND ITS AFFILIATES INCLUDING CISCO, ITS PARENT COMPANY (“MERAKI”) AND GOVERNS YOUR ACQUISITION AND USE OF MERAKI PRODUCTS. PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH YOU MAY USE OUR FREE WEB AND MOBILE APPS, PURCHASE HARDWARE FROM US OR OUR AUTHORIZED RESELLERS, AND PURCHASE A LICENSE TO USE OUR PROPRIETARY WEB-BASED HOSTED SOFTWARE PLATFORM THAT INTERACTS WITH OUR HARDWARE. YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO USE OUR PRODUCTS IN COMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT USE OUR PRODUCTS.

The terms “Customer,” “you,” “your,” and “yours” refer to you, the end GSA customer, the authorized entity permitted to use the Products, whether obtained directly from Meraki or through one of our authorized resellers. The terms “Meraki” “we,” “us,” and “our” refer to Meraki, LLC, a Delaware limited liability company with offices at 500 Terry Francois Street, San Francisco, California, 94158. For any material modifications to this Agreement, such modifications will be effective if they are stated in a writing, signed by both parties.

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

‘Agent Software’ means Meraki’s downloadable software client that is installed on a computer or mobile device as part of the Systems Manager application.

‘Apps License’ has the meaning given to it in Section 3.2, below.

‘Customer Content’ means content prepared by you for use with the Products, whether or not provided to Meraki, including logos, splash pages, network configurations, and preferences.

‘Device Management Functionality’ means the actions that may be performed by Customer or by Meraki on a mobile device or other device (e.g., a laptop computer) managed by our Systems Manager product, including: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots (on computers only); (iv) set and enforce policies; and (v) install and remove apps (on mobile devices only).

‘Documentation’ means any user instructions, manuals, Specifications, or other documentation provided by Meraki, at http://meraki.cisco.com that relates to the use of the Products, including any Modifications.

‘Distributor’ has the meaning given to it in Section 3.7, below

‘End Users’ means those persons who obtain access to your Network.

‘Feedback’ has the meaning given to it in Section 5.1, below.

‘Firmware’ means our proprietary software embedded in or otherwise running on the Hardware.

‘Firmware License’ has the meaning given to it in Section 3.1, below.

‘Governing Documents’ has the meaning given to it in Section 8.1, below.

‘Hardware’ means the Meraki hardware products listed on an Order.

‘Hosted Software’ means our proprietary, web-based software platform, including the interface known as the “Dashboard” and any Agent Software, but specifically excluding the Web Apps.

‘Hosted Software License’ has the meaning given to it in Section 3.1, below.

‘Intellectual Property Rights’ means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, trademarks, service marks, trade name and logo rights, and similar rights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisions, continuations, divisions or reissue of patents now or hereafter in force (including any rights in any of the foregoing).

‘Licenses’ means, collectively, the Firmware License, the Hosted Software License, and the Apps License.

‘Mobile Apps’ means the Agent Software for mobile devices.

‘Modification’ or ‘Modifications’ means all changes incorporated into or used with the Software or Documentation, including enhancements, standard releases, and patches.

‘Network’ means your local area network, created in whole or in part by use of our Products.

‘Order’ means a purchase order submitted by you either directly to Meraki or to one of our authorized resellers with respect to the purchase of the hardware products, software products, and related licenses listed on such Order.

‘Products’ means, collectively, the Hardware, the Software, the Documentation, and the Support Services.

‘Purchase Price’ means the aggregate price you paid for the Products listed on the applicable Order.

‘RMA’ has the meaning given to it in Section 7.2.

‘Service Level Agreement’ means the Service Level Agreement included as Attachment 1, which governs the terms of the Service Level Warranty.

‘Service Level Warranty’ has the meaning given to it in Section 7.1, below.

‘Software’ means, collectively, the Firmware, the Hosted Software, and the Web Apps.

‘Specifications’ has the meaning given to it in Section 4.1, below.

‘Systems Manager’ means the Web App currently known as Systems Manager.

‘Systems Manager Data’ means the data collected through the Device Management Functionality and otherwise through Systems Manager.

‘Support Services’ means the customer support services described below in Attachment 2.
“Term” means the term of the Hosted Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Hosted Software Licenses so that the Term with respect to all such licenses expires at the same time in accordance with the provisions of Section 6.1, below.

“Traffic Information” means, collectively, information about devices that connect to the Network, such as MAC address, device type, operating system, geolocation information, and information transmitted by devices when attempting to access or download data or content (e.g., hostnames, protocols, port numbers, and IP addresses) via the Network.

“Warranty Period” means, with respect to any item of Hardware, the greater of one year or the warranty period set forth in the applicable Specifications, commencing, in either case, on the date the applicable Hardware is shipped to Customer in fulfillment of the Order.

“Web Apps” means the web-based applications (available to you at http://meraki.cisco.com) currently known as “Mapper,” “Stumbler,” and “Systems Manager.”

ARTICLE 2 SERVICES

2.1. Meraki Responsibilities. If you have purchased a Hosted Software License, we will provide you with access to the Hosted Software commencing as of the date your Order ships through the expiration of the Term, subject to the terms of this Agreement.

2.2. Customer Responsibilities. You are responsible for your use of the Products in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) promptly updating the registration information of the primary account holder for the Hosted Software if it changes or is no longer current, accurate and complete; (ii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Software, and notifying Meraki promptly of such unauthorized access or use; (iii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iv) obtaining and maintaining all Hardware and other communications equipment needed to access the Hosted Software or Web Apps and for paying all required third-party access charges (v) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of all Customer Content; and (vi) complying with all applicable local, state, federal, and foreign laws in using the Hosted Software, or Web Apps.

ARTICLE 3 LICENSES

3.1. Firmware License and Hosted Software License. Subject to the terms and conditions of this Agreement, Meraki grants you a non-sublicensable, non-transferable (except as otherwise provided herein) and non-exclusive license, for the duration of the Term, to (i) use the Firmware only for internal purposes, in object code form, as embedded in, or for execution on, the Hardware (the “Firmware License”), and (ii) access the Hosted Software via a web browser and use the Hosted Software solely for internal business purposes (the “Hosted Software License”).

3.2. Apps License. If you access any of the Web Apps, including the download and/or installation of any related Agent Software, or download any Mobile App, then, subject to the terms and conditions of this Agreement, Meraki grants you an individual, personal, non-sublicensable, non-exclusive, and non-transferable (except as otherwise provided herein) license to use the Web Apps or Mobile App, as applicable, for your personal or internal business purposes (the “Apps License”).

3.3. Reserved.

3.4. Modifications. If, during the Term, Meraki integrates any Modifications into the Firmware, Hosted Software, or Web Apps, each such Modification and all related Documentation, will be deemed to be part of the Firmware, Hosted Software, or Web Apps and made available to the Government only under the terms of the applicable Firmware License, Hosted Software License, or Apps License.

3.5. License to Customer Content. You hereby grant us a non-sublicensable and non-exclusive license to reproduce, distribute, or use any Customer Content for the duration of the License(s) applicable to the Products you are using in connection with our delivery of the Products and services contemplated by this Agreement. You understand and agree that Meraki may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote Meraki’s products and services, provided that such aggregated data would not reasonably be identifiable as originating with or associated with you or any End User.

3.6. Restrictions. In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use or attempt to use the Firmware on third party hardware components; or (v) remove any proprietary notices or labels on the Software.

3.7. Special Terms Regarding Apple. Mobile Apps may be distributed by Meraki via a third party (“Distributor”), including Apple, Inc. You acknowledge that this Agreement is entered into solely between you and Meraki. This Agreement is not intended to provide for usage rules for Mobile Apps that are less restrictive than the Usage Rules set forth for Licensed Applications in, or that otherwise conflict with, the App Store Terms of Service as of the date that you accept the App Store Terms of Service (which you acknowledge you have had the opportunity to review).

ARTICLE 4 HARDWARE

4.1. Use. The specifications for any Hardware you have purchased are set forth on the relevant Meraki data sheets (which can be found on http://meraki.cisco.com) (the “Specifications”). You will use the Hardware only in accordance with the Specifications and subject to the terms of this Agreement, including this ARTICLE 4.

4.2. Restrictions. You will not, and will not permit others to, whether directly or indirectly: (i) disassemble or attempt to reverse engineer the Hardware; (ii) remove or erase the Firmware from the Hardware, or otherwise try to disable or alter the Firmware functionality; (iii) load any other software, in any manner, to the Hardware; (iv) make any alterations, updates, enhancements, additions or improvements to the Hardware without the prior written approval of Meraki; or (v) remove any logo, trademark, or service mark of Meraki from any item of Hardware. Any alterations, updates, enhancements, additions, or improvements so approved will be the sole property of Meraki. If any alterations, updates, enhancements, additions or improvements interfere with the normal operation, maintenance, or support of the Hardware (including by increasing the cost of maintenance or support or creating a safety hazard), you will promptly remove the same and restore the Hardware to its normal condition.

ARTICLE 5 OWNERSHIP

5.1. Meraki Property. Except as provided in Section 5.2, below, as between you and Meraki, Meraki owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation, and (ii) all Intellectual Property Rights in the Hardware. Nothing in this Agreement will be construed as transferring or changing our Intellectual Property Rights or interests in the Products in any respect. In addition, we will own any and all right, title, and interest in and to any feedback, suggestions, information, or materials you convey to us will be controlled by applicable
provisions of the Copyright Act, 17 U.S.C.§ 103 and the FAR clause at 52.227-14 related to the Products in connection with your use of the Products ("Feedback"). You hereby assign to Meraki all right, title, and interest in such Feedback and will execute any documents and take any additional actions Meraki deems necessary to evidence, record, or perfect the foregoing assignment.

5.2. Customer Property. Except as provided in Section 3.5, above, as between you and Meraki, you own the Customer Content and all Intellectual Property Rights therein. Nothing in this Agreement will be construed as transferring or changing your ownership rights or interests in the Customer Content in any respect.

5.3. Reservation of Rights. Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Products and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Products, whether available now or developed in the future.

5.4. Privacy and Data Collection. Our Privacy Policy hereby incorporated into this Agreement as Attachment 3. Please read the Privacy Policy carefully for information relating to our collection, use, and disclosure of personal information. We collect Traffic Information and may from time to time make available functionality that allows the Government to limit or restrict the types of Traffic Information we collect. Additionally, for devices with Agent Software installed, we transmit certain geolocation information about those devices and the networks on which they are running to Google Inc. ("Google"), which provides us with related geolocation information that we store and make available to network administrators as described in our Privacy Policy. Google's Privacy Policy, and not Meraki’s, governs Google’s handling of the information that we provide to Google. We use Traffic Information to make data available to you regarding, and to allow you to exercise certain controls with respect to, the traffic on your Network. We use Systems Manager Data to provide support and conduct product development activities. You represent and warrant to us that you have obtained or will obtain valid authorization from each End User to permit you and Meraki to collect, use, and disclose Traffic Information as described in this Section 5.4. and, to the extent you use Systems Manager, to use Systems Manager as described above (including, without limitation, accessing and deleting files on devices) and to permit you and Meraki to collect, use, and disclose Systems Manager Data as described in this Section 5.4. You hereby consent to our collection, use, and disclosure of Traffic Information and, to the extent you use Systems Manager, to our use of the Device Management Functionality and its collection, use, and disclosure of Systems Manager Data, in each case as described in this Section 5.4.

5.5. Publicity. Neither we, nor you, will use the other’s name, trademark, or trade name without the prior written consent of the other party.

ARTICLE 6 TERM AND TERMINATION

6.1. Term. This Agreement will be effective with respect to your use of the Products until the expiration of the License(s) applicable to the Products you are using, unless earlier terminated under the FAR. To the extent that you purchase additional Hosted Software License(s) subsequent to the date of the first Order, the duration of each Hosted Software License you have purchased will be adjusted such that all of your Hosted Software Licenses terminate on the same date.

The new co-termination date is calculated as a function of (i) the remaining time on your existing Hosted Software License(s) at the time of purchase, (ii) the direct list price of the new Hosted Software License(s) purchased, and (iii) the one-year list price of each such Hosted Software License. This new date is calculated as follows: (i) the remaining time on your existing Hosted Software License(s) at the time of purchase; (ii) the direct list price of the new Hosted Software License(s) purchased; and (iii) the one-year list price of each such Hosted Software License. The new co-termination date will be determined by the lesser of (a) the remaining time on your existing Hosted Software License(s) plus the direct list price of the new Hosted Software License(s) purchased divided by the one-year list price of each such Hosted Software License; or (b) the remaining time on your existing Hosted Software License(s) at the time of purchase plus the amount of the new Hosted Software License(s) purchased.

6.2. Termination. This Agreement may be terminated by the other party upon notice for any reason. Termination of this Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

6.3. Effect of Termination. Upon the termination of this Agreement for any reason, your access to and right to use the Products will terminate, and all Licenses will terminate. Upon expiration of a Hosted Software License, your Apps License will survive and you may continue to access and use the Web Apps and Mobile Apps, subject to the terms and conditions of this Agreement. Upon termination of this Agreement, each party will return (or destroy) any Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

ARTICLE 7 MERAKI WARRANTIES

7.1. Service Warranties. Meraki will make reasonable efforts to provide the Hosted Software and Web Apps available in accordance with the service level warranty set forth in the Service Level Agreement included as Attachment 1 (the "Service Level Warranty"). The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to the subject matter of the Service Level Agreement, and our sole and exclusive liability, in contract, tort, or otherwise, for any breach of the Service Level Warranty.

7.2. Hardware Warranties. We represent and warrant to you, the entity who obtained the Hardware from Meraki or its authorized reseller, but not to any End Users or other third parties, as follows: (i) for the Warranty Period, the Hardware will be free from material defects in materials and workmanship; (ii) all items of Hardware are new or refurbished unless otherwise indicated on the face of the Order; and (iii) we will have title to the Hardware and the title to all items of Hardware are new or refurbished is free from any liens, claims, or encumbrances. Hardware not meeting the warranties set forth above will be: (a) repaired, (b) replaced, or (c) Meraki will refund to you the depreciated amount of the Purchase Price allocable to the defective Hardware, calculated on a straight-line, five-year basis. All Hardware repaired or replaced under warranty will be warranted for the remainder of the Warranty Period. For any return permitted under Meraki's return policy as provided in Attachment 4, you will request a Return Materials Authorization ("RMA") number in writing with the reasons for the return request. The remedies described above are our sole liability and your sole remedy for any breach of the warranties contained in this Section 7.2. Meraki is not responsible for any Customer Content or any other non-Meraki data or information stored on any Hardware returned to Meraki for repair, whether under warranty or not.

ARTICLE 8 MISCELLANEOUS

8.1. Integration. This Agreement, the EULA, the Order, and the Service Level Agreement (collectively, the "Governing Documents") constitute the entire agreement between Meraki and Customer with respect to the subject matter of the Governing Documents and supersede all prior agreements, understandings, and arrangements, oral or written, between Meraki and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter of the Governing Documents have been made either by Meraki or Customer which is not expressly set forth in the Governing Documents. If there is a conflict between the terms of this Agreement and the EULA, the terms of this Agreement will apply.

8.2. Force Majeure. Neither you nor Meraki will be liable under this Agreement by reason of any failure or delay in the performance of its obligations on account of strikes (other than strikes of a party's own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party's own employees), earthquakes, material shortages or any other causes that
are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

8.3 Reserved.
8.4 Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein.
8.5 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C.§ 6305, and approval procedures set forth at FAR42.1204. Any attempted assignment in violation of this Section 8.5 will be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
Important: Read Carefully

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by the GSA Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

You may return the Software (including any unopened CD package and any written materials) for a full refund, or, if the Software and written materials are supplied as part of another product, you may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from Cisco or an authorized Cisco reseller, and applies only if you are the original end user purchaser.

Supplemental License Agreement for Cisco Systems Network Management Software: Cisco Network Active Abstraction

Additional Licensing Instructions:

Client Licensing: To activate additional users for the licenses purchased please contact your Cisco Account Manager or Sales Representative or send email to ask-ana-licensing@cisco.com with the requested information below:

GSA Customer Purchase Order
Your Contact Information
Your Cisco Sales Representative Name

NOTE: This alias is used only for license activation. For any questions or support issues, contact your Cisco Account Manager or representative.

Installation and Use

This license strictly prohibits Customer and any user from utilizing this Software for more than a single Customer network management environment. Reproduction and Distribution Customer may not reproduce nor distribute software

2. Description of Other Rights and Limitations

Please refer to the attached Cisco Systems, Inc. End User License Agreement
Dear Customer,

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

If you have licensed Cisco Workplace Portal, the following additional terms apply:
Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for employees, agents, consultants and/or independent contractors of the Government.
Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you licensed Cisco Cloud Portal, the following additional terms apply:
Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.
Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the licensee. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.
CPO elements included in Cisco Service Connector can only be used with the licensed components listed below: Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators. Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud. Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud. Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud. Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters are restricted to use with Cisco Cloud Portal.
IMPORTANT: READ CAREFULLY

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ADDITIONAL LICENSE RESTRICTIONS

Software Upgrades, Major and Minor Releases
Cisco may provide Cisco Configuration Engine software updates. The software update and new version releases can be purchased through Cisco or a recognized partner or reseller.

The customer should purchase one software update for each Configuration Engine installation. If the customer is eligible to receive the software update or new version release through a Cisco extended service program, the customer should request to receive only one software update or new version release per valid service contract. Reproduction and Distribution. Customer may not reproduce or distribute software.

DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

Please refer to the attached Cisco Systems, Inc. End User License Agreement.
Cisco Connected Grid Network Management System

IMPORTANT: READ CAREFULLY

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Product Name

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license
L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license
R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license
R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

Connected Grid Network Management System (CG NMS) License

This license entitles the user to specific Cisco CG NMS product features for specific time duration. The specific Cisco CG NMS product features and the time duration are detailed as follows:

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license
L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license
R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license
R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

The user is entitled to receive updates as made available during the term of the license, provided that the user holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting CG NMS products.
IMPORTANT: READ CAREFULLY

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END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS:

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler
Cisco Process Orchestrator
Tidal Performance Analyzer
Cisco Intelligent Automation for Compute
Cisco Intelligent Automation for Cloud
Cisco Intelligent Automation For Cloud Starter Edition
Cisco Server Provisioner
Cisco Intelligent Automation for SAP Definitions

For purposes of this Supplement, the following defined terms will apply:

Designated System shall mean the designated platform for which Customer originally licenses the Software from Cisco for installation and use. Such designated platform may include for instance, but is not limited to, a designation of the specific number of CPUs or system description or name as approved by Cisco. Movement and Usage Fees shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System. Total Deployment Size shall mean the designated configuration for which The Cisco Intelligent Automation For Cloud Starter Edition Solution’s total deployment size cannot exceed 160 blades collectively across a customer’s installation. Other Terms and Conditions, Movement and Usage. With respect to the license granted to Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing prior written notice to obtain updated keys, and additional fees may apply. A fee schedule is available upon Customer’s written request to Cisco. License. For the avoidance of doubt, the license granted to Customer for the Software in the license section shall be perpetual if designated as such by Cisco at time of Order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above. Total Deployment Size. For avoidance of doubt, no customer shall deploy the Cisco Intelligent Automation for Cloud Starter Edition Solution in a configuration that exceeds 160 blades in total deployment size across the customer’s enterprise.

Cloud and Systems Management       Cisco Intelligent Automation for Cloud       DOC-68556
Cloud and Systems Management       Cisco Intelligent Automation for Compute     DOC-68556
Cloud and Systems Management       Cisco Intelligent Automation for SAP        DOC-68556
Cloud and Systems Management       Cisco Process Orchestrator                  DOC-68556
Cloud and Systems Management       Cisco Server Provisioner                    DOC-68556
Cloud and Systems Management       Cisco Tidal Enterprise Scheduler            DOC-68556
Cloud and Systems Management       Cisco Tidal Performance Analyzer           DOC-68556
IMPORTANT: READ CAREFULLY

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In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by the Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS SOFTWARE

IMPORTANT READ CAREFULLY: This Supplemental End User License Agreement (SEULA) contains additional terms and conditions for the Software licensed under the End User License Agreement (EULA) between the Government and Cisco (collectively, the Agreement). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

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ADDITIONAL LICENSE RESTRICTIONS

Device Restricted Versions: The Customer may install and run the Software on a single server to manage up to the cumulative device count specified in the Right To Use statement located on the Claim Certificate received as part of the software package. When used anywhere in this SEULA, a "device" means any device in the Customer's network environment which has its own IP address. Please refer to this guide for further device definition. Customers whose requirements exceed the license limit of devices must purchase additional incremental licenses. Device restrictions are enforced by license registration and through serial key installation. Limitations associated with the maximum number of devices that the application can support per server is specified below. The licensed device limit will always override the maximum number of devices supported per server unless the customer has purchased and registered the 5,000 or the 10,000 device license offering.

Installation and Use

The Software components are provided to Customer solely to install, update, supplement, or replace existing functionality of the applicable Network Management Software product. Some license terms, such as device count and proof of preexisting licenses may be electronically enforced. Customer may install and use the following Software components: Cisco Prime LAN Management Solution (Cisco Prime LMS): May be installed on one (1) server in Customer's network management environment. Installing the Software and applying a single serial license key to two (2) servers are supported in the 5,000 and 10,000 device restricted versions, but the cumulative total number of devices supported cannot exceed 5,000 and 10,000 respectively per serial license key. When two servers are used to host Cisco Prime LMS, each server should have a copy of the original license key installed on it. Customers should not modify the license file.

Additional Information for 5,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 5,000 device restricted licensing may require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 5,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

Additional Information for 10,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 10,000 device restricted licensing often require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided that the customer has purchased and registered the 10,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 10,000 per serial license key. Device support beyond 10,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.
**Additional Information for RHEL**

RHEL distribution that comes along with Cisco Prime LMS 4.2 is solely intended for use by Cisco Prime LMS application alone and customers may not use this for other purposes.

**Reproduction and Distribution**

Customer may not reproduce nor distribute software except to make copies to authorized employees, agents, and contractors for backup purposes only.

**DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

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SUPPLEMENTAL LICENSE AGREEMENT
SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE:
CISCO PRIME CENTRAL

IMPORTANT-READ CAREFULLY: This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

Cisco Prime Central requires a license to connect to and/or interoperate with other Cisco and third party systems or components, and is further subject to the limitations set forth below. Please see the Additional Information section of this document for any licenses which are included with your specific product purchase. If your requirements exceed the scope of any license expressly included with your product, you must purchase additional licenses from Cisco pursuant to a newly executed GSA Customer Purchase Order. The following restrictions apply:

- Cisco Prime Central Tier 1 and Tier 2 Gateway may not be used to connect Cisco Prime Central to third party systems, such as third party trouble ticketing systems, except as expressly set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central Tier 1 and Tier 3 Data Service Adapter instances may only be used to connect to other Cisco applications or components embedded within Cisco applications, and in addition, only if expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with an OSS system(s) using MTOSI interface except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with Cisco Domain Manager(s) except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

Rights Included for Cisco Prime Central MTOSI License
Cisco Prime Central MTOSI license includes the right to use one (1) MTOSI instance to integrate Cisco Prime Central to an OSS system using the MTOSI interface.
Reproduction and Distribution
Customer may not reproduce nor distribute software. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS Please refer to the Cisco Systems, Inc. Software License Agreement.
Cisco Tidal Enterprise Scheduler
Cloud and Systems Management (Cisco Cloud Portal, Workplace Portal and Cisco Service Connector)  DOC-68700

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If you have licensed Cisco Workplace Portal, the following additional terms apply:
Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for the employees, agents, consultants and/or independent contractors. Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you have licensed Cisco Cloud Portal, the following additional terms apply:
Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the customer. Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.
CPO elements included in Cisco Service Connector can only be used with licensed components listed below: Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestration.
Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.
Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters restricted to use with Cisco Cloud Portal.
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Supplemental End User License Agreement

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END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS IMPORTANT: READ CAREFULLY

Software

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

- Tidal Enterprise Scheduler
- Tidal Horizon
- Tidal Intelligent Automation
- Tidal Enterprise Orchestrator
- Tidal Intersperse
- Tidal Performance Analyzer
- Tidal Transaction Analyzer
- Tidal Intelligent Reporting
- Tidal Enterprise Reporter
- Cisco Intelligent Automation Cloud Automation

Definitions

For purposes of this Supplement, the following defined terms will apply:

- "Designated System" shall mean the designated platform for which Customer originally licensed the Software from Cisco for installation and use. Such designated platform may include, but is not limited to, a designation of the specific number of CPUs or system descriptions or names as approved by Cisco.
- "Movement and Usage Fees" shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.
- "NFR" means not for resale, to be used for nonproduction, demonstration use only. Other Terms and Conditions

- "Movement and Usage". With respect to the license granted to the Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing Cisco with prior written notice to obtain updated keys, and pursuant to a new GSA Customer Purchase Order. Additional fees may apply. A fee schedule is available upon Customer’s written request to Cisco.
- "License". The license granted to the Software in the license section shall be perpetual if designated as such by Cisco at time of Customer order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.
- "NFR Software". With respect to the License granted in the Agreement as to the use of any Software sold to Customer as NFR Software, the purchase of such Software is subject to the following additional restrictions:

  NFR purchases are available to all Cisco registered partners (categories include Select, Premier, Silver and Gold level partners). Cisco authorized training partners may also participate, but use is limited to instructional purposes only. Cisco has the sole discretion to define a registered partner and status.

  Purchase limit is one NFR kit per operational installation for demonstration, proof of concept or internal nonproduction use. Software cannot be resold, traded, copied, transferred, sublicensed, or used in any manner other than as NFR.
In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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(This section shall replace the "License" section in the EULA)
License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for the purpose of delivering Managed Services, the Software and the Documentation for which Customer has paid the required license fees. "Managed Services" means the performance by Customer of providing services for third parties (Subscribers) which will require communicating with and managing Cisco equipment not owned or leased by the Customer. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software that Cisco makes available with the Software in any manner (including on CD Rom, or on line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card. Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or where the applicable Documentation or the applicable Supplemental License Agreement permits installation on non Cisco equipment) for communication with Cisco equipment not owned or leased by Customer in connection with Customer's provision of Managed Services to Subscriber. No other licenses are granted by implication, estoppel or otherwise. Upon termination of Managed Services to Subscriber, Customer is required to remove all deployed Software deployed by Customer to Subscriber's network and servers.
Customer's license to use the Software is contingent upon Customer deploying or otherwise making available the Software and any Documentation in compliance with and subject to the Software Subscriber License Responsibilities listed below.

Software Subscriber License Responsibilities
The following license terms and responsibilities, substantially as stated here, will be accepted and agreed to, in writing or as otherwise provided in the EULA, by the Subscribers of Managed Services:
1. Subscribers agree to be bound by the following terms and conditions. In the absence of a signed agreement, use of the Software by Subscriber or by Customer on Subscriber's behalf, or receipt by Subscriber of any direct or indirect benefit derived there-from, shall constitute acceptance by Subscriber of the following terms:
2. Subscribers will not distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Software, including but not limited to the code and the Software's supporting documentation in any form except as directed by Customer in support of the delivery of Managed Services.

END USER PURCHASER.
SUBPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT FOR CISCO SYSTEMS’ MAGENTO MANAGED SERVICES (“MAGENTO SERVICES”) AND MAGENTO SOFTWARE (“MAGENTO SOFTWARE”).

IMPORTANT—READ CAREFULLY. THIS SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT (“SLSA”) CONTAINS ADDITIONAL LIMITATIONS RELATING TO THE MAGENTO SERVICES AND MAGENTO SOFTWARE PROVIDED TO CUSTOMER UNDER THE END USER LICENSE AGREEMENT (“EULA”) BETWEEN CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLSA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLSA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE MAGENTO SERVICES OR MAGENTO SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLSA SHALL TAKE PRECEDENCE.

CUSTOMER’S RIGHT TO USE THE MAGENTO SERVICES IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE MAGENTO SERVICES PURSUANT TO A VALID PURCHASE ORDER. CUSTOMER MAY USE THE MAGENTO SERVICES ONLY DURING THE PERIOD FOR WHICH SERVICES WERE PURCHASED BY CUSTOMER UNDER THE APPLICABLE SKU PURSUANT TO A VALID PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by The Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLSA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE MAGENTO SERVICES OR MAGENTO SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a limited, nonexclusive, non-transferable, worldwide license to access and use the Magento Services and the Documentation to provide the Network Services its customers, subject to the production server and development server limitations set forth in the Purchase Order. The foregoing license does not transfer or convey to Customer or any third party any right, title or interest in or to Magento Services, the Magento Software or Documentation or any associated intellectual property rights, but only a limited right of use revocable in accordance with the terms of the Agreement.

Restricted Use. Customer is purchasing the rights to access and use the then-current version of the Magento Software; Customer’s license specifically excludes any subsequent Major Releases of the Magento Software. No other updates, upgrades, or other Magento Software releases are licensed by Cisco to Customer hereunder.

Major Release means a release of Magento Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Magento Software version number [x.x.x]. Cisco does not warrant Major Releases will be compatible with prior software releases. Minor Release means an incremental release of Magento Software that provides maintenance fixes and additional Magento Software functions. Cisco designates Minor releases as a change in the tenths digit of the Magento Software version number [x.(x).x].

CUSTOMER RESPONSIBILITIES

(a) In performing the Magento Services, Cisco may instruct the Customer to perform certain tasks or checks relating to Customer’s network. Customer will, at its expense, perform all such checks and tests. Customer will also provide Cisco, or its authorized representative, reasonable access, at no cost to Cisco, to Customer’s networking equipment in connection with the Magento Services. Customer shall not be required to furnish special equipment or know-how. Any rework or additional work resulting from modification of the Magento Services requested by Customer (and accepted by Cisco) or any act or omission of Customer, including providing inaccurate information to Cisco will only occur pursuant to the parties executing a new Purchase Order. (b) Customer is responsible for obtaining all approvals required by any third parties in order for Cisco to perform any Magento Service under this Agreement. Cisco will not be responsible or otherwise liable for any failure to perform the Magento Services to the extent caused by Customer’s failure to obtain such third party approvals or if any third party otherwise prevents Cisco from performing the Magento Services.

Customer will not resell the Magento Software or Magento Services or create or offer derivative versions of the Magento Software or Magento Services, either directly or indirectly through a third party.

Customer will be responsible for its compliance with all privacy, data control or use laws and regulations relating to its use of the Magento Services, including without limitation any data contained in any reports provided by Cisco hereunder. Customer acknowledges the potential privacy and other issues associated with the collection and use of such data. Customer warrants and covenants that it will comply with all laws (including, without limitation, copyright laws, privacy laws and import and export laws) applicable to Customer or its use of the Magento Services. In addition, Customer is responsible for obtaining any permits or approvals relating to its use of the Magento Services, including without limitation any permits or approvals relating to transactions requiring its customer's credit card information or other personally identifiable information.

Customer will not use the Magento Services to send spam, viruses or malware.

Customer understands the Magento Services are hosted by Cisco via a network utilized by Customer and other Cisco customers; Customer will not intentionally or unintentionally access data not owned by Customer or otherwise related to Customer’s use of the Magento Services, or log into, or attempt to log into, a server or account which Customer is not authorized to access.

Customer will not attempt to probe, scan or test the vulnerability of a system or breach security or authentication measures without proper authorization.
Customer will be responsible for handling all communication, technical support to and business relations with its customers, including without limitation responding to inquiries and technical questions.

Customer will be responsible for determining whether or not any reported defects or issues may be replicated and that they are isolated to the Magento Services or Magento Software.

Customer is responsible for any catastrophic security events that result from any unauthorized configuration of the Magento Service components by Customer’s personnel.

The failure of Customer to comply with Customer’s responsibilities set forth above may be deemed a material breach of. Any termination shall be in accordance with FAR 12.302(b) and 52.233-1.

**Customer Warranties.** Customer represents, warrants and covenants that (i) it shall only use the Magento Services and Magento Software to provide Magento Services to its End Users only as permitted by any Capacity limitations set forth in the Purchase Order. If Customer wishes to utilize the Magento Software beyond the Capacity set forth in the Purchase Order, Customer shall be obligated to place a new Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** Customer is and shall be solely responsible for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Magento Services, or otherwise provided to Cisco in any medium or transmitted or routed using the Magento Services ("Customer Content").

Customer owns all right, title, and interest in the Customer Content, or possesses or shall possess all legally valid rights in the Customer Content necessary for the uses of the Customer Content contemplated herein. Customer shall not transmit or route to Cisco or the Magento Services, or otherwise direct via the Magento Services, any Customer Content that (a) infringes any copyright, trade secret, or other intellectual property right, (b) contains libelous, defamatory, or obscene material under any applicable law, or (c) otherwise violates any federal laws or regulations relating to content or content distribution. Customer shall be responsible for utilizing Magento Services in accordance with the Documentation. If Customer has actual knowledge that any Customer Content infringes the intellectual property or other rights of a third party or violates any applicable federal laws or regulations (including, without limitation, laws and regulations relating to indecency or obscenity), Customer shall remove such Customer Content from its origin server. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its services to meet Customer’s purposes and objectives. During the Term, Customer grants to Cisco a limited, non-exclusive license to use the Customer Content solely for Cisco to perform the Magento Services as contemplated hereunder. In the case where at no material fault of Cisco, the Magento Services or Magento Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, Customer continues to allow its content to be accessed with any software or services operated in conjunction with the MagentoServices or Magento Software during the period where there is no fix for such DRM security breach, or Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then Customer acknowledges and agrees Cisco will not have any liability to Customer for any costs, damages or legal fees related to a DRM security breach. Neither this SLSA nor any rights or obligations under this SLSA shall be assigned by a party without the other’s prior written consent, in accordance with the provisions of the Anti-Assignment Act 41 USC 6305 and FAR 42.1204.

**ADDITIONAL SERVICES**

During the period Customer has purchased Magento Services, Cisco’s Software Application Support (SAS) service obligations are provided in Attachment 5. Customer is not eligible to receive Software Application Support Plus Upgrades (SASU) services, if any, included on such URL. Professional Services relating to the Magento Services or Magento Software purchased by Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed upon by the parties.
IMPORTANT: READ CAREFULLY

Dear Customer,
This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product that is used with Cisco's Unified Communications products, including features, functionality and solutions enabled in such Software (collectively, "Software Product") licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined, will have the meaning assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government's access and use of the Software Product, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:
Cisco UC Product means the following products:

**Call Processing and System Management Applications**
- Cisco Unified Communications Manager
- Cisco Unified Communications Manager IM & Presence
- Cisco Unified Communications Manager Basic Paging Server
- Cisco Unified Communications Manager Session Manager Edition
- Cisco Emergency Responder
- Cisco Unified Attendant Consoles
- Cisco Unified Communications Management Suite (including Operations Manager, Service Manager, Service Statistics Monitor and Provisioning Manager)
- Cisco Prime Collaboration Suite
- Cisco Survivable Remote Site Telephony Manager
- Cisco InterCompany Media Engine

**Messaging and Presence Applications**
- Cisco Unity
- Cisco Unity Connection
- Cisco Unified Presence

**Contact Center Applications**
- Cisco Unified Contact Center Express
  (including Work Force Management, Work Force Optimization, Quality Management, Compliance Recording)
- Cisco Unified IP IVR
- Cisco Unified Contact Center Enterprise
  (including Packaged Contact Center Enterprise and Email/Web Interaction Manager)
- Cisco Unified Intelligence Center
- Cisco Unified Contact Center Management Portal
- Cisco Unified Contact Center Voice Portal
- Cisco MediaSense
- Cisco SocialMiner
- Cisco Remote Expert Solution
(including Remote Expert Manager and Interactive Experience Manager)

**Conferencing, Collaboration and Social**

Cisco Webex
Cisco Unified MeetingPlace
Cisco TelePresence and Tandberg suites
Cisco Video Communications Server
Cisco Quad

Additionally, any bundled solutions including the applications listed above, including without limitation, Cisco Unified Communications Manager Business Edition 6000, are also licensed to run with the virtual machines.

“Software Product” includes the following two products: Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation.

In addition to the Agreement, the following supplemental terms apply:

1. You may use the VMware Products solely to operate and run in conjunction with the applicable CISCO UC Product or approved third party applications; they cannot be used in any manner independently from the CISCO UC Product or such third party applications. For purposes of this SEULA, “Approved Third Party Applications” include applications from Vendors enrolled in the “Collaboration” or “Complementary to Collaboration” categories within Cisco Solutions Plus or Cisco Developer Network Programs that are not listed in the Cisco Business Edition 6000 Co-residency Policy Document available at: http://www.cisco.com/en/US/products/ps11369/prod_white_papers_list.html All use shall terminate and cease when the use of the Cisco UC Product or Approved Third Party Applications terminates.
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or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This
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PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND
EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL
END USER PURCHASER.

SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT (“EULA”) FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(3) NOT FOR RESALE

This package contains a bundle of Cisco Unified Communications products (the “Cisco UC NFR Bundle”) made available under these terms only to
qualified Cisco resellers and channel partners. In addition to the EULA terms set forth in Attachment 8 and any other Supplemental End User License
Agreement (“SEULA”) terms (collectively, the EULA and the SEULA terms are referred to as the “Software Agreement”) accompanying or otherwise
applicable to the software products enclosed (the “Software”), the following additional supplemental SEULA terms apply to the Software and are hereby
incorporated as part of the Software Agreement:

The Cisco UC NFR Bundle Software is provided to you as a Cisco reseller or channel partner for your internal demonstration and testing purposes only.
The Cisco UC NFR offering may only be used in internal lab or demonstration environments by the acquiring reseller or partner. The Software is not
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Supplemental End User License Agreement for Cisco
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Definitions
For purposes of this SEULA, the following definitions apply:
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"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an Endpoint device.
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Cisco AnyConnect Network Access Manager Module
The Network Access Manager Module, as described in the Cisco AnyConnect Secure Mobility Client Administrator Guide, may be used by You in conjunction with non-Cisco wireless equipment for the purpose of connecting to non-Cisco network equipment. Support services (including Technical Assistance or TAC support) are only available if You have an active support contract for Cisco Products used in conjunction with the Network Access Manager Module. Support services will not be provided directly to your end users by Cisco.

Cisco Network Equipment and Hosted Service License Entitlements and Restrictions
Your use of the Software or specific features thereof with Cisco network equipment shall be subject to license entitlements and restrictions for the applicable Cisco network equipment or hosted services. Please consult Your administrator guide for the applicable Cisco network equipment or hosted services for the relevant license entitlements and restrictions.

**Distribution to Third Party Business Partners and Customers**
You may copy and distribute the Software to your duly authorized employees, agents, consultants, and/or independent contractors (collectively referred to as "employees") solely and exclusively for the purposes of accessing your Cisco equipment, provided that You shall remain responsible for compliance with the EULA and this SEULA by such employees. Each such distribution of the Software to a third party must be accompanied by a copy of the EULA and this SEULA.

**No Support to Third Party Business Partners or Customers**
Cisco will not provide end-user support (including Technical Assistance or TAC support) to any third party business partner or customer that receives the Software in accordance with Section 4 hereof. You shall be responsible for providing all support to each such third party.

**Effect of Termination on Third Party Business Partners or Customers**
In the event of termination of the Agreement, if applicable, You must use commercially reasonable efforts to notify the third party business partner or customer to whom You have distributed the Software that their rights of access and use of the Software have also ceased.

**Data, Information and Privacy**
Telemetry Module—if You install the Telemetry Module, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact You, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information at any time by configuring the Cisco ScanSafe Web Filtering Service to anonymize Your end user data. Configuration instructions for the Cisco ScanSafe Web Filtering Service are available in Your Cisco ScanSafe Web Filtering Service Administrator Guide.
IMPORTANT: READ CAREFULLY

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE: IMPORTANT: READ CAREFULLY

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Software shall include Cisco's ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services.

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Security Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility & Control

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Product Name
ASA5585-20-AWSY ASA 5585-X CX-20 AVC and Web Security Essentials 3Year

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Product Name
L-ISE-AD5Y-W-100= Cisco ISE 100 Endpoint 5 Year Wireless Subscription License

Identity Services Engine (ISE) Wireless License
The Cisco Identity Services Engine (ISE) Wireless Package License entitles the user to use the Base and Advanced features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that you hold a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality
The Identity Services Engine Wireless License Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing
A valid ISE Wireless license allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Additional licenses can be purchased to support more wireless endpoints. The purchased license quantity will be listed in the sales order. The Identity Services Engine Wireless Package License is a 5 year subscription license and subject to the termination provisions stated in the FAR. In order to be able to deploy the ISE across different types of endpoints or access technologies (wired, wireless and vpn), customers have to purchase the Wireless Upgrade license. The Wireless Upgrade license allows for the ISE to be deployed with wired, wireless and vpn endpoints. The pre-requisite for installing the Wireless Upgrade license is having the Wireless license installed on the ISE.

The endpoint count of the Wireless Upgrade license has to be the same as the pre-installed Wireless license.

Support
Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option, the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates.
Supplemental End User License Agreement

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If you do not agree to all of the terms of the Agreement, then Cisco is unwilling to license the software to you and (A) you may not download, install or use the software, and (B) you may return the software (including any unopened CD package and any written materials) for a full refund, or, if the software and written materials are supplied as part of another product, you may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from Cisco or an authorized Cisco reseller, and applies only if you are the original end user purchaser.

Product Name
L-ISE-W-UPG-100= ISE 100 Endpoint 5 Year Wireless Upgrade Subscription Lic

Identity Services Engine (ISE) Wireless Upgrade License

The Cisco Identity Services Engine (ISE) Wireless Upgrade License entitles the user to use the Base and Advanced features and services for All Endpoints and not just limited to Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that the GSA Customer holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Wireless Upgrade License provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Wireless Upgrade license allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine platform. The pre-requisite to install this license is the ISE Wireless License. This license entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Wireless Upgrade License is a subscription license whose term will expire at the same time as the pre-installed Wireless license and is subject to termination provisions stated in the FAR. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates.
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Product Name
L-ISE-ADV3Y-50K= Cisco ISE 50000 EndPoint 3Year Advanced Subscription License

Identity Services Engine (ISE) Advanced Package License
The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that the Government holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality
The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing
A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the Government to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the Government Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the sales order.

The Government’s subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco’s receipt of the Government Purchase Order. The term expires after the duration specified in the Government Purchase Order has been reached. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.
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Product Name

L-ISE-ADV-250-M= Cisco ISE 250 EndPoint Advanced + Base Migration License

Identity Services Engine (ISE) Advanced Package License

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services, and to receive updates as made available during the term of the Subscription, provided that you hold a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

Features and Functionality

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features are supported on Cisco Identity Services Engine hardware and software platforms.

Licensing

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the user to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints). Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order. The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and Services may cease operation. The purchased license term is listed on the GSA Customer Purchase Order.

Your subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically within 24 hours of Cisco’s receipt of the GSA Customer Purchase Order. The term expires after the duration specified in the GSA Customer Purchase Order. Support Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced Subscription Licenses.
Supplemental End User License Agreement for Identity Services Engine

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government's access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Product Name
For purposes of this SEULA, the Product name you have ordered is any of the following:
Cisco ISE 1 Year Wireless Subscription License
Cisco ISE 3 Year Wireless Subscription License
Cisco ISE 5 Year Wireless Subscription License
Cisco ISE 1 Year Wireless Upgrade Subscription License
Cisco ISE 3 Year Wireless Upgrade Subscription License
Cisco ISE 5 Year Wireless Upgrade Subscription License
Cisco ISE 1 Year Advance Subscription License
Cisco ISE 3 Year Advance Subscription License
Cisco ISE 5 Year Advance Subscription License
Cisco ISE Advance Migration Licenses

Identity Services Engine Term Licenses
Provided that you holds a valid license for the application software and that there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform, you are entitled to use the following Cisco Identity Services Engine (ISE) features and services depending on the Product you have ordered:

Cisco ISE Wireless Licenses
For the Cisco ISE Wireless Subscription License: you are entitled to use the Base and Advance features and services for Wireless Endpoints only and to receive updates as made available during the term of the subscription. A valid ISE Wireless Subscription License allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to the number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 wireless endpoints).

Cisco ISE Wireless Upgrade Licenses
For the Cisco ISE Wireless Upgrade Subscription License: you are entitled to use the Base and Advance features and services for all Endpoints (not just limited to Wireless Endpoints only), and to receive updates as made available during the term of the subscription. A valid ISE Wireless Upgrade Subscription License allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine Platform. The pre-requisite to install this ISE Wireless Upgrade Subscription License is the ISE Wireless Subscription License. An ISE Endpoint Wireless Upgrade Subscription License entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints). The endpoint count of the ISE Endpoint Wireless Upgrade Subscription License has to be the same as the pre-installed ISE Endpoint Wireless Subscription; or Cisco ISE Advance Licenses.

For the Cisco ISE Advance Subscription License: you are entitled to use the Advance Package features, services, and to receive updates as made available during the term of the Subscription. The ISE Advance Subscription License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

Cisco ISE Advance Migration Licenses
For the Cisco ISE Advance Migration Licenses: you are entitled to use the Base and Advance features and services, and to receive updates as made available during the term of the Subscription. The ISE Advance Migration License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. The Cisco ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and an ISE Advance License with a 3-year term. This license entitles the GSA Customer to support up
to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Base and Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

Additional licenses
Additional ISE Licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

Term
The ISE Term Licenses are subscription-based, and have either a 1-year, 3-year, or 5-year term, except that: (a) the term of the ISE Wireless Upgrade License will expire at the same time as the pre-installed ISE Wireless License; and (b) the ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and a ISE Advance License with a 3-year term. The ISE Term Licenses are subject to the termination provisions contained in the FAR. License subscriptions must be renewed before the expiration date for continued use of software Features and Services. After the expiration date has occurred without renewal, Features and Services may cease operation.

Features and Functionality
The ISE License provides features that require a valid license to operate. These features are supported on Cisco ISE hardware and software platforms.
Supplemental End User License Agreement for Cisco Systems Content Security Software

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product licensed under the End User License Agreement ("EULA") between You ("GSA Customer" as used herein means You and its duly authorized employees, agents, consultants and/or independent contractors and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For purposes of this SEULA, the Product name and the Product description you have ordered is any of the Following Cisco Systems Email Security Appliance ("ESA"), Cisco Systems Web Security Appliance ("WSA") and Cisco Systems Security Management Application ("SMA") (collectively, "Content Security") and their Virtual Appliance equivalent ("Software");

Cisco AsyncOS for Email
Cisco AsyncOS for Web
Cisco AsyncOS for Management
Cisco Email Anti-Spam, Sophos Anti-Virus
Cisco Email Outbreak Filters
Cloudmark Anti-Spam
Cisco Image Analyzer
Intel Security Public Sector, Inc. Anti-Virus
Cisco Intelligent Multi-Scan
Cisco RSA Data Loss Prevention
Cisco Email Encryption
Cisco Email Delivery Mode
Cisco Web Usage Controls
Cisco Web Reputation
Sophos Anti-Malware
Webroot Anti-Malware
Intel Security Public Sector, Inc. Anti-Malware
Cisco Email Reporting
Cisco Email Message Tracking
Cisco Email Centralized Quarantine
Cisco Web Reporting
Cisco Web Policy and Configuration Management
Cisco Advanced Web Security Management with Splunk
Email Encryption for Encryption Appliances
Email Encryption for System Generated Bulk Email
Email Encryption and Public Key Encryption for Encryption Appliances
Large Attachment Handling for Encryption Appliances
Secure Mailbox License for Encryption Appliances

Definitions
For purposes of this SEULA, the following definitions apply:

"GSA Customer Service" means the GSA Customer's email, Internet, security management services provided to employees and End Users for the purposes of conducting the GSA Customer's internal business.

"End User" means: (1) for the WSA and SMA, the employee, agent, consultant and/or independent contractor or other agent authorized by the GSA Customer to access the Internet and the SMA via the GSA Customer’s Service; and (2) for the ESA, the email boxes of the employees, consultants, independent contractors, or other agents authorized by the GSA Customer to access or use the email services via the GSA Customer’s Service.

"GSA Customer Purchase Order" means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the GSA Customer and Cisco or the GSA Customer and a Cisco reseller, or the valid terms of any GSA Customer Purchase Order accepted by Cisco in connection therewith, containing the purchase terms for the Software license granted by this Agreement.
“Personally Identifiable Information” means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

“Server” means a single physical computer or devices on a network that manages or provides network resources for multiple users.

“Services” means Cisco Software Subscription Services.

“Telemetry Data” means samples of the GSA Customer’s email and web traffic, including data on email message and web request attributes and information on how different types of email messages and web requests were handled by the GSA Customer’s Cisco hardware products. Email message metadata and web requests included in Telemetry Data are anonymized and obfuscated to remove any Personally Identifiable Information. “Term” means the length of the Software subscription you purchased, as indicated in the GSA Customer’s Purchase Order.

“Virtual Appliance” means the virtual version of Cisco’s email security appliances, web security appliances, and security management appliances.

“Virtual Machine” means a software container that can run its own operating system and execute applications like a Server.

Additional License Terms and Conditions

LICENSEGRANTSANDCONSENTTOTERMSOFDATACOLLECTION

License of Software.
The GSA Customer agrees to be bound by the terms of this Agreement, and so long as the GSA Customer is in compliance with this Agreement, Cisco hereby grants to The GSA Customer a nonexclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on Cisco's hardware products, or in the case of the Virtual Appliances, on a Virtual Machine, solely in connection with the provision of the GSA CustomerCompany Service to End Users. The number of End Users licensed for the use of the Software is limited to the number of End Users specified in the Ordering Documents. In the event that the number of End Users in connection with the provision of the Company Service exceeds the number of End Users specified in the Ordering Documents, Company shall contact an Approved Source to purchase additional licenses for the Software. The duration and scope of this license(s) is further defined in the Ordering Document. The GSA Customer Purchase Order supersedes the EULA with respect to the term of the Software license. Except for the license rights granted herein, no right, title or interest in any Software is granted to the GSA Customer by Cisco. Cisco's resellers or their respective licensors. The GSA Customer’s entitlement to Upgrades to the Software is subject to any separate support contract that the GSA Customer may execute. This Agreement and the Services are co-terminus.

Consent and License to Use Data
Subject to the Cisco Privacy Statement, Attachment 6.
The Government hereby consents and grants to Cisco a license to collect and use Telemetry Data from the Company. Cisco does not collect or use Personally Identifiable Information in the Telemetry Data. Cisco may share aggregated and anonymous Telemetry Data with third parties to assist us in improving the GSA Customer’s user experience and the Software and other Cisco security products and services. The GSA Customer may terminate Cisco’s right to collect Telemetry Data at any time by disabling SenderBase Network Participation in the Software. Instructions to enable or disable SenderBase Network Participation are available in the Software configuration guide.

Description of Other Rights and Obligations
Please refer to the Cisco Systems, Inc. End User License Agreement and Privacy Statement, Attachments 8 and 6.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS VIRTUAL SOFTWARE PRODUCTS:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA.

To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the GSA Customer's access and use of the Software, the GSA Customer agrees to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions

"CPU" means a central processing unit that encompasses part of a Server.

"Failover Pair" means a primary Instance and a standby Instance with the same Software configuration where the standby Instance can take over in case of failure of the primary Instance.

"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

"Server" means a single physical computer or device on a network that manages or provides network resources for multiple users.


"Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.

"Service Provider" means a company that provides information technology services to external end user customers.

Additional License Terms and Conditions

Cisco hereby grants you the right to install and use the Software listed above in this SEULA on single or multiple Cisco or non-Cisco Servers or as a Virtual Machine.

A unit license fee to Cisco or an authorized Cisco reseller shall be due for each Cisco or non- Cisco Server CPU on which the Software is installed, per Virtual Machine run by the Software, or per Instance, as determined by Cisco. Cisco also reserves the right to offer, in its sole discretion, versions of the Software that may not be subject to a unit license fee.

For the Adaptive Security Appliance 1000V Cloud Firewall Software, You are licensed to the number of Instances of the Software equal to the number of CPUs covered by the unit license fee, and if You deploy a Failover Pair, for an additional standby Instance for each primary Instance.

Description of Other Rights and Obligations

Please refer to the Cisco Systems, Inc. End User License Agreement, Attachment 8.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS INTEGRATED SECURITY APPLIANCE SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Definitions
For purposes of this SEULA, the following definitions apply:

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

Additional License Terms and Conditions

Term License
The Software is licensed for the one (1) or three (3) year license term, as set forth in the Software purchase order documentation.

Version 1.0

Data, Information and Privacy
If You agree to this Agreement, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information, and the transfer of Personal Information and Non-personal Information to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, as described in Cisco's Privacy Statement included as Attachment 6.
Supplemental End User License Agreement for Access Control System

IMPORTANT: READ CAREFULLY
This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Product Name
For purposes of this SEULA, the Product the Government has ordered is any of the following:
- ACS 1121 Appliance With 5.x SW And Base license
- ACS 1121 Appliance And 5.x SW Upgrade from Previous Versions
- ACS application & BASE license for SNS-3415-K9 appliance
- Upgrade to ACS application on SNS-3415-K9 appl. w/ BASE license
- ACS 5.2 VMWare Software And Base License
- ACS 5.2 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.2 VMWare SW + Base License (Electronic Delivery)
- ACS 5.2 VMWare SW Upgrade (Electronic Delivery)
- ACS 5.3 VMWare Software And Base License
- ACS 5.3 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.3 VMWare SW + Base License (Electronic Delivery)
- ACS 5.3 VMWare SW Upgrade (Electronic Delivery)
- ACS 5.4 VMWare Software And Base License
- ACS 5.4 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.4 VMWare SW + Base License (Electronic Delivery)
- ACS 5.4 VMWare SW Upgrade (Electronic Delivery)

1. ADDITIONAL LICENSE RESTRICTIONS
Installation and Use of Cisco Secure Access Control System: The Cisco Secure Access Control System ("ACS") Software component of the Cisco Hardware Platform is preinstalled. CDs containing tools to restore this Software to the Hardware are provided to you for reinstallation purposes only. You may only run the supported Cisco Secure Access Control System Software Products on the Cisco Hardware Platform designed for its use. No unsupported software product or component may be installed on the Cisco Hardware Platform. Each Cisco Secure Access Control System is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one Cisco Secure Access Control System. Installation and Use of Cisco Secure Access Control System Software for Virtual Machine: The Cisco Secure Access Control System ("ACS") Software for Virtual Machine can run and is supported only on versions of Virtual Machine specified in the product documentation. Each copy of Cisco Secure ACS Software for Virtual Machine is shipped with a Product Activation Key ("PAK") that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on with one and only one running Instance of Cisco Secure ACS Software.

2. DEFINITIONS
"Instance" means a single copy of the Software. Each copy of the Software loaded into memory is an Instance. "Server" means a single physical computer or device on a network that manages or provides network resources for multiple users. "Virtual Appliance" means the virtual version of Cisco's email security appliances, web security appliances, and security and identity management appliances. "Virtual Machine" means a software container that can run its own operating system and execute applications like a Server.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

For the purpose of this SEULA, we define the following terms:

"Intragovernmental Features" are those features that are deployed within an enterprise and do not traverse a service provider network for the purpose of interconnecting and communicating to other enterprises. This does not include transport provided for communication within the enterprise allowing it to communicate to itself.

"Inter-company Features" are those features that provide support for communications between enterprises through a service provider network.

In addition to the Agreement, the following supplemental terms apply to Inter-company Features. Multipoint encryption for Inter-company feature is available in the Software Product but you are not authorized to use it until you have been permitted to do so upon notice from Cisco.
<table>
<thead>
<tr>
<th>TelePresence</th>
<th>Cisco TelePresence Manager</th>
<th>DOC-14958 DOC-29311</th>
</tr>
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<tbody>
<tr>
<td>TelePresence</td>
<td>Cisco TelePresence Express</td>
<td>DOC-14958 DOC-29311</td>
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<tr>
<td></td>
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Please see the SEULAs starting above for (DOC-29311) and (DOC-14958) for the SEULAs applicable to these offerings.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

If you do not agree to all of the terms of the Agreement, then Cisco is unwilling to license the Software to you and (A) you may not download, install or use the Software, and (B) you may return the Software (including any unopened CD package and any written materials) for a full refund, or, if the Software and written materials are supplied as part of another product, the Government may return the entire product for a full refund. Your right to return and refund expires 30 days after purchase from Cisco or an authorized Cisco reseller, and applies only if you are the original end user purchaser.

For the purpose of this SEULA, we define the following terms:

“Authorized Service Provider” is a service provider that has an agreement with Cisco explicitly authorizing support for the Restricted Features. “Intra-Governmental Use” is a use of the Software Product which occurs within the government and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities. “Inter company Use” is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of inter connecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter company Use also includes providing features of the Software Product in a commercially available service offering.

“Restricted Features” means one or more of the following features: (i) Inter company Multipoint encryption; and (ii) Inter company HD/SD Inter Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTERGOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. You are not authorized to use the Restricted Features for Inter-Governmental Use until the Cisco notifies the GSA Customer Restricted Features are generally available feature sets in the updated release notes for the Software Product. Notwithstanding the foregoing, your Intra-Governmental Use of the Restricted Features shall not be restricted by this paragraph. The CTS Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-Governmental Use. The CTS Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS Manager per tenant.
IMPORTANT: READ CAREFULLY

Dear Customer,

Supplemental End User License Agreement

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

"Authorized Service Provider" is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

"Intra-Governmental Use" is a use of the Software Product which occurs within the same Government entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same entities.

"Inter-Governmental Use" is a use of the Software Product which occurs between two or more Government entities and which traverses a service provider network for the purpose of interconnecting and communicating to other entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-Governmental Use also includes providing features of the Software Product in a commercially available service offering.

"Restricted Features" means one or more of the following features: (i) Inter-Governmental Multipoint encryption; and (ii) Inter-Governmental HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product, but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-GOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. The Government is not authorized to use the Restricted Features for Inter-Governmental Use until Cisco notifies the GSA Customer that the Restricted Features are available feature sets. Notwithstanding the foregoing, the GSA Customer’s Intra-Governmental Use of the Restricted Features shall not be restricted by this paragraph.
IMPORTANT: READ CAREFULLY

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEO CONTROL PLANE AND CDN MANAGER ("SOFTWARE"): VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

THE GSA CUSTOMER'S RIGHT TO USE THE SOFTWARE IS LIMITED SOLELY TO THOSE PRODUCTS COMPONENTS OF THE SOFTWARE (INCLUDING BUT NOT LIMITED TO THE VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. WITH RESPECT TO THE SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE SOFTWARE; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE SOFTWARE.

When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF GSA CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE SOFTWARE. LICENSE; ADDITIONAL RESTRICTIONS License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, non-transferable, worldwide, royalty-free license to use the Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the capacity limitations set forth in the description of the product associated with the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of the Agreement.

RESTRICTED VERSION AND USE. GSA Customer may install and use the Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users, subject to the capacity limitations set forth in the description of the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. All other uses are strictly prohibited.

Customer Warranties

GSA Customer represents, warrants and covenants that (i) it shall only use the Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the Software beyond the...
Capacity set forth in the GSA Customer Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content
As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's business purposes and objectives.

ADDITIONAL SERVICES
Professional Services and/or Support Services relating to the Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.
Dear Customer,

Supplemental End User License Agreement

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IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE; AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

SUPPLEMENTAL LICENSE AGREEMENT

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEOSCAPE MEDIA SUITE SOFTWARE ("VMS SOFTWARE"): CMS, ENTITLEMENT, PUBLISHER, MEDIA STREAMING PLAYER, MEDIA DOWNLOAD APPLICATION

IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE VMS SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE VMS SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.

GSA CUSTOMER'S RIGHT TO USE THE VMS SOFTWARE IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE VMS SOFTWARE (INCLUDING BUT NOT LIMITED TO THE CMS, ENTITLEMENT, PUBLISHER, STREAMING PLAYER OR DOWNLOAD APPLICATION COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED. WITH RESPECT TO THE VMS SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE VMS SOFTWARE, INCLUDING ANY SERVICES PROVIDED BY CISCO PURSUANT TO EXHIBIT C; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE VMS SOFTWARE.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE VMS SOFTWARE.

LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a perpetual, nonexclusive, non-transferable, worldwide, royalty-free license to use the VMS Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the User Capacity, Transaction Capacity or Title Capacity (collectively, "Capacity") limitations set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the VMS Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of this Agreement.

Restricted Version and Use. GSA Customer may install and use the VMS Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the VMS Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the VMS Software. No other Updates, upgrades, or other VMS Software releases are licensed by Cisco to GSA Customer hereunder. Major Release means a release of VMS Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the VMS Software version number [(x).x]. Minor Release means an incremental release of VMS Software that provides maintenance fixes and additional VMS Software functions. Cisco designates Minor releases as a change in the tenths digit of the VMS Software version number [x.(x)].x.
**GSA Customer Warranties.** GSA Customer represents, warrants and covenants that (i) it shall only use the VMS Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the VMS Software beyond the Capacity set forth in the Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the VMS Software ("GSA Customer Content").

GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. GSA Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's purposes and objectives. In the case where at no material fault of Cisco or the VMS Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify GSA Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, GSA Customer continues to allow its content to be accessed with any software or services operated in conjunction with the VMS Software during the period where there is no fix for such DRM security breach, or GSA Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then GSA Customer acknowledges and agrees Cisco will not have any liability to GSA Customer for any costs, damages or legal fees related to a DRM security breach.

**ADDITIONAL SERVICES**
Professional Services and/or Support Services relating to the VMS Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO WEBEX MEETINGS SERVER SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED USB DRIVE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

Cisco WebEx Meetings Server (the "Software") is a software-based enterprise conferencing product that integrates audio, video and web conferencing in a single, on-premises solution. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. The server component of the Software may be installed only on Cisco hardware that is: (a) operated by GSA Customer, or (b) operated by a third party under the GSA Customer's direct control. GSA Customer may copy and distribute the client component of the Software to its duly authorized agents, consultants and/or independent contractors solely and exclusively in connection with allowing such third parties to attend meetings hosted by GSA Customer using the Software, provided that GSA Customer shall remain responsible for such third parties' compliance with the Agreement. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on USB Drive or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Version 1.0

User Licenses. "Employees" are the full and part-time employees, agents, consultants and/or third-party independent contractors of GSA Customer. Employees may include third-party contractors, only if (a) GSA Customer allows the third-party contractor to use the Software only for the benefit of GSA Customer, (b) GSA Customer does not charge the third-party contractor for the use of the Software, and (c) GSA Customer takes full liability for the actions of the third-party contractor, including, but not limited to the third-party contractor's misuse of the Software. A "User" is a GSA Customer Employee assigned an account by GSA Customer to use the Software to host meetings. A User may host an unlimited number of meetings ("Meeting(s)") using the Software; provided that a User may only host one (1) Meeting at a time. Each Meeting will be repeated until performed internal checks to compare the number of Users using the Software with the number of Users licensed by GSA Customer, and if it repeatedly finds more Users than authorized, Cisco will provide notice to the GSA Customer and provide the GSA Customer with the opportunity to negotiate additional GSA Customer Purchase Orders to bring the GSA Customer into compliance.

Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings and any other material ("Content") used, displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

Privacy. GSA Customer understands and agrees that, as part of Cisco providing support to GSA Customer, Cisco may request access to and use of technical or diagnostic information (e.g., server logs) that may contain Personal Information and Non-personal Information of GSA Customer and/or GSA Customer's meeting invitees ("Server Data"). If you provide such Server Data to Cisco, you consent to Cisco's collection, use, processing and storage of Personal Information and Nonpersonal Information as described below. This Personal Information and Nonpersonal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purposes of providing GSA Customer support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form.

None of this Personal Information and Non-personal Information will be used to identify or contact individual users, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, included as Attachment.
GSA Customer may withdraw this consent to collection, use, processing and storage of Personal Information and Non-
personal Information at any time by not providing Cisco access to the Server Data. Active steps are required each time by
the System Administrator to provide Cisco access to the Server Data.

GSA Customer agrees that it will not use the Software to send unsolicited email outside GSA Customer's company or organization (e.g.,
"spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire
sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). GSA
Customer further agrees not to use the Software to communicate any message or material that is harassing, libelous, threatening, obscene,
or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful
under any applicable law or regulation.

The Software may not be appropriate for use in all countries. GSA Customer agrees that GSA Customer will comply with all
applicable laws and regulations in connection with GSA Customer's use of the Software, including, but not limited to: (a) with respect
to personally identifiable information sent or received by GSA Customer, all applicable privacy laws and regulations, (b) laws relating
to the recording of communications, including, when required, advising all participants in a recorded WebEx Meetings Server
meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It
is the sole responsibility of GSA Customer to ensure it has the right to use all features of the Software. Cisco may modify or not make
available the Software and/or certain Software features to comply with applicable laws and regulations. The Software is subject to
U.S. and local export control laws and regulations. GSA Customer shall comply with such laws and regulations governing use,
export, re-export, and transfer of the Software and will obtain all required U.S. authorizations, permits, or licenses. The export
obligations under this clause shall survive the expiration or termination of the Agreement.

The Software contains certain third party database products ("Third Party Database Products") that may impose additional restrictions on GSA
Customer's use. GSA Customer shall not install or configure the Third Party Database Products separately and independently from the
Software. GSA Customer shall not access the Third Party Database Products directly or through other database tools, but rather only through
the Software. GSA Customer shall not download the underlying data schema of the Third Party Database Products. GSA Customer shall not
access the Third Party Database Products or Version 1.0 establish the transfer of data without Cisco Application Programmer Interfaces APIs.
GSA Customer shall not upgrade the Third Party Database Products separately, but only as a component of Third Party Database Products.

Oracle Java SE Terms and conditions. (i) Trademarks and Logos. This SEULA does not authorize an end user licensee to use any Oracle
America, Inc. name, trademark, service mark, logo or icon. The GSA Customer acknowledges that Oracle owns the Java trademark and all
Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks"). and agrees to: (a) comply with the Java
Trademark Guidelines included as Attachment 7; (b) not do anything harmful to or inconsistent with Oracle’s rights in the Java Marks; and (c)
assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. (ii) Third Party Code.
Additional copyright notices and license terms applicable to portions of the Oracle Java SE software are set forth in the
THIRDPARTYLICENSEREADME.txt file. (iii) Commercial Features. Use of the Commercial Features for any commercial or production purpose
require a separate license from Oracle.re.

Portions of the Software utilize Microsoft Windows Media Technologies. Copyright (c) 1999-2006 Microsoft Corporation.
SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS WEBEX SOCIAL SOFTWARE:

IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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WebEx Social Software is an enterprise collaboration platform that may provide different functionality including, but not limited to: content/documents (content development, content management, portals, and Intranets); communication (voice/video, instant messaging, conferencing, and email); business process (business applications, vertical applications, customer care, and workflow); and social networking (profiles, teams, communities, networks).

License. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer’s end users) license to use for GSA Customer’s (and/or GSA Customer’s end users’) internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. “Documentation” means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.

GSA Customer’s license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the “GSA Customer Purchase Order”).

Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications and any other material ("Content") displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

Third Party Offerings. Certain uses of Software may allow Customer to evaluate and use third party applications and/or services ("Third Party Offerings"). Third Party Offerings may involve the exchange of data with the Software. Cisco is not responsible for Customer’s data outside of the Software or for modifications or deletions of Customer’s data made by third parties or their Third Party Offerings.

6. Use of Twitter Services. GSA Customer’s use of Twitter Services is governed by and Twitter Terms of Services
7. WebEx Social Software contains certain Oracle database products ("Oracle Products") that impose additional restrictions on GSA Customer’s use. GSA Customer shall not install or configure Oracle Products separately and independently from WebEx Social Software. Except for Enterprise Manager, GSA Customer shall not access Oracle Products directly or through other database tools, but rather only through WebEx Social Software. GSA Customer shall not navigate the underlying data schema of Oracle Products. GSA Customer shall not access Oracle Products or establish the transfer of data without Cisco APIs. GSA Customer shall not upgrade Oracle Products separately, but only as a component of Oracle Products.

8. WebEx Social Software contains IBM Licensed Materials. Copyright IBM Corporation 2009. IBM Licensed Materials or their modifications may not be used for any purpose other than to enable WebEx Social Software.
This Service Level Agreement (this “Agreement”) sets forth Cisco Meraki’s obligations and our customers’ rights with respect to the performance of Cisco Meraki’s Hosted Software. All capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in the End Customer Agreement above (the Meraki SEULA), or as otherwise entered into between Cisco Meraki and Customer (the “Customer Agreement”).

Definitions. For purposes of this Agreement, the following terms have the meaning ascribed to each term below:

“Downtime” means if the Hosted Software is unavailable to Customer due to failure(s) in the Hardware, Firmware, or Hosted Software, as confirmed by both Customer and Cisco Meraki.

“Monthly Uptime Percentage” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“Service Credit” means the number of days that Cisco Meraki will add to the end of the Term, at no charge to Customer.

Service Level Warranty. During the Term, the Hosted Software will be operational and available to Customer at least 99.99% of the time in any calendar month (the “Service Level Warranty”). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer meets its obligations under this Agreement, then Customer will be eligible to receive Service Credit as follows:

<table>
<thead>
<tr>
<th>Uptime</th>
<th>Days Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.99% - ≥ 99.9%</td>
<td>3</td>
</tr>
<tr>
<td>&lt; 99.9% - ≥ 99.0%</td>
<td>7</td>
</tr>
<tr>
<td>&lt; 99.0%</td>
<td>15</td>
</tr>
</tbody>
</table>

Customer Must Request Service Credit. In order to receive any of the Service Credits described above, Customer must notify Cisco Meraki within 30 days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

Maximum Service Credit. The aggregate maximum amount of Service Credit to be issued by Cisco Meraki to Customer for all Downtime that occurs in a single calendar month will not exceed 15 days. Service Credit may not be exchanged for, or converted into, monetary amounts.

Exclusions. The Service Level Warranty does not apply to any services that expressly exclude this Service Level Warranty (as stated in the documentation for such services) or any performance issues (i) caused by Force Majeure on the terms set forth in Section 9.3 of the Agreement, (ii) that resulted from Customer’s equipment or third party equipment, or both (not within the primary control of Cisco Meraki), or (iii) that otherwise resulted from Customer’s violation of Sections 3.5 or 4.2 of the Agreement.

Exclusive Remedy. This Agreement states Customer’s sole and exclusive remedy for any failure by Cisco Meraki to meet the Service Level Warranty.
Attachment 2
Meraki Support Overview:

**Enterprise support at no additional cost**
Cisco Meraki’s simple, all-inclusive pricing includes enterprise-class phone support. We will help you deploy your first network or troubleshoot global network issues and other unforeseen emergencies at no additional cost.

**Deep expertise and fanatical service**
Our support engineers have deep expertise in enterprise networking and wireless design. The Cisco Meraki support team sits alongside the engineers who build Cisco Meraki products, providing a wealth of expertise.

**Real time cloud-based support tools**
Cisco Meraki support engineers use real time web-based tools to securely and quickly diagnose and troubleshoot your network, providing the speed and service of an on-site visit without the hassle.

**The best support call is the one you don’t have to make**
Cisco Meraki self-provisioning hardware, automatic firmware updates, automatic network optimization, intuitive user interface and built-in contextual help dramatically reduce support incidents, providing reliable and hassle free enterprise networking.

**Meraki Support Includes**
- Access to knowledge base
- Case-based support viewable in dashboard
- Firmware and software upgrades and updates
- 24×7 telephone support based out of San Francisco, London, Sydney technical assistance centers

[Contact Support](#)

**Log in** to submit cases.

**Telephone support**

<table>
<thead>
<tr>
<th>Region</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>US/North America</td>
<td>(415) 432-1203</td>
</tr>
<tr>
<td>Europe</td>
<td>+44 20-78-71-2776</td>
</tr>
<tr>
<td>Australia / Asia-Pacific</td>
<td>+61 285203058</td>
</tr>
<tr>
<td>New Zealand</td>
<td>+64 99749591</td>
</tr>
<tr>
<td>Singapore</td>
<td>+65 31582108</td>
</tr>
<tr>
<td>Mexico</td>
<td>+52 5511638940</td>
</tr>
<tr>
<td>Brazil</td>
<td>+55 1130422855</td>
</tr>
</tbody>
</table>

**Note**
Starting on January 1, 2014, you will need your Cisco Meraki account number in order to access telephone support. This number is available on the help tab of the Meraki dashboard.
Meraki Privacy Policy

This privacy policy (this "Policy") describes the collection of personal information and certain other information by Meraki, LLC, a Delaware limited liability company and a wholly owned subsidiary of Cisco Systems, Inc. ("Meraki.", "we," or "us") from users of our Web site at meraki.cisco.com (the "Website"), as well as all applications, widgets, software, tools, and other services provided by us and on which a link to this Policy is displayed (collectively, together with the Website, our "Services"). This Policy also describes our use and disclosure of such information. By using our Services, you consent to the collection, use, and disclosure of information in accordance with this Policy. This Policy is incorporated by reference into the Meraki Terms of Use and the Meraki End Customer Agreement and is subject to the provisions of the Meraki Terms of Use and the Meraki End Customer Agreement. The terms "you," "your," and "user" refer to the user visiting the Website or accessing or using the Services. Other capitalized terms used but not defined in this Privacy Policy have the meanings given to them in the Terms of Use.

Meraki has received TRUSTe's Privacy Seal signifying that this privacy policy and our practices have been reviewed for compliance with the TRUSTe program viewable on the validation page available by clicking the TRUSTe seal. If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please contact TRUSTe. TRUSTe's Dispute Resolution process is only available in English. The TRUSTe certification covers our collection, use and disclosure of information we collect through our Services. The use of information collected through our Services shall be limited to the purpose of providing the service for which the customer has engaged Meraki. Meraki complies with the U.S. – E.U. Safe Harbor framework and the U.S. – Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Meraki has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. For more information, see the Safe Harbor Privacy Principles.

Personal Information

"Personal Information," as used in this Policy, is information that specifically identifies an individual, such as an individual's name, address, telephone number, or e-mail address. Personal Information also includes information, such as demographic information (e.g., date of birth, gender, geographic area, and preferences), when any of this information is linked to Personal Information that identifies that individual. Personal Information does not include "aggregate" or other non-personally identifiable information. Aggregate information is information that we collect about a group or category of products, services, or users that is not personally identifiable or from which individual identities are removed. We may use and disclose aggregate information, and other non-personally identifiable information, for various purposes at our sole discretion and without notice or liability to you.

Collection of Information

Collection of Voluntarily-Provided Information

We collect Personal Information that our users provide to us in a variety of ways on our Services. These include the following:

E-mail Newsletters. We may offer e-mail newsletters from time to time on our Services. If you sign up to receive a newsletter from us, we collect your e-mail address.

User Account and Profiles. Our Services may give you the ability to register for an account or to create and update a user profile. If we offer user account or profile functionality on the Services, we will collect the Personal Information that you provide to us in the course of registering for an account or creating or updating a user account or profile. This information may include, for example, name, postal address, telephone number, e-mail address, and related demographic information about you. We may indicate that some Personal Information is required for you to register for the account or to create the profile, while some is optional.

Logging into Networks. Certain networks using our Services may require users to establish or use login credentials. In connection with supporting this log-on functionality, we may collect information such as email addresses, telephone numbers, or user or administrator-created user names, along with user-created or administrator-created passwords, to facilitate such log-on functionality and otherwise to provide our Services.

Correspondence. If you contact us by e-mail, using a contact form on the Services, or by other means, we collect the Personal Information contained within, and associated with, your correspondence.

Contests and Sweepstakes. We and other business partners may conduct or sponsor special contests, sweepstakes, and other promotions that users may enter or otherwise participate in on our Services or otherwise. Certain of these promotions may be co-branded with one of our advertisers or other business partners. In these instances, the collection of your Personal Information may occur directly by the third-party partner on its websites or other online service and may be shared with us. The promotion will state the privacy policy or policies governing the collection of such personal information.

Testimonials. We display testimonials of satisfied customers on our site in addition to other endorsements. With your consent we may post your testimonial along with your name.

Information Related to Data Collected for our Customers. Meraki collects information under the direction of its customers, and has no direct relationship with the individuals whose personal data it processes. If you are an individual who makes use of services offered by one of our customers and would no longer like to be contacted by that customer, please contact the customer that you interact with directly. We may transfer personal information to companies that help us provide our Services. Transfers to subsequent third parties are covered by the service agreements with our customers.

Passive Information Collection

When you use or visit our Services, some information is collected automatically. For example, when you access our Services, we automatically collect your browser’s Internet Protocol (IP) address, your browser type, the nature of the device from which you are visiting the Services (e.g., a personal computer or a mobile device), identifiers for any handheld or mobile device that you may be using, the Web site that you visited immediately prior to accessing any Web-based Services, the actions you take on our Services, and the content, features, and activities that you access and engage with on our Services. We also may collect information regarding your interaction with e-mail messages from Meraki, such as whether you opened, clicked on, or forwarded a message.

We may collect this information passively using technologies such as standard server logs, cookies, and clear GIFs (also known as "Web beacons"). We use passively-collected information to administer, operate, maintain and improve our Services and our other services and systems and to provide content that is tailored to you.
If we link or associate any information gathered through passive means with Personal Information, or if applicable laws require us to treat any information gathered through passive means as Personal Information, we treat the combined information as Personal Information under this Policy. Otherwise, we use and disclose information collected by passive means in aggregate form or otherwise in a non-personally identifiable form. Please be aware that in the course of your use of the Services, websites or other services provided by third parties (“Third-Party Services”), including marketing or website optimization vendors, may set cookies on your hard drive or use other means of passively collecting information about your use of their Third-Party Services or other services or content. To do this, they may use first-party cookies (which are set by the same domain your browser is receiving data from) or third-party cookies (which are set by a different domain). Meraki also may make non-personally identifiable information available to Third-Party Services, and these Third-Party Services may collect such information, to assist such parties in understanding our users’ activities and usage patterns on the Services. If desired, you may use the Google Analytics Opt-out Browser Add-on to opt-out of having information collected by Google Analytics. We do not have access to, or control over, the actions of Third-Party Services. Each provider of Third-Party Services uses information that it collects in accordance with its own privacy and security policies. Additionally, please be aware that Google and other third-party vendors may place or recognize one or more unique cookies on your computer when you use the Services, and may record information to these cookies based upon your activities on our Services and on third-party websites and other services. Google and these other third-party vendors may use information about those activities to inform, optimize, and serve advertisements. In particular, we may use Google and other third-party vendors to engage in “remarketing,” in which advertisements you see on third-party websites and services may be based on your prior visits to our Services. To learn more about these practices, and to opt-out from Google’s and others’ use of information collected on the Services through cookies for advertising purposes, you may visit Google’s Ads Preferences Manager, TRUSTe’s Preference Manager, or the Network Advertising Initiative opt-out page. Please note that opting-out will not prevent advertisements from being served to you on the Internet; it will only result in advertisements that utilize cookies to serve advertisements on the specified advertising networks from which you opt-out no longer being targeted. We are not responsible for the activities of other parties that may not comply with your opt-out requests.

We also use Google Conversion Tracking, which tracks whether users engage in certain activities (e.g., filling out a form to receive more information about our products or services) after they view one of our advertisements on a Third-Party Service. Google uses cookies to track conversions and to report that information to us. Finally, please also be aware that we use the Google Maps API as a source of maps, geographic data, and geolocation information for purposes of providing location-based information regarding terminal devices connected to networks managed by our Services and for providing reporting and analysis. Google may collect information, including personal information, from those who view content provided through the Google Maps API, and Google handles such information in accordance with the Google Privacy Policy.

Network Usage Information Collected by Our Services
Some of our Services collect information from terminal devices connected to networks that are managed by those Services. Those Services also collect information regarding the performance of, and certain other information regarding, such networks. This information includes, for example, MAC address, device type, operating system, geolocation information, and network traffic information (e.g., hostnames, protocols, port numbers, and IP addresses). This information is made available to administrators of networks managed by our Services through an online interface that we call the “dashboard”. Additionally, if a Meraki customer elects to use our device management tool currently known as Systems Manager (“Systems Manager”) and installs it on a device (e.g., a mobile device or a laptop computer) managed by Systems Manager, the customer or Meraki may undertake certain actions on the device, such as the following: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots; (iv) manage the device through remote desktop functionality; (v) set and enforce policies; and (vi) install/remove apps. Finally, for devices with Systems Manager installed or devices that utilize Global Positioning System (GPS) technology, we transmit certain geolocation information about those devices and the network(s) on which they are running, which provides us with related geolocation information that we store and make available to network administrators through our dashboard as described above in this paragraph. Google handles the information that we provide to it in accordance with the Google Privacy Policy.

Information from Other Sources
We may receive information about you, including Personal Information, from affiliated and unaffiliated third parties, and may combine this information with other Personal Information we maintain about you in order to ensure we have accurate information. If we do so, this Policy governs any combined information that we maintain in personally identifiable format.

Use of Information
We use Personal Information and other information we collect to do any of the following: provide services to our customers; provide information and otherwise respond to your requests, including sales inquiries, email requests, and shipping requests; enhance, improve, operate, maintain, and debug the Website, our other Services, and our other programs, services, Web sites, and systems; improve the effectiveness of our Website as a marketing tool and optimize the performance of the Website and our other Services; prevent fraudulent use of our Services and other systems; to prevent or take action against activities that are, or may be, in violation of the Meraki End Customer Agreement, the Meraki Terms of Use, or applicable law; to tailor content and other aspects of your experience on and in connection with the Services; maintain a record of our dealings with you; for other administrative purposes; and for any other purposes that we may disclose to you at the point at which we request your Personal Information, and pursuant to your consent. We may also use Personal Information you provide to contact you regarding products, services, and offers, both from ourselves and third parties, that we believe you may find of interest. We allow you to opt-out from receiving marketing communications from us as described in the “Choice” section below.

Disclosure of Information
Except as described in this Policy, we will not disclose your Personal Information that we collect on the Services to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

Service Providers
We may disclose Personal Information to third-party service providers (e.g., payment processing and data storage and processing facilities) that assist us in our work. We limit the Personal Information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such Personal Information.

Business Transfers
Information about our users, including Personal Information, may be disclosed and otherwise transferred to an acquirer, successor, or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency,
bankruptcy, or receivership in which Personal Information is transferred to one or more third parties as one of our business assets. To Affiliated Companies
We may disclose Personal Information and other information to our parent company and to other corporate affiliates of ours. These affiliated third-party companies may use such Personal Information and other information that we disclose to them for purposes such as marketing our products and services to you.

To Channel Partners
We may disclose Personal Information and other information to channel partners, such as resellers, of ours. These third parties may use such Personal Information and other information that we disclose to them to comply with their privacy policies and procedures.

To Protect our Interests
We also may disclose Personal Information and other information if we believe that doing so is legally required or is in our interest to protect our property or other legal rights (including, but not limited to, enforcement of our agreements) or the rights or property of others, or otherwise to help protect the safety or security of our Services or other users of the Services.

Choices Regarding Promotional Communications
If you receive commercial e-mail from us, you may unsubscribe at any time by following the instructions contained within the e-mail. You may also opt-out of receiving commercial e-mails by sending your request to us by e-mail at privacy@meraki.com or by writing to us at the address given at the end of this policy. Additionally, if we offer user account functionality on the Services, we may allow you to view and modify settings relating to the nature and frequency of promotional communications that you receive from us.

Please be aware that if you opt-out of receiving commercial e-mail from us, it may take up to ten business days for us to process your opt-out request, and you may receive commercial e-mail from us during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding our Services.

Privacy Rights
You may choose to opt-out of the sharing of your personal information with third parties for their direct marketing purposes at any time by e-mailing us at opt-out@meraki.com. Once we receive your opt-out request, we will no longer disclose your Personal Information to third-parties for their direct marketing purposes. Please be aware that this opt-out does not prohibit disclosures of Personal Information or other information made for non-direct marketing purposes.

Access
If we offer the ability to create user accounts or profiles on our Services, you may have the ability to access and update certain categories of Personal Information that you provide to us by logging in to your account and accessing your account settings. If you wish to access, amend, or delete any other Personal Information we hold about you, you may contact us at privacy@meraki.com.

If you request access to your account including deletion requests on any of our Services (via a user settings page, by email, or otherwise) including requests to remove testimonials that contain Personal Information, we will respond to your access requests within 30 days. Please note that we may need to retain some of your Personal Information in order to satisfy our legal obligations, or where we reasonably believe that we have a legitimate reason to do so.

Please note that Meraki has no direct relationship with the individuals whose personal data we process on behalf of our customers. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct his or her query to our customer (the data controller). If the customer requests Meraki to remove the data, we will respond to their request within 30 days.

We will retain personal data we process on behalf of our customers for as long as needed to provide services to our customer. Meraki will retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Links
The Services may contain links to other Web sites or other Third-Party Services that we do not own or operate. If you choose to visit or use any Third-Party Services or products or services available on or through such Third-Party Services, please be aware that this Policy will not apply to your activities or any information you disclose while using those Third-Party Services or any products or services available on or through such Third-Party Services. We are not responsible for the privacy practices of these Third-Party Services or any products or services on or through them. Additionally, the Services may contain links to Web sites and services that we operate but that are governed by different privacy policies. We encourage you to carefully review the privacy policies applicable to any Web site or service you visit other than the Services before providing any Personal Information on them.

Children
Children’s safety is important to us, and we encourage parents and guardians to take an active interest in the online activities of their children. Our Services are not directed to children under the age of 13, and we do not knowingly collect Personal Information from children under the age of 13 without obtaining parental consent. If we learn that we have collected Personal Information from a child under the age of 13 on our Services, we will delete that information as quickly as possible. If you believe that we may have collected any such Personal Information on our Services, please notify us at privacy@meraki.com.

International Visitors
Many of our servers and data centers are located in the United States. If you choose to use the Services from outside the U.S., then you should know that you may be transferring your Personal Information outside of your region and into the U.S. for storage and processing. By providing your Personal Information to us through your use of the Service, you agree to that transfer, storage, and processing in the U.S. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Services. You should know that each region can have its own privacy and data security laws, some of which may be less stringent as compared to those of your own region.

Security
We use certain security measures in an effort to protect Personal Information from accidental loss, disclosure, misuse, and destruction. The security of your Personal Information and our customers’ information is important to us. When you enter sensitive information (such as login credentials) we encrypt the transmission of that information using secure socket layer technology (SSL). Please be aware, however, that no data security measures can be guaranteed to be completely effective. Consequently, we cannot ensure or warrant the security of any information that you provide to us. You transmit information to us at your own risk.

If Meraki learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Meraki may post a notice through the Services if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach, you should notify us at privacy@meraki.com.
Meraki Return Policy

Warranty Returns
If you are experiencing hardware issues, please contact Cisco Meraki support by signing in to dashboard (Help > File a Ticket) or by calling us. If you require advance replacement, please call Cisco Meraki technical support. Advance replacement orders will ship within 1 business day. Cisco Meraki stands behind its products. Hardware products come with either a one year or lifetime warranty, as specified on the relevant Cisco Meraki data sheet.

To request a return materials authorization (RMA), please complete our RMA request form. If your RMA request is approved, Cisco Meraki will email you an RMA number and a return shipping label free of charge. We will ship replacement units within five business days of receiving your defective units. If no trouble is found, we will contact you before taking further action.

Additional information about Cisco Meraki’s hardware warranty can be found in Cisco Meraki’s End Customer Agreement.

Free Trial Returns
If you would like to return units from a free trial, please go to your free trial webpage (using the link your rep provided you with) and go to the returns tab to fill out the RMA request form. If your free trial hardware was shipped to the US, Canada, or an EU member country you will also be able to print out a return shipping label and ship the product back to Cisco Meraki at no charge to you.

Refund Requests
If you are dissatisfied with your Cisco Meraki purchase for any reason, you may return your order for a full refund. All returns must meet the following criteria:

- You purchased the product through an authorized Cisco Meraki reseller or direct from Cisco Meraki
- You are the original purchaser of the product
- You submit your refund request within 30 days of purchase
- The product is in new condition, including all accessories in the original packaging

To request a refund, please complete our RMA request form.

If your refund request is approved, Cisco Meraki will email you an RMA number. In order for the refund to be accepted and processed, Meraki must receive the hardware you are returning no later than 30 days following the date the RMA number is issued. Once we have received and inspected the units, we will process your return. If you purchased through a Cisco Meraki reseller, your refund will be issued by that reseller. If you purchased directly from Cisco Meraki, we will issue a refund, typically within 15 days of receiving the return. (If you paid by credit card we will credit the original credit card. If you paid by any other method, we will send you a check.)

From time to time Cisco Meraki offers special refund terms. If your return is covered by special terms, please reference those terms on your RMA request.

Please contact Cisco Meraki directly for all returns, including product purchased through distributors or resellers.

Shipment Preparation
Please return units in their entirety. That is, include all power supplies, antennas, and other components along with the original product box. Please use the original shipping carton and packaging material. If this is not possible, use another shipping carton with padding to protect the units from damage during shipping. DO NOT ship a product without a carton.

The customer will be charged for product that is damaged due to insufficient packaging. Once you have received your RMA number from Cisco Meraki via email, write this RMA number in large letters on the exterior of the shipping carton. Shipments to Cisco Meraki without an RMA approval will not be processed.

If Cisco Meraki approves your RMA request, you will receive a confirmation email containing an RMA number within two business days. The address to which the product should be sent will also be included in that email.

Cisco Meraki will pay for warranty replacement return shipments and free trial return shipments from the US and Canada. For all other returns it is your responsibility to pay for return shipping back to Cisco Meraki using the carrier of your choice. Cisco Meraki recommends that the return package has a tracking number and is insured for the proper value of its contents. Cisco Meraki is not responsible for packages lost by carriers.
Attachment 5
This document describes Cisco’s Software Application
All capitalized terms in this description have the meaning ascribed to them in the Glossary of Terms. Direct Sale from Cisco. If you have purchased these Services directly from Cisco, this document is incorporated into your Master Services Agreement (MSA) with Cisco. In the event of a conflict between this Service Description and your MSA, this Service Description shall govern.

Sale via Cisco-Authorized Reseller. If you have purchased these Services through a Cisco-Authorized Reseller, this document is for description purposes only; is not a contract between you and Cisco. The contract, if any, governing the provision of this Service will be the one between you and your Cisco Authorized Reseller.

SAS
Cisco Responsibilities:
Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration and troubleshooting.

(1) hour for all calls received during Standard Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next Business Day.

Manage problems according to the Cisco Severity and Escalation Guideline.

Access to Cisco.com. This system provides Customer with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.

Work-around solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at Customer’s expense.

Minor and Maintenance Releases. The Application Software releases and supporting Documentation are available on the Cisco.com Software Center (w w w . c i s c o . c o m / s o f t w a r e ) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) (w w w . c i s c o . c o m / u p g r a d e ). Applicable supporting Documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.

SASU
Cisco Responsibilities:
Cisco-provided deliverables, as specified above in SAS.

Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting Documentation will be made available on the Cisco.com Software Center (w w w . c i s c o . c o m / s o f t w a r e ) or on media such as CDROM, through the Cisco PUT (w w w . c i s c o . c o m / u p g r a d e ). Applicable supporting Documentation, if available, is available on Cisco.com and is limited to one copy per licensed Software. Additional copies may be purchased.

Customer Responsibilities:
The provision of the Service options assumes that Customer will:

Provide a severity level as described in the Cisco Severity and Escalation Guideline for all the calls Customer places.

Provide, at Customer’s expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Cisco TAC engineer and systems passwords so that problems may be diagnosed and, where possible, corrected remotely.

Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.

Notify Cisco, using Cisco.com, of Product on the Equipment List which Customer has moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to Customer beginning thirty (30) days after receipt of your notification. Cisco will also need Customer to notify Cisco of any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.

Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.
Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where Customer is seeking information from Cisco in connection with Product use. Cisco may also require Customer to provide additional information in the form of location of the Product, city location details and zip code information.

When requested, provide Cisco with a list of all personnel that Customer has authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or ordered via Cisco’s PUT. Customer is responsible for reviewing the list on an annual basis and adding or removing personnel as necessary.

Verify any in-transit damage of the media for the SAS or SASU Application Software Updates. Update to the latest Application Software release and latest third-party Software release, if required by Cisco to correct a reported Application Software problem.

Pay all engineering time, travel, and out-of-pocket expenses if Customer request performance of onsite Services or Services outside the scope of Service options described in this document.

Provide any Hardware required to perform fault isolation.

Receive Services on Cisco Application Software for which Customer has:

Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.

Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.

Acquire, install, configure and provide technical support for all:

Third-party Products, including upgrades required by Cisco or related Services; and
Network infrastructure, including, but not limited to, local and wide-area data Networks and equipment required by Cisco for operation of Application Software.

Maintain Customer’s entire Application Software implementation for configurable Application Software currently in use under the same Service option for Cisco to provide Services for any portion of Customer’s Application Software implementation.
Cisco Online Privacy Statement
Cisco Systems, Inc. and its subsidiaries (collectively “Cisco”) are committed to protecting your privacy and ensuring you have a positive experience on our websites and in using our products and services (“Solution” or “Solutions”). This Privacy Statement applies to Cisco websites that link to this Statement but does not apply to those Cisco websites that have their own privacy statement. Our personal information handling practices are described below, in the supplements on the right, and in notices at the point of collection.

TRUSTe Certification
Cisco Systems, Inc. has been awarded TRUSTe’s Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with TRUSTe’s program requirements including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program only covers information that is collected through the websites www.cisco.com, www.webex.com, and www.theflip.com, and does not cover information that may be collected through any software downloaded from these websites.

TRUSTe’s mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trademark and innovative trust solutions. If you have questions or complaints regarding our privacy policy or practices, please contact us at privacy@cisco.com. If you are not satisfied with our response, you can contact TRUSTe here.

Cisco complies with the U.S. – E.U. Safe Harbor framework and the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. Cisco has certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement.

To learn more about the Safe Harbor program, and to view Cisco's certification, please visit http://www.export.gov/safeharbor/.

Collection of Your Personal Information
We will inform you of the purpose for collecting personal information when we collect it from you and keep it to fulfill the purposes for which it was collected as outlined below. “Personal Information” is any information that can be used to identify an individual, and may include name, address, email address, phone number or payment card number. We collect Personal Information (and engage third parties to collect Personal Information to assist us) for a variety of reasons, such as processing your order, providing you with a newsletter subscription, enabling the use of certain features of our Solutions, personalizing your experience, managing a job application, or during the testing process when a computer based certification test is administered to you (for more information about online testing, go to pearsonvue.com/Cisco). We and the third parties we engage may combine the information we collect from you over time and across our websites with information obtained from other sources to improve our overall accuracy and completeness, and to help us better tailor our interactions with you.

If you choose to provide third party Personal Information (such as name, email and phone number), we will assume that you have the third party's permission to provide us the information. Examples include forwarding reference material to a friend or job referrals. This information will not be used for any other purpose.

In some instances, Cisco may collect non-personal (aggregate or demographic) data through cookies, web logs, web beacons and other similar applications. This information is used to better understand and improve the usability, performance, and effectiveness of the website. Please read the "Cookies" section below for more information. In addition, by using some of our Solutions, anonymous network information may be transmitted to us such as the performance of the Solution and types of devices attached to the network. With this information we can determine how users are interacting with the Solution, to assist us with improving it, to manage your network, and to provide alerts via the Solution of available software updates/upgrade.

Uses of Your Personal Information
We will only use your Personal Information in the way we specified when it was collected. We will not subsequently change the way your Personal Information is used without first asking for your permission. Some of the ways we may use Personal Information include to deliver a Solution that you have requested, support our Solutions, contact you for customer satisfaction surveys, personalize websites and newsletters to your preferences, administer and process your certification exams, or communicate for marketing purposes. You can edit your preferences at any time (see Your Choices and Selecting Your Communication Preferences below).

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We need your help in keeping your Personal Information accurate and up to date so please notify us of any changes to your Personal Information. To update your Personal Information and communication preferences, you can contact privacy@cisco.com. In addition, you may have the ability to view or edit your personal information online, including:

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Webex.com - You can access and update your profile by signing into your user online account at http://try.webex.com/mk/get/profile. You may also make these updates or request deactivation of your website profile by sending an email to privacy@webex.com.

TheFlip.com - You can access and update your profile by signing into your user online account at http://puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com/cgi-bin/puredigital2.custhelp.com. You may also make these updates or request deactivation of your website profile by sending an email to remove@theflip.com.

We make good faith efforts to honor your reasonable request to access and correct your data if it is inaccurate or delete the data if we are not required to retain it by law or for legitimate purposes. We will respond to your request to access within 30 days. For a list of Cisco entities that may be considered data controllers from time to time and where you can exercise your rights of access and request corrections or deactivations under applicable data protection laws, click here.

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We give you the choice of receiving a variety of information that complements our Solutions. You can manage your communication preferences and unsubscribe using one of the following methods:

- You can access and update your profile using the Cisco Profile Management Tool.
- You can access and update your profile by signing into your user online account at http://try.webex.com/mk/get/profile. You may also make these updates or request deactivation of your website profile by sending an email to privacy@webex.com.
- You can access and update your profile by signing into your Online Account at http://home.cisco.com/. You may also make these updates or request deactivation of your website profile by sending an email to privacy@linksys.com.

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- Within Cisco or with any of our worldwide subsidiaries for purposes of data processing or storage.
- With our partners, service vendors, authorized third-party agents or contractors to provide a requested service or transaction, including processing orders and credit card transactions, hosting websites, hosting seminar registration and providing customer support. We only provide these third parties with the minimum amount of Personal Information necessary to complete/provide the requested service or transaction. We do not allow third parties to use your Personal Information for a different purpose.
- To comply with the law or legal process (such as responding to subpoenas or court orders) and to exercise our legal rights or defend against legal claims.

To investigate, prevent, or take action regarding illegal activities, suspected or potential fraud, brand protection matters (such as gray market sales), actions that may affect the rights and safety of others, situations involving potential threats to the physical safety of any person, violations of Cisco's terms of use, or as otherwise required by law.

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We are committed to protecting the Personal Information you share with us and utilize a combination of industry-standard security technologies, procedures, and organizational measures to help protect your Personal Information from unauthorized access, use or disclosure. We recommend you to take every precaution in protecting your Personal Information when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, and make sure you use a secure browser. When you enter sensitive information on our forms, we encrypt this data using SSL or other technologies. Please visit our Learning Center for more tips for using security features when connected to the Internet using a router.

Retention of Personal Information
We will only retain your Personal Information to fulfill the purposes for which it was collected or as required for legitimate purposes or permitted by law.

Use of Cookies and other Web Technologies
Like many websites, Cisco uses automatic data collection tools, such as cookies, embedded web links and web beacons. These tools collect certain information that your browser sends to our website, such as your browser type and the address of the website from which you arrived at our website. They may also collect information about your Internet Protocol (IP) address (a number automatically assigned to your computer whenever you are surfing the Web, allowing Web servers to locate and identify your computer, which is a unique address assigned to your PC by your Internet Service Provider or Information Systems Department on a TCP/IP network) and clickstream behavior (for example, the pages you view and the links you click). These tools help make your visit to our website easier, more efficient and more valuable by providing you with a customized experience and recognizing you when you return. To learn more, read Cisco's Use of Automatic Data Collection Tools.

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We may provide links to other third-party websites and services which are outside our control and not covered by this Privacy Statement. We encourage you to review the privacy statements posted on those websites (and all websites) you visit.

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If you participate in a discussion forum or chat room on a Cisco website, you should be aware that the information you provide there will be made broadly available to others, and can be read, collected or used by other users of these forums, potentially inside or outside Cisco, who have access to that discussion forum or chat room. This information could also be used to send you unsolicited messages. Also, please recognize that individual forums and chat rooms may have additional rules and conditions. Each participant's opinion on a forum or chat room is his or her own and should not be considered as reflecting the opinion of Cisco. We are not responsible for the Personal Information or any other information you choose to submit in these forums.

Children's Privacy
Cisco does not knowingly collect Personal Information from children under the age of 13. If we learn that we have collected Personal Information of a child under the age of 13, we will delete that data from our systems. Please note that the Personal Information collected by Cisco Networking Academy (NetAcad) is subject to the privacy statement posted on the NetAcad websites along with any applicable privacy supplement.

Cisco encourages parents and guardians to go online with their children. Here are a few tips to help make a child's online experience safer:
- Teach children never to give Personal Information (such as name, address, phone number, school, etc.) unless supervised by a parent or responsible adult.

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- Teach children never to give Personal Information (such as name, address, phone number, school, etc.) unless supervised by a parent or responsible adult.

Know the sites your children are visiting and which sites are appropriate.

Look for website privacy policies and know how your child's information is treated.

For more tips on protecting children's privacy online, please see Cisco's Online Privacy Portal here or FTC's website here.

Consent to Transfer, Processing and Storage of Personal Information
As Cisco is a global organization, we may transfer your Personal Information to Cisco in the United States of America, to any Cisco subsidiary worldwide, or to third parties acting on our behalf, for the purposes of processing or storage. By providing any Personal Information to us, you fully understand and unambiguously consent to the transfer, processing and storage of such information outside of your country of residence where data protection standards may be different. Our Privacy Statement and our practices are designed to provide a globally consistent level of
protection for Personal Information all over the world. This means that even in countries whose laws provide for less protection for your information, Cisco will still handle your information in the manner described here.

**Your California Privacy Rights**

Residents of the State of California, under California Civil Code § 1798.83, have the right to request from companies conducting business in California a list of all third parties to which the company has disclosed Personal Information during the preceding year for direct marketing purposes. Alternatively, the law provides that if the company has a privacy policy that gives either an Opt-out or Opt-in choice for use of your Personal Information by third parties (such as advertisers) for marketing purposes, the company may instead provide you with information on how to exercise your disclosure choice options.

Cisco qualifies for the alternative option. We have a comprehensive privacy statement, and provide you with details on how you may either Opt-out or Optin to the use of your Personal Information by third parties for direct marketing purposes. Therefore, we are not required to maintain or disclose a list of the third parties that received your Personal Information for marketing purposes during the preceding year.

If you are a California resident and request information about how to exercise your third party disclosure choices, please send a request to privacy@cisco.com.

**How to Contact Us**

We value your opinions. Should you have any privacy-related questions or comments related to this Privacy Statement, please send an email to privacy@cisco.com.

**Updates to this Cisco Privacy Statement**

We may update this Privacy Statement at any time, so please review it frequently. If we change our Privacy Statement, we will post the revised version here, with an updated revision date. If we make significant changes to our Privacy Statement, we may also notify you by other means prior to the changes taking effect, such as sending an email or posting a notice on our website.

REVISED AND POSTED AS OF: FEBRUARY 3, 2014. Please note this version does not substantively change the way we treat personal information compared to the previous version of the privacy statement available here.
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Do not use Oracle trademarks or potentially confusing variations as all or part of your company, product or service names. If you wish to note the relationship of your products or services to Oracle products or services, please use an appropriate tag line as detailed above. For example, "XYZ for Oracle database" not "OraXYZ or XYZ Oracle"

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Use a generic term in association with each Oracle trademark the first time the mark appears in text, and as often as possible after that. You need not include generic names in headlines, package titles and documentation titles. For example, "Oracle iLearning software", "Oracle On Demand services", and "Oracle database."

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Oracle trademarks are adjectives and should not be used as nouns, or in the possessive or plural form. For example, "Oracle database's benefits." not "Oracle's benefits..."

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Do not vary Oracle trademarks by changing their spelling or abbreviating them. For example, "Oracle Collaboration Suite" not "CollabSuite."

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Proper trademark attribution through trademark symbols and credit lines helps makes the public aware of our trademarks, and helps prevent them from becoming generic terms. Credit lines also help clarify that they belong to Oracle. Accordingly, Oracle would appreciate you attributing ownership of Oracle trademarks to Oracle Corporation by using trademark symbols (™ or SM or ®) and credit lines as detailed below.

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Use the ® symbol with the most prominent appearance of the "Oracle" mark on products, packaging, manuals, advertisements, promotional materials and Web pages (for example, in the headline of an advertisement), and the first use of the mark in text or body copy. This includes situations where "Oracle" is a part of a product or service name (for example, Oracle® Collaboration Suite, Oracle® PartnerNetwork). You do not need to use trademark symbols with other Oracle trademarks.

Example: XYZ Develops New Product for Oracle® Database
XYZ Corporation, a member of the Oracle® PartnerNetwork program, has developed the ABC software cartridge for use with the industry leading Oracle database. The ABC software cartridge is one of numerous products XYZ has developed that complement leading Oracle offerings. "Oracle" receives a trademark symbol in the headline because this is the most prominent appearance, and when it appears as part of the "Oracle PartnerNetwork" name because this is the first appearance in text. While there is no trademark symbol after "Oracle" when it appears in front of the term "products" and "offerings" since we already used a symbol the first time that the term "Oracle" appeared in body copy. It is always acceptable to continue using the ® after "Oracle" throughout the document.

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All products, packaging, manuals, advertisements, promotional materials and Web pages bearing Oracle trademarks should include the following trademark credit line. "Oracle and Java are registered trademarks of Oracle and/or its affiliates. Other names may be trademarks of their respective owners."
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**Examples**
Corporate Name: This software was developed by Oracle Corporation.
Trade Name: This software was developed by Oracle.
Trade Name: Oracle's latest software developments are outstanding.
Trademark: The Oracle® database leads the industry.
Cisco EULA


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ATTACHMENT 9

Reserved
Attachment 10

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VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

GENERAL.

Transfers; Assignment. Except to the extent transfer may not legally be restricted or as permitted by VMware’s transfer and assignment policies, in all cases following the process set forth at www.vmware.com/support/policies/licensingpolicies.html. You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware’s prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by you will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to you, provided that VMware remains responsible to You for the performance of the services.

Notices. Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word ‘including’ means “including but not limited to”.

Governing Law. This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

Order of Precedence. In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

Entire Agreement. This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

Contact Information. Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. - See more at: http://www.vmware.com/download/eula/esxi50_eula.html#sthash.PWrI1eoX.dpuf
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. § 501 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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

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

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

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

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

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

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

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

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

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
CITRIX SYSTEMS, INC.
CITRIX SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

GRANT OF LICENSE. This PRODUCT contains software that provides services on a computer called a server ("Server Software") and contains software that allows a computer to access or utilize the services provided by the Server Software ("Client Software"). This PRODUCT is licensed under a concurrent user, user, or device model. For purposes of this license, i) "Concurrent User" is single client device connected to the Server Software; ii) "User" is an individual authorized by Ordering Activity to use any device(s) to access instances of the Server Software through Ordering Activity's assignment of a single user ID, regardless of whether or not the individual is using the PRODUCT at any given time; and iii) a "Device" is a device authorized by Ordering Activity to be used by any individual(s) to access instances of the Server Software (locally or over a network) through Ordering Activity's assignment of the device identity to a Device log, regardless of whether or not the device is being used at any given time. Server Software is activated by licenses that allow use of the Server Software in increments defined by the license model ("Licenses"). Under the User or Device model, Ordering Activity may deploy network architectures that use hardware or software to reduce the number of Users or Devices that directly access the Server Software. This is referred to as multiplexing or pooling. This does not reduce the number of Licenses required to access or use the Server Software. A License is required for each User or Device that is connected to the multiplexing or pooling software or hardware front end. Ordering Activity must acquire and assign a License to each User or Device that accesses Ordering Activity's instances of the Server Software directly or indirectly, frequently or infrequently. Client Software is not activated by Licenses but will not operate in conjunction with the Server Software without the Server Software being activated. Licenses for other CITRIX PRODUCTS or other editions of the same PRODUCT may not be used to increase the allowable use for the PRODUCT. Licenses are version specific for the PRODUCT. They must be the same version or later than the Server Software being accessed. CONTRACTOR grants to Ordering Activity the following worldwide, non-exclusive rights to the Server Software and Client Software and accompanying documentation (collectively called the “SOFTWARE”):

Server Software. Ordering Activity may install and use the Server Software on one or more computers ("Server(s)"). Each License may be installed and used on a single license server within Ordering Activity’s production environment and a single license server within Ordering Activity’s disaster recovery environment. The Server Software may be used only to support up to the allowable number of Concurrent Users, Users or Devices based on Ordering Activity’s total purchases of Licenses. Ordering Activity may use the Server Software to provide application services to third parties ("Hosting"). Each License that is installed in both a production and disaster recovery environment may be used only in one of the environments at any one time, except for duplicate use during routine testing of the disaster recovery environment. If Ordering Activity purchased the Enterprise or Platinum editions of this PRODUCT, each License may be used only to support use of any one or more of the edition features for the same Concurrent User, User or Device. If Ordering Activity’s use of Application Streaming to included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise hosted applications, and not other users Ordering Activity’s use of EasyCall voice services included with XenApp is limited to support of Concurrent Users, Users or Devices using XenApp hosted applications, and not other users. Ordering Activity’s use of Provisioning services included with the XenApp Platinum Edition is limited to provisioning only the XenApp Platinum Edition workload. Ordering Activity’s use of Single Sign-On included with XenApp Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Platinum hosted applications, and not other users. Ordering Activity’s use of Profile management included with XenApp Enterprise or Platinum Edition is limited to support of Concurrent Users, Users or Devices using XenApp Enterprise and Platinum hosted applications, and not other users. Client Software. Under the Concurrent User or User model, the Client Software may be installed and used on an unlimited number of client devices. Under the Device Model, the Client Software may be installed and used only on Devices. Ordering Activity may use Client Software only to allow Concurrent Users, Users and Devices to access instances of the Server Software.

Perpetual License. If the SOFTWARE is "Perpetual License SOFTWARE," the SOFTWARE is licensed on a perpetual basis and includes the right to receive Subscription Advantage (as defined in Section 2 below).

Annual License. If the SOFTWARE is “Annual License SOFTWARE,” Ordering Activity’s license is for one (1) year and includes the right to receive Updates for that period (but not under Subscription Advantage as defined in Section 2 below). For the purposes of this ATTACHMENT A, an Update shall mean a generally available release of the same SOFTWARE. To extend an Annual License, Ordering Activity must purchase and install an additional Annual License prior to the expiration of the current Annual License. Note that if a new Annual License is not purchased and installed, Annual SOFTWARE disables itself upon the expiration of the then-current Annual License period.

Archive Copy. Ordering Activity may make one (1) copy of the SOFTWARE in machine-readable form solely for backup purposes, provided that Ordering Activity reproduce all proprietary notices on the copy.

SUBSCRIPTION RIGHTS. Ordering Activity’s subscription for the SOFTWARE ("Subscription") shall begin on the date the Licenses are delivered to Ordering Activity by email. Should Licenses be delivered to Ordering Activity on a tangible license card, Subscription shall instead begin on the date Ordering Activity request that the Licenses be allocated to Ordering Activity through mycitrix.com. Subscription shall continue for a one (1) year term subject to Ordering Activity’s purchase of annual renewals (the “Subscription Term”). During the initial or a renewal Subscription Term, CONTRACTOR may, from time to time, generally make Updates available for licensing to the public. Upon general availability of Updates during the Subscription Term, CONTRACTOR shall provide Ordering Activity with Updates for covered Licenses. Any such Updates so delivered to Ordering Activity shall be considered SOFTWARE under the terms of this ATTACHMENT A, except they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. Subscription Advantage may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only.

Ordering Activity acknowledge that CONTRACTOR may develop and market new or different computer programs or editions of the SOFTWARE that use portions of the SOFTWARE and that perform all or part of the functions performed by the SOFTWARE. Nothing contained in this
ATTACHMENT A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledge that CONTRACTOR is not obligated under this ATTACHMENT A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works CITRIX (Incoterms 2000).

SUPPORT. Ordering Activity may buy SUPPORT for the SOFTWARE. SUPPORT shall begin on the date of SUPPORT activation by CONTRACTOR THROUGH CITRIX and shall run for a one (1) year term subject to Ordering Activity’s purchase of annual renewals. SUPPORT is sold including various combinations of Incidents, technical contacts, coverage hours, geographic coverage areas, technical relationship management coverage, and infrastructure assessment options. An “Incident” is defined as a single SUPPORT issue and reasonable effort(s) needed to resolve it. An Incident may require multiple telephone calls and offline research to achieve final resolution. The Incident severity will determine the response levels for the SOFTWARE. Unused Incidents and other entitlements expire at the end of each annual term. SUPPORT may be purchased for the SOFTWARE until it is no longer offered in accordance with the CITRIX PRODUCT Support Lifecycle Policy posted at www.citrix.com. This website reference is for informational purposes only. SUPPORT will be provided remotely from CONTRACTOR THROUGH CITRIX to your locations. Where on-site visits are mutually agreed, Ordering Activity will be billed for reasonable travel and living expenses in accordance with Ordering Activity’s travel policy. CONTRACTOR THROUGH CITRIX’ performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity will designate a Customer Support Manager (CSM) who will be the primary administrative contact; (ii) Ordering Activity will designate Named Contacts (including a CSM), preferably each CITRIX certified, and each Named Contact (excluding CSM) will be supplied with an individual service ID number for contacting SUPPORT; (iii) Ordering Activity agree to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by CONTRACTOR THROUGH CITRIX. Ordering Activity agrees to cooperate with such requests; (iv) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of SOFTWARE and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (v) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity’s site and providing CONTRACTOR THROUGH CITRIX with access to Ordering Activity’s facilities as required to operate the SOFTWARE and permitting CONTRACTOR THROUGH CITRIX to perform the service called for by this ATTACHMENT A; and (vi) Ordering Activity is required to implement all currently available and applicable hotfixes, hotfix rollout packs, and service packs or their equivalent to the SOFTWARE in a timely manner. CONTRACTOR THROUGH CITRIX is not required to provide any SUPPORT relating to problems arising out of: (i) Ordering Activity’s customization to the operating system or environment that adversely affects the SOFTWARE; (ii) any alterations of or additions to the SOFTWARE performed by parties other than CONTRACTOR THROUGH CITRIX; (iii) use of the SOFTWARE on a processor and peripherals other than the processor and peripherals for which the SOFTWARE was designed and licensed; or (iv) SOFTWARE that has reached End-of-Life. In situations where CONTRACTOR THROUGH CITRIX cannot provide a satisfactory resolution to Ordering Activity’s critical problem through normal SUPPORT methods, CONTRACTOR THROUGH CITRIX may engage its product development team to create a private fix. Private fixes are designed to address Ordering Activity’s specific situation and may not be distributed by Contracting Activity outside Ordering Activity’s organization without written consent from CONTRACTOR. CONTRACTOR retains all right, title, and interest in and to all private fixes. Any hotfixes or private fixes are not SOFTWARE under the terms of this ATTACHMENT A and they are not covered by the Limited Warranty applicable to SOFTWARE, to the extent permitted by applicable law. With respect to infrastructure assessments or other consulting services, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the assessment are and shall remain the property of CONTRACTOR, subject to a worldwide, nonexclusive License to Ordering Activity for internal use.

DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS. Unless expressly permitted by applicable law, Ordering Activity may not transfer, rent, timeshare, or lease the SOFTWARE. Under the User or Device model, Ordering Activity may permanently reassign a License from one User to another or from one Device to another, and Ordering Activity may temporarily assign a License to a temporary worker while the User or Device is on loan to such temporary worker while the License is designed to a Loaner Device. Licensees are not entitled to replacement SOFTWARE if the SOFTWARE is terminated and no longer needed for use on; or (ii) SOFTWARE that has replaced other CITRIX Licenses and retain no copies after installation of the new Licenses and SOFTWARE. Ordering Activity shall provide the serial numbers of such replaced Licenses and corresponding replacement Licenses to the reseller, and upon request, directly to CONTRACTOR for license tracking purposes. Except as specifically licensed herein, Ordering Activity may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for backup as permitted above) the SOFTWARE, except to the extent such foregoing restriction is expressly prohibited by applicable law. Ordering Activity may not remove any proprietary notices, labels, or marks on any SOFTWARE. Notwithstanding the foregoing, this ATTACHMENT A shall not prevent or restrict Ordering Activity from exercising additional or different rights to any free, open source code, documentation and materials contained in or provided with the SOFTWARE in accordance with the applicable free, open source license for such code, documentation, and materials.

ORDERING ACTIVITY MAY NOT USE, COPY, MODIFY, OR TRANSFER THE SOFTWARE OR ANY COPY IN WHOLE OR IN PART, OR GRANT ANY RIGHTS IN THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT A. ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY CONTRACTOR OR ITS SUPPLIERS.

LIMITED WARRANTY AND DISCLAIMER. CONTRACTOR warrants that for a period of ninety (90) days from the date of delivery of the SOFTWARE to Ordering Activity, the SOFTWARE will perform substantially in accordance with the CITRIX PRODUCT documentation published by CITRIX and included with the PRODUCT. CONTRACTOR and its suppliers’ liability and Ordering Activity’s remedy under this warranty (which is subject to Ordering Activity returning the SOFTWARE to CONTRACTOR or an authorized reseller) will be, at the option of CONTRACTOR and subject to applicable law, to replace the media and/or SOFTWARE or to refund the purchase price and terminate this ATTACHMENT A. CONTRACTOR will provide the SUPPORT requested by Ordering Activity in a professional and workmanlike manner, but CONTRACTOR cannot guarantee that every question or problem raised by Ordering Activity will be timely resolved or resolved in a certain amount of time. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY FOR SOFTWARE, CONTRACTOR AND ITS SUPPLIERS MAKE AND ORDERING ACTIVITY RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CONTRACTOR AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO SOFTWARE, UPDATES, SUBSCRIPTION ADVANTAGE, AND SUPPORT ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE.
The SOFTWARE is not designed, manufactured, or intended for use or distribution with any equipment the failure of which could lead directly to death, personal injury, or severe physical or environmental damage. Ordering Activity assumes the responsibility for the selection of the SOFTWARE and HARDWARE to achieve ORDERING Activity's intended results, and for the installation of, use of, and results obtained from the SOFTWARE and HARDWARE.

Proprietary Rights. No title to or ownership of the SOFTWARE is transferred to Ordering Activity. CONTRACTOR and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the SOFTWARE, including any adaptations or copies. Ordering Activity acquires only a limited license to use the SOFTWARE.

U.S. Government End-Users. If Ordering Activity is a U.S. Government agency, in accordance with Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)), Ordering Activity hereby acknowledge that the SOFTWARE constitutes "Commercial Computer Software" and that the use, duplication, or disclosure of the SOFTWARE by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this ATTACHMENT A. In the event that, for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, Ordering Activity hereby acknowledge that the Government's right to use, duplicate, or disclose the SOFTWARE are "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida, 33309.

EXHIBIT A – ORDERING ACTIVITY RETURN POLICY

Limited Warranty. Contractor warrants to Ordering Activity for each Product that the Hardware delivered as part of an Appliance shall be free from defects in material and workmanship in normal use for a period of one (1) year from the date of purchase. Ordering Activity’s remedy and the liability of Contractor, its licensors, and suppliers under this warranty. This warranty extends only to the original Ordering Activity and may not be assigned. Ordering Activity’s remedy and the liability of Contractor, its licensors and suppliers under this limited warranty (which is subject to Ordering Activity returning the Hardware to Contractor or an authorized reseller) will be, at the discretion of Contractor, to replace the Hardware or refund the purchase price. This warranty does not cover any loss or damage which occurs in shipment or which is due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by Ordering Activity or a third party; (2) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (3) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, or other irregularities; or (4) third party software or software drivers. Ordering Activity’s maintenance agreement as detailed in Exhibit B hereunder with Contractor will supersede this Ordering Activity Return Policy.

Warranty Returns. Ordering Activity may return to Contractor through Citrix any defective Product subject to the limited warranty above. Prior to such return, Ordering Activity shall verify that the Product is defective and shall obtain from Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall return all Products with the RMA number, serial number and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall use commercially reasonable efforts to send to Ordering Activity an RMA form and RMA number within five (5) business days of Ordering Activity’s request. Within five (5) business days after receiving an RMA number for the Product, Ordering Activity shall package the Product in its original packing material or equivalent, write the RMA number on the outside of the package and return the Product, to Contractor's cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix’s designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss or damage of the Product and shall bear all cost of shipment to Contractor. Ordering Activity’s remedy and the liability of Contractor, its licensors and suppliers under this limited warranty shall be limited to repair or replacement of the Product using new or reconditioned parts (of better or equivalent quality) at Contractor’s discretion, and shall pay the shipping costs to return the Product to the location from which it was returned by Ordering Activity. Any Product that has been returned, but that Citrix determines not to be defective, or that is not otherwise covered under the limited warranty above, shall be returned to Ordering Activity at Ordering Activity’s expense and risk. Title to any Product returned under warranty shall at all times remain with Ordering Activity unless and until Citrix either replaces the Product or pays Ordering Activity the Price of the Product in lieu of repair or replacement, at which time title shall pass to Citrix. The warranty period of any repaired or replaced Product shall be the longer of (a) ninety (90) calendar days from Citrix’s return shipment of the Product or (b) the original warranty period for the Product. Citrix shall not be responsible for any software, firmware, information, memory, data or the like of Ordering Activity or other’s contained in, stored on or integrated with any Product returned to Citrix for repair, whether or not under warranty.

EXHIBIT B – CITRIX APPLIANCE MAINTENANCE & TECHNICAL SUPPORT

SERVICES PROVIDED BY CITRIX.

Contractor through Citrix offers a range of maintenance programs for its Products (including standard Products and optional Products) as described below and as summarized in the below Citrix Appliance Maintenance Program Overview (the “Program Overview”). Ordering Activity shall be entitled to receive the following services to the extent Ordering Activity has ordered and paid in full the Annual GSA Fee for the applicable service. Ordering Activity must purchase maintenance services for its optional Products where Ordering Activity has maintenance services in place for the corresponding standard Product. Ordering Activity may purchase maintenance services for its optional Products only where it has maintenance services in place for the corresponding standard Product. Ordering Activity may also purchase optional installation and/or consulting services as offered by Contractor through Citrix.

Extended hardware Warranty D includes the following:

Except as otherwise provided in this Attachment A, Contractor warrants to Ordering Activity that the Hardware (as defined below) shall be free from material defects in materials and workmanship during the term of this Attachment A. Contractor’s liability and Ordering Activity’s remedy under this warranty shall be limited to repair or replacement of, or refund of the price paid for, the non-conforming Product at Contractor’s option.

GS-35F-0511T https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/  Page 197
For purposes of this Attachment A, “Hardware” shall mean that portion of the Product that is not the Software. For purposes of this Attachment A, “Software” shall mean the Product software, in machine-readable form, and accompanying user documentation licensed to Ordering Activity by Contractor pursuant to an applicable purchase order between Ordering Activity and Contractor for such license.

Software Subscription Service D includes the following:

**Software Updates.** Ordering Activity’s subscription for Software (“Subscription Advantage”) shall be effective during the term of this Attachment A, subject to Ordering Activity’s purchase of annual renewals (the “Subscription Term”). During the Subscription Term, Contractor may, from time to time, generally make Updates available for licensing to the public. For the purposes of this Attachment A, an Update shall mean a generally available release of the same Software. Upon general availability of Updates during the Subscription Term, Ordering Activity may obtain Updates by downloading the Update from Contractor through Citrix’s server via the Internet. Any such Updates so delivered to Ordering Activity shall be considered Software under the terms of this Attachment A, except they are not covered by the Limited Warranty applicable to Software, to the extent permitted by applicable law. Subscription Advantage may be purchased for the Software until it is no longer offered in accordance with the Citrix Product Support Lifecycle Policy posted at [www.citrix.com](http://www.citrix.com). This website reference is for informational purposes only.

Ordering Activity acknowledges that Contractor through Citrix may develop and market new or different computer programs or editions of the Software that use portions of the Software and that perform all or part of the functions performed by the Software. Nothing contained in this Attachment A shall give Ordering Activity any rights with respect to such new or different computer programs or editions. Ordering Activity also acknowledges that Contractor is not obligated under this Attachment A to make any Updates available to the public. Any deliveries of Updates shall be Ex Works Citrix (Incoterms 2000).

**Bronze/Silver/Gold Maintenance**

**Bronze Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service, plus each of the following:

- **Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity’s designated contacts.

- **Support Service Level.** Contractor through Citrix shall respond within twenty-four (24) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twenty-four (24) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

- **Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above. Prior to such return, Ordering Activity shall verify that said Product is defective and shall obtain from Citrix a Return Material Authorization (“RMA”) number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix’s RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than ten (10) business days after Citrix’s issuance of an RMA number (or longer in countries where regulation requires export approval documentation in advance of RMA shipment). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix’s discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packaging material or equivalent, the RMA number on the outside of the package and return said Product, at Ordering Activity’s cost, shipped properly insured, freight prepaid, DDP (Incoterms 2000) Citrix’s designated facility. Ordering Activity shall enclose with the returned Product the applicable RMA form, and any other documentation or information requested by Citrix. Ordering Activity shall assume any and all risk of loss of or damage to such Product during shipping. Title to the defective Product shall pass to Citrix upon Citrix’s receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity, and Ordering Activity shall pay for the replacement Product at the then current GSA price. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix’s shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

**Silver Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:

- **Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line during designated business hours. Citrix Appliance Support Coverage hours are indicated in the Program Overview. Citrix support technicians shall only be obligated to respond to Ordering Activity’s designated contacts.

- **Support Service Level.** Contractor through Citrix shall respond within twelve (12) hours of receiving an inquiry from Ordering Activity if received during a business day (or if received on a day other than a business day, within twelve (12) hours of the opening of business on the succeeding business day) regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

- **Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Gold Maintenance** includes all of the services set forth above under Extended Warranty Program and Software Subscription Service plus each of the following:
**Telephone Support.** During the term of this Attachment A, Contractor through Citrix shall provide Ordering Activity technical telephone support for the Product through the Citrix support line twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Citrix's support technician shall only be obligated to respond to Ordering Activity's designated contacts.

**Support Service Level.** Contractor through Citrix shall respond within two (2) hours of receiving an inquiry from Ordering Activity regarding use or installation of the Product, and use diligent efforts to answer questions and resolve problems.

**Returns.** During the term of this Attachment A, Ordering Activity shall have the right to return to Contractor through Citrix any defective Product subject to the limited warranty set forth in the Extended Warranty Program above pursuant to the Advance Return provisions set forth below.

**Advance Return**
Prior to any return as to which Advance Return applies, Ordering Activity shall first verify that said Product is defective and shall obtain from Contractor through Citrix a Return Material Authorization ("RMA") number. Ordering Activity shall request each RMA number from Citrix in accordance with Citrix's RMA procedures including providing the part number, serial number, quantity and reason for return, an explanation of all failure symptoms and other relevant information. Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than one (1) business day after Citrix's issuance of an RMA number, except in countries where regulation requires export approval documentation in advance of RMA shipment (current list shown in the table below). The replacement Product may be a new or reconditioned Product (of better or equivalent quality) at Citrix's discretion. Citrix shall pay the shipping costs to ship the replacement Product to Ordering Activity. Within five (5) business days after Citrix issues an RMA number for the defective Product, Ordering Activity shall package said Product in its original packing material or equivalent, write the RMA number on the outside of the package, return the defective Product (of better or equivalent quality) at Citrix's discretion. Title to the defective Product shall pass to Citrix upon Citrix's receipt thereof. When a replacement Product is provided and Ordering Activity fails to return the defective Product to Citrix within ten (10) business days after Citrix issues an RMA number for the defective Product, Contractor may charge Ordering Activity. The warranty period of any replacement Product shall be the longer of (a) ninety (90) calendar days from Citrix's shipment of said Product or (b) the remainder of the applicable warranty period for said Product pursuant to the Extended Warranty Program.

*Current list of countries requiring export approval documentation before shipment of replacement Product:

<table>
<thead>
<tr>
<th>Country</th>
<th>RMA Documents</th>
<th>Time Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>CVO/EX A/Embassy</td>
<td>10 business days</td>
</tr>
<tr>
<td>Jordan</td>
<td>CVO/EX A/Embassy/Min. foreign</td>
<td>10 business days</td>
</tr>
<tr>
<td>Kuwait</td>
<td>EX A/Embassy/CVO</td>
<td>10 business days</td>
</tr>
<tr>
<td>Qatar</td>
<td>EX A/Embassy/CVO/Min. foreign</td>
<td>10 business days</td>
</tr>
<tr>
<td>Norway</td>
<td>EU A</td>
<td>1 business day</td>
</tr>
<tr>
<td>Switzerland</td>
<td>EU A</td>
<td>1 business day</td>
</tr>
<tr>
<td>Dubai/United Arab Emirates</td>
<td>CVO/EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Israel</td>
<td>CVA/EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>EX A/CVO</td>
<td>2 business days</td>
</tr>
<tr>
<td>South Africa</td>
<td>EX A</td>
<td>2 business days</td>
</tr>
<tr>
<td>Turkey</td>
<td>EX A/ATR</td>
<td>2 business days</td>
</tr>
</tbody>
</table>

**4-hour Advance Return**
Where available, and upon payment of the applicable GSA fees, Ordering Activities receiving Gold Maintenance may select an optional expedited Advance Return service. The features of the 4-hour Advance Return are the same as the standard Advance Return above, except that Contractor through Citrix shall ship via a recognized express courier service a replacement Product to Ordering Activity no later than four (4) hours after Citrix’s issuance of an RMA number.

**Onsite Support**
This Attachment A does not include onsite support. In critical situations, Ordering Activity may request onsite support as a separate and distinct billable service, subject to a separate purchase order between Contractor and Ordering Activity. Onsite support is subject to Contractor through Citrix resource availability, and the tasks performed will vary based on the situation, environment, and business impact of the problem.

**Product Development Support**
In situations when Contractor through Citrix cannot provide a satisfactory resolution to Ordering Activity’s critical problem through normal support methods, Citrix may engage its product development team to create a Ordering Activity-specific solution (a “Private Fix”) to the Products. Privates Fixes are designed to address a specific Ordering Activity situation and may not be distributed by Ordering Activity outside the Ordering Activity organization without written consent from Citrix. Private Fixes and hotfixes are provided 'as-is', without warranty of any kind applicable to Software pursuant to this Attachment A to the extent permitted by applicable law. Citrix retains all right, title and interest in and to all Private Fixes.
Technical Relations Management
Ordering Activity may select an optional Technical Relations Manager (TRM) to enhance the technical support relationship between Ordering Activity and Contractor through Citrix. The TRM provides high-level technical expertise and proactive services, and also serves as the point of information delivery and feedback to Citrix product groups, research and development teams, and other Citrix groups. These services include:

Orientation Session. At the start of this service, an initial orientation session will be scheduled for the TRM to introduce the Ordering Activity to Citrix Technical Support contact information and processes.

Escalation Management. In cases where issues need engineering assistance, the TRM will act as the Ordering Activity’s advocate and function as point-of-contact to assist in rapid resolution of the incident.

Implementation and Informational Reviews. The TRM will be a resource for the Ordering Activity to assist with product information and recommendations for integration of Citrix products in the Ordering Activity environments.

Incident Tracking and Status Reporting Sessions. TRM will provide the Ordering Activity on a regular basis, reports summarizing Ordering Activity account information such as incidents opened and status updates.

TRM services can only be used in a single geographical region. Ordering Activities wishing to use TRM services in more than one region must purchase 200 hour blocks in each region. All TRM purchased hours are valid for 12 months from date of purchase; unused TRM hours do not roll over into a subsequent purchase order term. Citrix regions are as follows: (a) Americas – North America, Latin America, and the Caribbean; (b) EMEA – Europe, Middle East and Africa; (c) Asia Pac – Asia, New Zealand and Australia and (d) Japan. Ordering Activities should contact Contractor through Citrix Technical Support to determine TRM service availability in their region.

ORDERING ACTIVITY RESPONSIBILITIES.

Ordering Activity Assistance. Contractor through Citrix’s performance is predicated upon the following responsibilities being fulfilled by Ordering Activity: (i) Ordering Activity agrees to provide Citrix reasonable access to all necessary personnel to answer questions or resolve problems reported by Ordering Activity regarding the Products; (ii) Ordering Activity agrees to perform reasonable problem determination activities and to perform reasonable problem resolution activities as suggested by Citrix. Ordering Activity agrees to cooperate with such requests; (iii) Ordering Activity is responsible for implementing procedures necessary to safeguard the integrity and security of Software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) Ordering Activity is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at Ordering Activity’s site; (v) Ordering Activity is required to implement all currently available and applicable Updates and error corrections provided by Citrix under this Attachment A in a timely manner, including hotfixes, hotfix rollup packs, and service packs or their equivalent; and (vi) Ordering Activity shall allow Citrix access as needed to the Products via the Internet for the purpose of providing support services and shall permit Citrix to perform the support services called for by this Attachment A. Ordering Activity shall maintain Citrix supported versions of required third party software, if any.

Named Contacts. Ordering Activity shall appoint at least two (2) named contacts within Ordering Activity’s organization to serve as contacts between Ordering Activity and Contractor through Citrix and to receive support through Citrix’s telephone support center. Ordering Activity’s contacts shall have been adequately trained on the Software and shall have sufficient technical expertise, training and experience.

EXCLUSIONS.

Notwithstanding anything in this Attachment A to the contrary, Contractor through Citrix shall have no obligation or responsibility to provide any support services relating to problems arising out of or related to (i) Ordering Activity’s failure to implement all updates to the Software which are made available by the Ordering Activity under this Attachment A; (ii) the failure to provide a suitable installation environment; (iii) Ordering Activity’s customization to the operating system or environment that adversely affects the Software; (iv) any alteration, modification, enhancement or addition to the Products performed by parties other than Citrix; (v) use of the Products in a manner, or for a purpose, for which it was not designed; (vi) accident, abuse, neglect, unauthorized repair, inadequate maintenance or misuse of the Products; (vii) operation of the Products outside of environmental specifications; (viii) interconnection of the Software with other software products not supplied by Citrix; (ix) use of the Software on any systems other than the specified hardware platform for such Software; or (x) introduction of data into any database used by the Software by any means other than the use of the Software. Notwithstanding anything else contained in this Attachment A to the contrary, Citrix shall only be obligated to provide support for eligible Products as indicated in the Citrix Appliance End of Life Policy available www.citrix.com. This website reference is for informational purposes only.

OWNERSHIP AND USE; WARRANTY DISCLAIMER.

Ownership and Use. All Updates and other changes, improvements, bug fixes or other modifications to the Software provided under this Attachment A shall be deemed to be included within the Software and shall be subject to the terms and conditions of this Attachment A except that they are not covered by the warranty. With respect to installation and consulting services relating to the Product purchased from Contractor, all intellectual property rights in all reports, preexisting works and derivative works of such preexisting works, as well as installation scripts and all other deliverables and developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the property of Contractor, subject to a worldwide, nonexclusive license to Contractor for internal use.

Warranty and Warranty Disclaimer. Contractor shall use all reasonable commercial efforts to provide the support, installation and consulting services requested by Ordering Activity under this Attachment A in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Ordering Activity shall be resolved. OTHER THAN THE EXPRESS LIMITED WARRANTIES MADE BY CONTRACTOR, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND CONTRACTOR HEREBY SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS INCLUDING WITHOUT LIMITATION THOSE ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE.
AND THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND SATISFACTORY QUALITY.

HOW TO CONTACT CITRIX TECHNICAL SUPPORT

If Ordering Activity purchased maintenance for Citrix products, Ordering Activity can contact Citrix Technical Support either by phone or via the Internet. In order to contact Citrix Technical Support each individual named contact must have a valid support agreement number in place. If Ordering Activity have been designated a named contact, Ordering Activity should have received Ordering Activity’s individual agreement number via email. However, if Ordering Activity has not received Ordering Activity’s agreement number, please send an email to Contractor through Citrix (addresses provided below) with your name, company name, phone number and serial number of the unit.

Phone

From North America, Latin America, and the Caribbean, please dial: 1-800-424-8749 or (954) 267-2599
From EMEA (Europe, Middle East, Africa), please dial: 00353-1-805-5000
From APAC (Australia, New Zealand and Asia), please dial: +61-2 8870 0899
From Japan, please contact your distributor directly.

Ordering Activity may also find Ordering Activity’s country specific toll free phone number by going to the following website address: www.citrix.com/English/SS/supportContacts.asp

Internet

Log on to www.mycitrix.com
Navigate to the Toolbox and select “My Support”. This will direct Ordering Activity to the eService Self Service Homepage. This view provides links with associated descriptions in a user friendly web-based format. These links will include Service Requests, Agreements and Returns / Exchange Orders. Ordering Activity can find more details as you navigate through each link.

Email

From North America, Latin America and the Caribbean, please use techsupport_na@citrix.com
From EMEA (Europe, Middle East, & Africa), please use techsupport_emea@citrix.com
From APAC (Australia, New Zealand and Asia), please use techsupport_apac@citrix.com
From Japan, please contact your distributor directly.

CITRIX APPLIANCE MAINTENANCE PROGRAM OVERVIEW

As an Ordering Activity, Ordering Activity is entitled the following services as described in this document to the extent Ordering Activity has ordered and paid in full the Annual Fee for the applicable service.

Ordering Activity puts confidence in Contractor through Citrix when Ordering Activity installed products in Ordering Activity’s network infrastructure. Citrix wants that confidence to last, and is committed to making sure Ordering Activity’s Citrix Appliance is successfully implemented and continues to work to provide a robust solution for Ordering Activity’s applications. The Citrix Appliance Maintenance Program has been designed to help sustain, grow and enhance our products within Ordering Activity’s infrastructure, so Ordering Activity can be assured of their performance every step of the way.

The levels of maintenance that are available for the Citrix products are:

Bronze (not currently available for Citrix Access Gateway)
Unlimited incidents during each one-year term
Standard business hours (see technical support coverage hours below)
One year of software updates and bug fixes
2 named contacts
Standard replacement for materials (ships within 10 business days after issuing the RMA number*)

Silver
Unlimited incidents during each one-year term
Standard business hours (see technical support coverage hours below)
One year of software updates and bug fixes
Assigned Support Account Manager for non-technical Relations Management Services
4 named contacts
Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

Gold
Unlimited incidents during each one-year term
24 x 7 coverage hours
One year of software updates and bug fixes
Assigned Support Account Manager for non-technical Relations Management Services
6 named contacts
Advanced replacement for materials (ships within 1 business day after issuing the RMA number*)

* Please note that in countries where regulation requires export approval documentation in advance of RMA shipment, the time for shipment may be longer.

<table>
<thead>
<tr>
<th>Citrix Appliance Technical Support Coverage Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America, Latin America, and the Caribbean</td>
</tr>
<tr>
<td>8 a.m. to 9 p.m. U.S. Eastern time, Monday -Friday</td>
</tr>
<tr>
<td>Asia (excluding Japan*)</td>
</tr>
<tr>
<td>Australia &amp; New Zealand</td>
</tr>
<tr>
<td>Europe, Middle East, &amp; Africa</td>
</tr>
</tbody>
</table>

*Ordering Activities in Japan should contact their local distributor for technical support coverage.

Contractor through Citrix’s tiered Citrix Appliance Maintenance Program allows Ordering Activity to select the level of service that is best for Ordering Activity. Citrix’s goal is to continue to earn Ordering Activity’s confidence and to exceed Ordering Activity’s expectations. If Ordering Activity has not already chosen a Citrix Appliance Maintenance Program, please review the levels above.
CODE42 SOFTWARE, INC.
100 WASHINGTON AVENUE SOUTH
SUITE 2000
MINNEAPOLIS, MN 55401

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CODE42 SOFTWARE, INC.
CODE42 SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

By both parties executing this agreement in writing you agree to this Master Services Agreement ("Agreement"). If you do not agree to this Agreement, you must not use any of the Offerings. “You” or “Ordering Activity” means the undersigned Ordering Activity under GSA Schedule contracts. “Code42” means Code42 Software, Inc. This Agreement governs your use of all of the Offerings in your Order and is effective as of the date you first use any of the Offerings. This Agreement expires at the end of the last Subscription Term for the Order under which you accepted this Agreement.

1. DEFINITIONS

1.1 “Affiliate” means, for a party at a given time, an entity that is directly controlled by, under common control with, or controls that party, where “control” means an ownership, voting or similar interest representing more than 50% of the total interests then outstanding of that entity.

1.2 “Authorized Users” means (A) you, (B) your Affiliates, and (C) your and your Affiliate’s employees, contractors and service providers.

1.3 “Cloud Services” means the Cloud based services for which Code42 provides to you.

1.4 “Customer Data” means any data that you provide to Code42 through the Software or Cloud Services.

1.5 “Documentation” means the information about using the Software or Cloud Services that Code42 makes available at https://support.code42.com/Administrator and https://support.code42.com/CrashPlan.

1.6 “Intellectual Property Rights” means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications and moral rights, whether registered or unregistered.

1.7 “Offerings” means all products and services that Code42 provides to you under this Agreement.

1.8 “Offering Description” means all products and services that Code42 provides to you under this Agreement.

1.9 “Order” means an ordering document, signed Quote or online submission that you issue to Code42, or a Code42 authorized reseller, in response to a Quote.

1.10 “Service Level Agreement” means the service level agreement available at https://support.code42.com/Terms_and_conditions/Cloud_storage_service_level_agreement.

1.11 “Software” means the commercial software (including updates and upgrades provided through support) in object code format that Code42 provides to you.

1.12 “Subscription Term” means the term during which you may use the Offerings.

1.13 “Technical Services” means the standard service offerings described at https://www.code42.com/professional-services/.

1.14 “Quote” means Code42’s written or website description of the Offerings and applicable terms.

2. CUSTOMER USE OF THE OFFERINGS.

2.1 Authorized Users. You may allow your Authorized Users to use the Cloud Services and Software as “you” under this Agreement. You are responsible for your Authorized Users’ compliance with this Agreement.

2.2 Software and Cloud Services. Code42 grants you a nonexclusive, non-sublicensable, non-transferable (except as set forth in section 12.1 (General: Assignment)), worldwide license to use the Software, Cloud Services and Documentation during the Subscription Term solely for your internal business purposes. You must only use the Software and Cloud Services for up to the number of users or devices listed on your Quote and in accordance with the Documentation. You may copy the Software and Documentation as necessary to install and run the Software, and for backup and archiving. Code42 will provide the Cloud Services in accordance with the applicable Documentation and Service Level Agreement. You will reasonably cooperate with Code42 to resolve any issues relating to your use of the Software and Cloud Services. To use the Cloud Services, you must create login credentials (e.g. a username and password). You are responsible for all activity occurring under your login credentials and will notify Code42 as soon as possible if you believe there has been any unauthorized use of your login credentials.

2.3 Other Offerings. If you purchase other Offerings, including support, appliance maintenance, hardware and education services, Code42 will provide those Offerings in accordance with the Offering Description.

2.4 Restrictions. You will not (A) permit anyone other than your Authorized Users to use the Offerings; (B) use the Offerings for the benefit of any third party other than your Authorized Users; (C) use the Offerings except as permitted under this Agreement; (D) decompile, reverse engineer, modify or create a derivative work of the Offerings (to the extent this restriction is not prohibited by law); (E) attempt to test the vulnerability of, gain unauthorized access to, or circumvent limitations on the use of, the Offerings or their related systems or networks; (F) interfere with the performance of the Offerings; or (G) remove any copyright or other proprietary notices in the Offerings.

2.5 Evaluation Use. Code42 may make an Offering or a new feature or functionality available to you on an evaluation or beta basis (“Evaluation Offering”). Each Evaluation Offering is provided “AS IS” without indemnification, Service Level Agreement, support or warranty of any kind. You must only use an Evaluation Offering in a non-production environment for evaluation purposes during the evaluation period set by Code42.

3. INTELLECTUAL PROPERTY
3.1 Customer Ownership. As between you and Code42, you retain all right, title and interest in and to the Customer Data and all related Intellectual Property Rights. You grant Code42 a royalty-free, non-exclusive, non-transferable (except as set forth in section 12.1 (General: Assignment)), sub-licensable, worldwide right to use Customer Data solely to provide the Offerings to you under this Agreement. Code42's rights to use the Customer Data are only those expressly granted in this Agreement.

3.2 Code42 Ownership. As between you and Code42, Code42 retains all right, title and interest in and to the Offerings and all related Intellectual Property Rights. Your rights to use the Offerings are only those expressly granted in this Agreement. All Software is licensed and not sold, even if Code42 uses words like “sale” or “purchase” in sales materials.

3.3 Feedback. If you provide any suggestions to Code42 regarding the Offerings, you grant Code42 a royalty-free, non-exclusive, transferable, sub-licensable, worldwide, perpetual, irrevocable license to use the suggestions and incorporate them into the Offerings. Code42 acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3.4 Open Source Software. “Open Source Software” means the software components that Code42 provides in the Software under separate license terms that are found either in the open_source_licenses.txt file (or similar file) provided within the Software or at http://support.code42.com/Terms_And_Conditions/Open_Source_Licenses. Open Source Software is licensed to you under its own applicable license terms. These license terms are consistent with the license granted in section 2.2 (Customer Use of the Offerings: Software and Cloud Services) and take precedence over this Agreement to the extent that this Agreement imposes greater restrictions on you. If required, Code42 makes the Open Source Software source code and modifications (the “Source Files”) available to you on the Code42 website or on written request. You will send requests with your name and address to Code42 at the address in section 12.6 (General: Notice) specifying: Attention: General Counsel - Open Source Files Request. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software containing the Open Source Software.

4. SECURITY AND DATA PROCESSING

4.1 Code42 Obligations. Code42 will provide the Software and Cloud Services in accordance with the Information Security Addendum, Code42 will process your Customer Data in accordance with the Data Processing Addendum at https://support.code42.com/Terms_and_conditions/Security/addendum. Code42 will process your Service Data in accordance with the Service Data Addendum at https://support.code42.com/Terms_and_conditions/Service/Addendum. Code42 will provide written certification that Code42 deleted your Customer Data.

4.2 Customer Obligations. You are responsible for providing notices, obtaining consents, and satisfying any other requirements for Code42 to use your Customer Data to perform its obligations under this Agreement. You will not provide Code42 with any data that is regulated by the United States Health Insurance Portability and Accountability Act unless you have entered into a business associate agreement with Code42.

4.3 Code42 Data. (A) Code42 collects de-identified information and aggregated information about the use and performance of the Software and Cloud Services ("Service Data"). Service Data may include information about the frequency of feature usage, technical performance metrics, product configuration, and file usage patterns. Service Data never includes Customer Data. Code42 owns the Service Data and uses it to improve the Offerings and create new products. (B) Code42 also collects account-related data during your purchase and use of the offerings ("Administrative Data"). Administrative Data never includes your Customer Data. Code42 owns the Administrative Data and uses it to provide the Offerings, bill you for the Offerings, advise you of new Code42 products and service, and comply with Code42’s contractual obligations and applicable law. Code42 is an independent controller of the Administrative Data and will process the Administrative Data under the Code42 privacy policy available at: https://www.code42.com/privacy-policv.

5. ORDERING AND PAYMENT

5.1 Orders. You may purchase Offerings directly from Code42 or through a Code42 authorized reseller. If you purchase through a Code42 authorized reseller, sections 5.2 (Ordering and Payment: Affiliate Orders), 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Delivery) and 5.6 (Ordering and Payment: Taxes) will not apply to that purchase. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. The Subscription Term is a continuous and non-divisible commitment for the full duration of the Subscription Term. Except as required by applicable law and regulations, all Orders are non-refundable and non-cancelable except as expressly provided in this Agreement.

5.2 Affiliate Orders. Your Affiliates whom you identify in an email sent to Code42 at PO@code42.com may submit Orders as “you” to Code42 under this Agreement. You will place Orders with Code42 or its Affiliate as indicated on the Quote. If you place an Order with a Code42 Affiliate, then that Affiliate will act as “you” for sections 5.3 (Ordering and Payment: Payment), 5.5 (Ordering and Payment: Delivery) and 5.7 (Ordering and Payment: Taxes). Code42 will promptly refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Software or Cloud Services offering. This termination right only applies to your initial purchase of a specific Software or Cloud Service offering and not to any renewal, staggered deployment or expansion order and only if you purchased Code42’s deployment services available for the offering.

5.3 Payment. Code42 will invoice you for the fees stated on your Quote in accordance with the GSAG Schedule Pricelist after accepting your Order. You will pay all applicable and valid fees in the amount and currency specified on your invoice within 30 days of the invoice receipt date. You will pay any delinquent amounts within 30 days of Code42’s written notice identifying a delinquency.

5.4 Money Back Guarantee. This section does not apply to any CrashPlan for Small Business offering. If you are not completely satisfied with your initial purchase of any Software or Cloud Service offering, you may terminate that subscription for convenience by providing written notice to Code42 during the first 60 days of the Subscription Term. Code42 will promptly refund you the amount that Code42 received for the unused portion of the Subscription Term for the terminated Software or Cloud Services offering. This termination right only applies to your initial purchase of a specific Software or Cloud Service offering (and not to any renewal, staggered deployment or expansion order) and only if you purchased Code42’s deployment services available for the offering.

5.5 Reserved.

5.6 Taxes. Code42 shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the Offerings) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.7 Delivery. When Code42 accepts your Order, Code42 will make cloud services available to you and deliver license keys to you by email to the address associated with your account. Code42 will provide any physical goods to the carrier listed on the Quote for shipment to you. Shipping and delivery terms for physical goods are Ex Works Code42’s regional fulfillment facility (INCOTERMS 2010). You are the importer of record if Code42 ships physical goods to you in a country in which Code42 does not have a physical presence.
6. MODIFICATIONS. This Agreement incorporates by reference all of the documents in this Agreement identifies as applicable to your ordered Offerings (“Ancillary Documents”). Ancillary Documents may include the Documentation, Service Level Agreement, Information Security Addendum, Data Processing Addendum and Offering Descriptions. Because the Offerings are continually evolving, Code42 may update any of the Ancillary Documents from time to time so long as the update is not material (as defined in 48 CFR § 52.212-4(w)(1)(vi)), and the Ancillary Document applicable at any time is the then-current version. Code42 will notify you in writing if any update to an Ancillary Document is material, and in that case you and Code42 may amend the Agreement to incorporate the change or you may elect in writing to terminate the affected Offering. If you terminate the Offering, Code42 will refund the portion of the fees applicable to the unused portion of the Subscription Term for the terminated Offering.

7. WARRANTIES

7.1 Software and Cloud Services Warranty. Code42 warrants that the Software and Cloud Services will substantially conform to the applicable Documentation for a period of 120 days following notice of availability for electronic download or access (“Warranty Period”). This warranty only applies if the Software and Cloud Services were properly installed and used in unmodified form in accordance with the Documentation. For any reproducible error identified in writing during the Warranty Period, Code42 will either replace that Software or Cloud Service or correct the error. If Code42 determines that it cannot correct the error or replace the Software or Cloud Service, Code42 will refund to you the amount that Code42 received for the Software or Cloud Services offering, in which case your rights to use that Software or Cloud Service will terminate. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Software and Cloud Services warranty.

8. INDEMNIFICATION

8.1 Code42 Indemnification. (A) Subject to the remainder of section 8.1 (Indemnification: Code42 Indemnification), Code42 will defend you against any unaffiliated third party claim that the Software or Cloud Services infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party under the laws of (1) the United States, (2) Canada, (3) the United Kingdom, (4) Australia, and (5) any European Economic Area member state (“Infringement Claim”). Code42 will indemnify you from the resulting costs and damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to in settlement. Code42’s obligations only apply if you: (a) promptly notify Code42 of the Infringement Claim in writing, (b) allow Code42 sole control over the defense for the claim and any settlement negotiations, and (c) reasonably cooperate in response to Code42’s requests for assistance. You may not settle or compromise any Infringement Claim without Code42’s prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. government under its jurisdictional statute 28 U.S.C. § 516.

8.2 Reserved.

8.3 Software or Cloud Services Warranty. Code42 warrants that the Software and Cloud Services will substantially conform to the applicable Documentation for a period of 120 days following notice of availability for electronic download or access (“Warranty Period”). This warranty only applies if the Software and Cloud Services were properly installed and used in unmodified form in accordance with the Documentation. For any reproducible error identified in writing during the Warranty Period, Code42 will either replace that Software or Cloud Service or correct the error. If Code42 determines that it cannot correct the error or replace the Software or Cloud Service, Code42 will refund to you the amount that Code42 received for the Software or Cloud Services offering, in which case your rights to use that Software or Cloud Service will terminate. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Software and Cloud Services warranty.

8.4 Technical Services Warranty. Code42 warrants that it will perform Technical Services in a workmanlike manner in accordance with the standards of the industry. If you provide written notice to Code42 within 10 business days after any alleged breach of this warranty, Code42 will correct that breach or terminate that Technical Service and refund to you the amount that Code42 received for that Technical Service. Code42 will do this at its own expense and as its sole obligation and your sole remedy for breach of this Technical Services warranty.

9. LIMITATIONS OF LIABILITY

9.1 Exclusion of Damages. Neither Code42 nor you are liable for any lost profits or business opportunities, loss of use, business interruption, or any indirect, special, incidental or consequential damages under any theory of liability. This exclusion applies regardless of whether Code42 or you have been advised of the possibility of those damages and regardless of whether any remedy fails of its essential purpose.

9.2 Cap on Monetary Liability. The maximum aggregate liability for Code42 or you for claims under this Agreement will not exceed an amount equal to the contract price, including total fees paid or payable to Code42 for your use of the Offerings.

9.3 Reserved.

9.4 Exclusions. The exclusions and limitations in section 9 (Limitations of Liability) will not apply to: (A) either party’s violation of the other party’s or its licensor’s Intellectual Property Rights; (B) either party’s obligations in section 8 (Mutual Indemnification); (C) your payment obligations under section 5 (Orders and Payment); (D) either party’s liability for death or personal injury caused by its negligence; (E) Fraud; or (F) any liability that cannot be excluded under applicable law.

10. CONFIDENTIAL INFORMATION

10.1 Obligations. “Confidential Information” means non-public information provided in connection with this Agreement that is labeled “confidential” or the like, or is provided under circumstances reasonably indicating its confidentiality. Code42’s Confidential Information includes product roadmaps. Your Confidential Information includes your Customer Data. A party (“discloser”) solely to exercise its rights and perform its obligations under this Agreement. Code 42 and you will each protect the
other party’s Confidential Information in the same manner as it protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care.

10.2 Exclusions. The recipient’s obligations under section 10.1 (Confidential Information: Obligations) will terminate with respect to any Confidential Information that the recipient can show: (A) was already rightfully known to the recipient without any obligation of confidentiality at the time of disclosure; (B) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (C) was at the time of disclosure, or through no fault of the recipient has become, generally available to the public; or (D) was independently developed by the recipient without access to or use of the discloser’s Confidential Information. Code42 recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by Code42.

10.3 Permitted Disclosures. The recipient may disclose Confidential Information only to its employees, professional advisors, service providers or contractors who have a need to know the Confidential Information and who are under a similar duty of confidentiality. The recipient may also disclose Confidential Information to the extent required by law or regulation, in which case the recipient will notify the discloser as soon as practicable and if permitted by law or regulation. At the discloser’s request and expense, the recipient will take reasonable steps to contest and to limit the scope of any required disclosure.

10.4 Reserved.

11. TERM AND TERMINATION
11.1 Term. This Agreement will remain in effect until the later of (A) the end of the period identified in the preamble or (B) the termination or expiration of all Orders accepted under this Agreement. Either party may terminate this Agreement before the end of the term in accordance with the Contract Disputes Act and Federal Acquisition Regulation if expressly permitted by this Agreement. The Subscription Term and any renewal is described in the applicable Quote. If you place an Order after the start date stated on your Quote, Code42 may adjust your start date as described in the Quote, in which case your Subscription Term will be described on your invoice.

11.2 Termination. When you are an affiliate of the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Code42 shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.3 Effect of Expiration or Termination. Upon termination or expiration of an Order, you will stop using and Code42 will stop providing the applicable Software or Cloud Services. Upon termination or expiration of this Agreement, Code42 and you will each delete any Confidential Information of the other party.

11.4 Survival. The following sections will survive termination or expiration of this Agreement: 3 (Intellectual Property); 4 (Security and Data Processing); 5.3 (Ordering and Payment; Payment); 7.3 (Warranties: Disclaimer); 8 (Mutual Indemnification); 9 (Limitations of Liability); 10 (Confidentiality); 11 (Term and Termination); and 12 (General).

12. GENERAL
12.1 Assignment. Neither party may assign its rights or obligations under this Agreement or any Order, by operation of law or otherwise, without the prior written consent of the other party. But either party may assign this Agreement without consent to its Affiliates or to any successor or assign that has acquired substantially all of its business relating to this Agreement. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any purported assignment in violation of this section is void.


12.3 Compliance with Laws. Each party will comply with any statutes and regulations that apply to it in its performance under this Agreement.

12.4 Export Compliance. The Offerings are of United States origin, are provided subject to the U.S. Export Administration Regulations, and who is controlled by, the government of any country to which the United States has prohibited export transactions; or (B) any person or entity may be subject to export control laws. You are not, and are not acting on behalf of: (A) any person who is a citizen, national, or resident of, or
12.12 Third Party Rights. Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.13 Severability. If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the maximum extent feasible or permitted by law.

12.14 Construction. The Offerings will be provided in the English language. The word “including” means “including but not limited to.” Section headings are for convenience only and are not to be used in interpreting this Agreement.

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

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

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

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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

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

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

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

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

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

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

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

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

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

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

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

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

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

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

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

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

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

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works of Licensor’s existing software or enhancements to the Licensor’ software shall remain with Commvault, however of any ownership in GSA Customer preexisting material shall remain independently with the GSA Customer. The parties agree that such ownership rights are in agreement with the those set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost for its own internal business.

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

**End User License and Limited Warranty Agreement**

THIS END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN the Ordering Activity under GSA Schedule contracts ("YOU" or "Ordering Activity") AND COMMVAULT SYSTEMS, INC. ("COMMVAULT") FOR SERVICES PROVIDED BY COMMVAULT, AS WELL AS THE ABOVE-REFERENCED SOFTWARE PRODUCT(S), WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED HARDWARE, MEDIA, AND "ONLINE" OR ELECTRONIC DOCUMENTATION ("SOFTWARE"). BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA.

This EULA, grants You, the user, a non-exclusive license to use the Software (and including any hardware appliance, if applicable) under the terms and conditions stated herein. You agree that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided relating to the Software, if available to you during the terms of the Software, shall be provided to you by the terms and conditions stated herein, including the limitations of liability provided herein. This EULA shall be perpetual provided You comply with the terms hereof. This EULA shall be in effect until terminated pursuant to the Contract Disputes Act except as expressly otherwise provided herein. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Commvault shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination, You must destroy all copies of Software in Your possession or control.

In the event You license the Software on a temporary, term or subscription basis (the "license period"), Your license to use the Software shall not be perpetual, notwithstanding any conflicting language contained in this EULA. In the event of any such license, Your license shall expire at the end of the license period which shall be as set forth on the applicable ordering document. If no license period is stated, then Your license shall continue on a month to month basis, unless terminated by either You or Commvault pursuant to the Contract Disputes Act. You may be required to periodically re-apply license keys during such license period, which shall be provided by Commvault. Following the license period, You may use a limited recovery version of the Software solely for recovering data stored using the Software during the license period. Maintenance and support services shall only be provided during the license period.

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# Global Customer Support Services Guide

January 2018

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Overview

Welcome to Commvault Customer Support Services!

NOTE: Not all services are available for all products or customers. Customers with OEM-based or CASP level support may have different features offered through their primary Support contact.

Commvault's Customer Support Services options help you make the most of your investment in the Commvault software suite. We want you to get the most from your products throughout their life. Commvault offers different Support options based on your business requirements in order to enhance the value of your support investment and meet the needs of your business. You also receive access to a variety of other services that are valuable throughout the life of your products:

Product Updates
Service Pack and Hot Fix availability
New update notifications through the Support Notification Service

Online Services
Access to the Commvault eSupport Portal ('Maintenance Advantage') with features specially-designed for our Support customers
Access to Mobile Advantage App for IOS and Android with the ability to control your Support experience
Online Knowledge Base
Online Forum for real time discussion with Commvault experts and Commvault end-users
Online documentation and FAQs for each product
Support that is available 24/7, whenever a problem may occur
Unlimited number of calls to Commvault Customer Support
Regular updates on the status of open incidents
Support engineers who are certified with high-skill security qualifications
Remote debugging and re-configuration tools for rapid fault resolution
Proactive site monitoring through the Commvault Metrics service

Other Features
Telephone access to skilled engineers
Product Upgrade Validation Automation Tools
Commvault Support Log Upload Management
Product Compatibility and Interoperability Matrices
Cloud Metrics Reporting

---

1 New release version upgrades may be made available by Commvault

2 For customers with Premium-based Maintenance Contracts
Support Offerings

Commvault Customer Support Programs

Commvault provides multiple support options for our customers; each is designed to meet the needs and requirements of a wide range of customers. These plans maximize your productivity, letting you focus on your core business.

Support Programs

As a Commvault customer, you rely on us to deliver the best software and support so that you can manage your data with the utmost results. To that end, we listen to your needs and anticipate your future requirements. We take this knowledge and design the best support programs to meet your needs at any level, to maximize your productivity and lower your costs.
**Standard Support**

The Standard Support offering provides broad business hours coverage with direct access to the Commvault Technical Assistance Center and is designed to support the majority of customer's needs. This package includes:

- Access to the Commvault Technical Assistance Center on business days (Monday - Friday), excluding statutory holidays, between the hours of 7 AM to 7 PM (local time) for the location where the software is installed
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software update fixes
- Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums
- Support Account History Reports provided upon request

**Premium Support**

The Premium Support offering provides live access customer support over a comprehensive 24x7 coverage period. Premium Support includes:

- Around-the-clock access to the Commvault Technical Assistance Center (including holidays)
- 24x7 access to the Maintenance Advantage self-help website
- Notification of critical software updates, product enhancements and new releases (when available)
- Web E-Support such as Incident Management, Knowledge Database, Commvault Books Online and the Commvault Forums
- Support Account History Reports provided upon request

**Proactive Support**

Proactive Support is an enhanced Commvault support offering that includes all of the benefits of Premium Support and additional value added services associated with mission critical data management operations. These services include:

- 15 minute Service Level Response Target for Severity 0 incidents
- Inclusive Premium Operations Management Reporting for all internet-connected CommServes
- Support Account Management Service. This service team:
  - Monitors open issues to ensure there is continued activity towards prompt resolution
  - Communicates directly with customer management to update and prioritize on high severity issues
  - Directs issue escalation to ensure continued ownership
- Monthly Technical Reviews with Support Account Management

---

3 **Standard Coverage Support** for Commvault's Japanese Customers is 7am to 6pm in the time zone in which the CommServe resides.

4 New release version upgrades may be made available by Commvault
**Technical Account Manager**

The Technical Account Manager (TAM) is an enhanced support offering that allows the customer to have a localized resource (onsite and remote) who aligns a strategic business plan with a customer’s business objectives and the technology to accomplish those objectives. These services include (but are not limited to):

- Fulfill the role of “voice of the customer” in Commvault meetings, and the technical “voice of Commvault” in customer meetings (ongoing)
- Communicate proactive monitoring metrics to customer, including if thresholds met or exceeded and the potential impact on the business (Quarterly)
- Identify risks in the environment as it relates to data management operations
- Help executing the technical business plan in accordance with customer policies and procedures
- Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)
- Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment
- Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations
- Work in tandem with the SAM on any support needs

Note: The TAM (TAM-20) is typically assigned five customers and can dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the TAM Program. Please note that the 20% service time is a guideline and doesn’t imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with the base offering, they can purchase options for a fully or partially dedicated (i.e. 100% or 50%) TAM.

**Enterprise Support Program (ESP)**

Commvault’s Enterprise Support Program is Commvault’s most comprehensive support offering and is designed to provide strategic World Class Technical Management for all aspects of our customers’ Enterprise Data Management Solution. We partner fully with our customers to enable success, and to provide business stakeholders with the highest level of customer satisfaction, all while safeguarding technology investments and intellectual property.

**Severity Level Agreement Targets**

Resources work towards the achievement of SLAs as per the targets outlined below in section 2.2.6

**Severity 0 (Zero)** designed to support Enterprise Data Centers

**Customer Support Engineer (CE)**

The CE works to provide answers, solutions or a work-around for Enterprise Support Program customer Commvault issues.

The CE:
- Takes responsibility to accept, analyze, resolve or escalate new issues
- Manages issues using Enterprise Support Program Service Level Agreements
- Prioritizes all ESP issues before all non-ESP clients
- Keeps a current issue status and advises client and SAM of regular updates to the status

**Support Account / Technical Account Manager (SAM / TAM)**

The Enterprise Support Program is a joint collaboration with the Support Account Manager (SAM) and Technical Account Manager (TAM). The following are the roles and responsibilities for each under the ESP to ensure continued success:

**Support Account Manager (SAM)**

The SAM works to ensure SLA success, provide reporting, and manage escalation and critical care instances.

- Single point of contact owning the overall support experience
- Overall management of support status – includes all tickets and metrics associated with ticket history
- Hosts Weekly Support Calls and provides status updates
- Delivers Quarterly Business Reviews – metrics/business reviews
- Working with the customer to understand the business requirements and stated Service Level Agreements (SLAs) (Reviewed for both Commvault and customer’s internal SLA’s to ensure they are achievable metrics for success)
- Generation and Review of support ticket history and analysis during the Quarterly Business Reviews
- Yearly Briefings – Executive and/or Technical. Work with TAM on strategic agenda
- Work closely with the TAM for any onsite technical requirements/assistance
- Work closely with the TAM to identify training opportunities for customer personnel

**Technical Account Manager (TAM)**

The ESP includes assignment of a TAM (20% percent coverage) to partner with our customers to understand the customer’s business objectives. The TAM provides proactive and reactive guidance to mitigate risk and reduce time to resolution by aligning key technologies and resources to those objectives.

The ESP TAM is a TAM-20, typically assigned five customers and may dedicate up to 20% of service time (throughout the service contract) to each customer. This service time is reviewed with assigned customers on a regular basis in order to determine the frequency and type of coverage (onsite or remote) needed to ensure the customer receives the maximum value out of the Enterprise Support Program. Please note that the 20% service time is a guideline and doesn’t imply that the customer is guaranteed 20% time nor can customers accumulate service time from month to month. If the customer desires guaranteed focus for a specified time from a TAM, beyond what is included with Enterprise Support, they can purchase options for a fully or partially dedicated (100% or 50%) TAM as described in the TAM Offering.

Fulfill the role of “voice of the customer” in Commvault meetings, and the technical “voice of Commvault” in customer meetings (ongoing)

Communicate proactive monitoring metrics to customer, including if thresholds are met or exceeded and the potential impact on the business (Quarterly)

Identify risks in the environment as it relates to data management operations

Help executing the technical business plan in accordance with customer policies and procedures

Fractional TAM Options (20% or 50%): Onsite/Remote presence with the customer (to be scheduled with the TAM, max number of days as per fraction purchased, dependent on agreed requirements)

Dedicated TAM Option: Full time technical consultant to ensure the operational stability and value realization of your Commvault environment

Escalated Critical Ticket Management – work with development directly on critical issues which are affecting business operations
Work in tandem with the SAM on any support needs

**Enterprise Service Credits**
Service credit for Commvault Services E.g. Professional Services, RSE, Training, Personalization, etc.
Credits can be used by customer or SAM (with customer agreement) during the period of the Enterprise contract. ESP Credits must be used in the same country as the location of the designated, main (named) location / home region.
Availability of credits allows for prompt co-ordination to meet additional customer requirements, reducing procurement overhead at a time when speed may be critical
Service credits are reset upon renewal, expire in 12 months from the date of purchase and not transferable between contract periods

**Reporting**
Working with the Enterprise Support Program’s Customer’s fiscal or operation calendar, the SAM will present data on quarterly activity:
Commvault Cloud Metrics Reporting configured to provide customer with an overview of the CommCells(s) within your environment
Weekly conference call with customer principals to discuss issue status and path to resolution
Compiles and reports to customer management with the Monthly Executive Summary
Demonstrates SLA response and resolution success
Provides data trending
Job counts*
CommCell Health*
License Usage and Forecasting*
Reports on quarterly success for SLA response and resolution, and overall CommCell® trends*
Provides a Quarterly Executive Summary (summary can be conducted onsite or remote, to meet the needs of the customers distributed global teams)

*Ability to enable ‘CommCell Diagnostics and Usage’ on your CommServe(s) required / Requires CommServe connectivity to port 443 for access and connectivity to the cloud.commvault.com hosted infrastructure.

**Enterprise Metrics Reporting**
Enterprise Metrics Reporting allows you to monitor the performance of all CommCell computers, gauge the storage capacity for backups, and predict the cost of data protection in your organization. Available reports include the Activity Report, Monthly Chargeback Report, CommCell Growth Report, and the Health Report.
Enterprise Support Customers receive access to Premium Metric Reports with no requirement to purchase additional Metrics licensing to access these reports. These reports are available for download from Commvault Cloud site. For more information, please contact your assigned Support Account Manager.
## Service Levels Response and Resolution Target Matrix

<table>
<thead>
<tr>
<th>PRIORITY TIERS</th>
<th>STANDARD SUPPORT</th>
<th>PREMIUM SUPPORT</th>
<th>PROACTIVE SUPPORT</th>
<th>ENTERPRISE SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEVα (Catastrophic)</td>
<td>N/A</td>
<td>N/A</td>
<td>15 Minutes</td>
<td>15 Minutes</td>
</tr>
<tr>
<td>Response</td>
<td>Resolution/Workaround</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEVβ (Critical)</td>
<td>1 Hour</td>
<td>1 Hour</td>
<td>30 Minutes</td>
<td>30 Minutes</td>
</tr>
<tr>
<td>Response</td>
<td>Resolution/Workaround</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEVγ (High)</td>
<td>24 Hours</td>
<td>24 Hours</td>
<td>24 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>SEVδ (Medium)</td>
<td>2 Hours</td>
<td>2 Hours</td>
<td>1 Hour</td>
<td>1 Hour</td>
</tr>
<tr>
<td>Response</td>
<td>Resolution/Workaround</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEVε (Low)</td>
<td>72 Hours</td>
<td>72 Hours</td>
<td>72 Hours</td>
<td>72 Hours</td>
</tr>
<tr>
<td>Response</td>
<td>Resolution/Workaround</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Customer Support Quality Assurance

Commvault is committed to providing best in class technical support, and we drive our customer satisfaction through a variety of metrics to guide us to achieve that goal. Industry standard measurements of time to respond, first contact resolution and time to solve are cornerstones of our support model.

Outside of internal objectives we proactively solicit feedback from our user base for each incident logged with Commvault support in the form of a survey. This survey includes a brief questionnaire along with a comments section to add remarks about our service quality. Each survey response is reviewed by support management and, in the event of an unsatisfactory survey response; we initiate an investigation into the source of customer’s dissatisfaction with the support experience. Support management will initiate a call with the customer to cover satisfaction issues that were brought to light in the survey. The outcome of that conversation is reviewed against existing support processes and adjustments are made, as needed.

Commvault is committed to improving our products, and we are always open to customer suggestions and requests of ways we can best accomplish this. By providing reports regarding customer’s use of the software, including results, comments or suggestions to Commvault (collectively, the “Feedback”), customer agrees that Commvault may use and disclose the Feedback in any manner Commvault chooses, provided that Commvault ensures the confidentiality of customer’s identity at all times. Commvault acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Commvault shall own all intellectual property rights related to the Feedback and its use. For those customers that request to opt out of this product improvement process, Commvault notes this in each such customer’s Support Account.
Contacting Customer Support

Prior to contacting support, it is highly recommended that customers search for possible solutions via the Web on our Support Portal, “Maintenance Advantage” and/or load the latest service pack and updates. If the problem persists, collecting log files, along with having the latest Service Pack and updates installed, will help expedite the resolution of your issue. If these steps are not taken by you, this can cause longer resolution times. Please be aware that Commvault Technical Support Management reserves the right to close a service call if repeated attempts to contact the end user over the course of three (3) business days have failed to yield a response without reason. If necessary, these Support Incidents can be referenced if a new call for the original incident is required.

Commvault offers three different methods of support:
Web Support – Self Service (Forum, Knowledge Base, Chat, Solution Engine, and more)
Web Support Submission
Telephone Support

Web Support – Self Service

Commvault's Web Support is provided via our Support Portal called Maintenance Advantage (ma.commvault.com). Maintenance Advantage is provided to customers who have a current and active maintenance contract. If you meet this requirement and you do not have a Maintenance Advantage login and password please send an email to support@commvault.com and provide your CommCell-ID along with your contact information and you will be notified via email of your login and password within 24 - 48 hours.

Maintenance Advantage contains a set of powerful tools to enable Commvault software customers to optimize and maintain their deployments. The section includes:

Knowledge Base
Solution Engine
Commvault's Customer Forum
Service Packs and Hotfix Update Downloads, when and if available
Technical FAQs
Tips and Techniques to achieve better performance
Configuration and deployment guidelines
Supported hardware and software compatibility matrixes
Troubleshooting Guides, and other valuable resources
Enterprise Support Dashboard
Commvault Support Chat
Web Support Submission

Customers can submit an incident via the internet by logging into Maintenance Advantage and clicking on the Incident Management link. From this location customers can view, update, and close incidents.

Web-Submitted incidents are responded to using the following guidelines:

severity 0 (CATASTROPHIC)* and severity 1 (CRITICAL) incidents cannot be opened via the Maintenance Advantage website

Severity 2 (SEV2) – 2 Hour Response

Severity 3 (SEV3) – 3 Hour Response

Severity 4 (SEV4) – Next Business Day

*Only available to Proactive or Enterprise Support customers

Once the online form is submitted, a ticket will automatically be generated as well as email notification that will include the Ticket number and a link to upload logs via the HTTP Log up-loader. In the majority of the support cases, logs will be required in order to troubleshoot and analyze the problem reported. Uploading logs in a timely manner will help expedite the troubleshooting process.

Commvault Chat

Customers may leverage Chat and access quick information about their support accounts, an incident, and more. Chat is found on the Common Portal of Maintenance Advantage. Chat is utilized for the following:

- Documentation or Product Supportability questions
- Hardware Compatibility questions
- Questions on Reporting
- Questions regarding Commvault licensing
- Problems with Maintenance Advantage Sub Account Creation
- Contact information for your Commvault Sales Representative
- Incident Escalation
- Incident Follow up
- Incident Re-Assignment
- Questions about Log and Database uploads

If your subject is of a break fix or technical nature please create an incident or, for Critical Incidents, please contact Customer Support using your local Technical Support hotline number.
Telephone Support

Commvault has four Main Global Customer Support locations; Tinton Falls, New Jersey; Reading, UK; Sydney, Australia; and Beijing, China. The Commvault Technical Assistance Centers are staffed by highly skilled professionals who are available 24 hours a day / 7 days a week (based on your warranty and contract support hours).

NORTH AMERICA
Toll Free # (877) 780-3077
Direct Toll # (732) 571-2160

LATIN AMERICA
Brazil 0-800-892-2288
Colombia 01800-710-2063
Mexico 01-800-681-1581

EUROPE, MIDDLE EAST & AFRICA (EMEA)
Belgium 0800-79392
Denmark 8088-9260
France 0800-918893
Germany 0800-1012330
Ireland 1-800-608178
Israel 1-809-494177
Italy 0800-782147
Netherlands 0800-0227402
Norway 800-11-985
Portugal 800-8-14516
Russia 8-800-100-9423
Saudi Arabia 800-8-110540
South Africa 080-09-81256
Spain 0900-991600
Sweden 0200-896316
Switzerland 0800-836023
United Arab Emirates 8000-3577005
United Kingdom 0800-9171424
Other EMEA Countries +441189522030

ASIA-PACIFIC & JAPAN (APJ)
Australia 1300 368 528
India 1800-419-2951
Indonesia 040-6654-0300
Japan 001-803-015-205-0066
Korea 0120-938-003
Malaysia 00-308-13-1763
New Zealand 800-002-032
Singapore 800-101-2206
Thailand 001-800-13-204-2904

CHINA
China 400-818-5908
Hong Kong 800-906-128
Taiwan 00801-14-7127

Submitting an Incident
When contacting support, customers should be prepared to provide the following information. Failure to provide this information can result in delays in the processing of your incident.

User name and Contact Information
CommCell ID
Company Name
Description of the problem
Agent type, Version and Update Level
Any other pertinent information such as failure reason and time of failure
Severity levels are mutually agreed upon between customer and support representative. (See: Severity Level Definitions in section 3.7). For Severity 1-Critical issues, customer must provide valid business case reason for a Severity 1-Critical call classification.

**Language Support**

Commvault provides its primary support activities in English with support assistance available for both localized support within our Support Centers and translation support for phone and remote support activities. Elements of Commvault’s Web Support infrastructure include localized language views for non-English speaking customers. Customers should designate their preferred language on their Maintenance Advantage profile. Chinese speaking customers are serviced locally by our Beijing Support Center in native language.

**Solution Engine**

All incidents submitted to Commvault Support are ingested into our solution engine which will return results based on classification and text content. Our solution engine seeks to return results that have a 90% or greater chance of solving your problem. The results will come in several forms such as recommended hotfix, knowledge base article, documentation etc.

Results for the Solution Engine are returned in two different methods depending on how the incident is logged with support.

**Web-submitted:** Solution Engine results are presented after the incident details have been filled out and submitted via our online incident form. Each result will include “Did this solve your issue? Yes or No” response links which can be clicked there or upon returning to your open incidents page.

**Hotline/Phone submission:** Solution Engine results are sent via email after the incident details have been collected by our Frontline Engineer with a subject of “Possible Solution detected for incident”. At the conclusion of creating your incident our Frontline Engineer will inform you that a possible solution(s) has been determined and to please follow the steps provided within our email. Included in that message is solution content and “Did this solve your issue? Yes or No” response links which can be clicked there or upon returning to your open incidents page.

**Note:** If a solution is detected that incident will be placed into a status of “Waiting for result feedback” for a period of 24 hours or until a Yes/No response has been submitted. If at any point within that time the No option is selected, that incident will be immediately routed to an engineer for service under the SLA guidelines determined by severity. If Yes has been selected, that incident will be closed and the corresponding solution noted as its resolution.

**Service Packs and Hotfix Updates**

Customers can download Service packs and hot fixes via Maintenance Advantage. Our Service Packs are a roll up of all released updates up to the release date of the most current Service Pack. Hotfixes are fully certified updates that are not part of the last Service Pack. Commvault notes that these updates are offered on a “if-and-when available” basis only and do not follow any specific release schedule.

**Alerts and Notifications**

In order for customers to receive alerts they must edit their Maintenance Advantage user profile. There are two methods to receive alerts, one manual via ad hoc alerts sent by Technical Support or automated alerts via setting in your user profile.

**Manual Alert Notifications:** You can subscribe yourself to these alerts by selecting Yes on the Receive Update Alert Messages portion of the profile. Once you choose to receive alerts please make sure the Alert Distribution email field contains the email to which you wish to send these reports. We recommend creating an alias distribution address so that more than one person can be notified such as a primary and a backup.

**Automated Alert Notifications:** The automated alert notification feature will automatically send notifications on what you selected. You can select to receive Critical Alerts, Service Pack Alerts and/or Critical Updates only. You will then need to select the frequency either weekly or monthly.

**Severity Level Definitions**

**Severity Level Definitions and Examples:**

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-Catastrophic</td>
<td>This severity level is reserved solely for Commvault Enterprise Support or Proactive Support Customers. This severity is used to indicate that all Commvault components are inoperable and no data movement operations are possible. Examples of SEV0-Catastrophic incidents are: Complete outage to CommServe. Multiple Server outages/rebuild issues. Disaster Recovery Event (not a DR Test)</td>
</tr>
<tr>
<td>1-Critical</td>
<td>This severity should be used to indicate that a major component is down or having a serious problem that it is impacting business. Examples of SEV1-Critical incidents are: CommServe® is not functioning, and server backups or restores are not possible Mission Critical Database Restores (Exchange, SQL, Oracle, Informix etc.) impacting customers’ business Mission Critical Server Restore/Rebuild impacting customers business</td>
</tr>
<tr>
<td>2-High</td>
<td>This severity should be used to indicate that a major component has problems that degrade the ability to meet the needs of the business. Examples of SEV2-High incidents are: Critical Server Backup failures Directory/Folder and File level Restore failures.</td>
</tr>
<tr>
<td>3-Medium</td>
<td>This severity should be used to indicate intermittent problems that do not impact the immediate production needs of the business. Examples of SEV3-Medium incidents are: Client installation issues Media Management issues Operational problems.</td>
</tr>
</tbody>
</table>
4-Low 

This severity is used to report a defect or inconsistency in the product or request an enhancement to the product.

**Problem Escalation:**

This section describes the actions that will be taken towards a resolution of Severity 1-Critical issues that are not resolved, and/or where no progress is being made nor a workaround provided within the response target goal time:

A Tier 2 Engineer will be assigned to manage and coordinate efforts to work towards a resolution. Managers from the following departments will be notified: Technical Support, Engineering, Sales and Regional Technical Services.

The Tier 2 Engineer will coordinate a conference call with the user and all necessary personnel from Support and Engineering departments to discuss the viability of providing a workaround until a permanent solution can be achieved. Regular updates on the progress of the issue will be provided to the user. All reasonable efforts to resolve the issue remotely will be taken, such as remote access to the problem site, replication of the problem in a support lab, or utilization of information gathered through the installation of diagnostic updates. The majority of problems are resolved remotely using phone support along with remote access tools.

If all remote troubleshooting attempts are deemed unsuccessful, then an on-site engineer can be provided until the problem is resolved. The on-site engineer fees would comprise of the current daily billable rates in accordance with the GSA Pricelist. Ordering Activity Licensee agrees to pay any travel expenses for the on-site engineer in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

**Incident Escalation:**

While Commvault support makes every effort to meet our customer’s expectations, occasionally a situation may arise where an incident may need to be expedited, or criticality may have changed. In cases where you feel additional attention or further escalation is required, any of the following processes may be followed:

- **Escalate Online:** From our Maintenance Advantage Support Portal’s Active Incidents list, open the incident and select the Update Activity with ‘Yes, please ask management to review my incident’.
- **Escalate via Email Link:** Click on the Support Management Escalation link in your incident’s email footer.
- **Escalate via Mobile Advantage App:** From the Open Incidents view, select the incident and click Mgmt. Review.
- **Escalate via Phone:** Contact the Customer Support Hotline providing your incident-id number and ask to have the incident escalated. Please provide the reason for escalation so that the incident can be handled accordingly by our engineers.

You may also request to speak with a Supervisor or Manager. In most cases a Supervisor or Manager will return your call within one hour. You will have the opportunity to explain the situation currently being faced and we will assist in getting the situation rectified.

Please refer to section 3.4 Telephone Support or online, for a list of Toll Free numbers to contact your local Support Center.

[https://ma.commvault.com/Support/TelephoneSupport](https://ma.commvault.com/Support/TelephoneSupport)
Product Updates

Keeping Your Products Current
A current Commvault Maintenance Agreement entitles you to the latest versions\(^5\) of your licensed Commvault products, Service Packs, Maintenance Packs, hotfixes, and more.

Download Software Packages
Commvault makes all of its software packages available online. To access Commvault’s Software Suite, log into the Maintenance Advantage website and click Electronic Software Distribution, Service Pack or Additional Platform Support Packages under the Downloads and Packages tab. Different release versions are accessed by selecting the appropriate Software Version.

Download Software Updates
Commvault constantly enhances its products for resiliency and performance. Regular updates to your deployed Commvault environment ensures optimized operating efficiency for your CommCell(s) and minimizes the possibility of encountering an issue that has already been addressed in the Service or Maintenance Pack.

To check for available software updates (loose updates, Service Pack), log into the Maintenance Advantage website and click Software Updates under the Product Support tab. You can sort the list of Updates by Major Release and Product family.

Weekly Update Alert Notice
The Weekly Update Alert Notice delivers to you via email product information, update and upgrade notifications, as well as critical alerts that may require immediate attention. This information helps you get the most out of your Commvault investment by keeping you up to date. For more information, visit the URL noted below and update your User Profile for alerting:
https://ma.commvault.com/Profile/Editor

\(^5\) Release version upgrades are available per the terms of your active Maintenance Agreement
Support Entitlement and Maintenance Renewals

Support Entitlement

In order to receive maintenance and support services, including updates and upgrades, Customers must maintain the same level of active maintenance and support on all software licenses within their software configuration. Customers who do not have a maintenance agreement with Commvault will have limited access to technical resources. Commvault will respond on a Time & Material basis with "commercially reasonable effort", only upon receipt of email acceptance of payment by (Credit Card or Purchase Order) based off of the current billable rates on the GSA Pricelist.

Maintenance Renewals

Maintenance Agreements are renewed on an annual basis. Any changes to a Maintenance agreement must be made in writing. Contract change requests can be submitted via e-mail for the following locations:

US: servicecontracts@Commvault.com
Canada: servicecontractscan@Commvault.com
EMEA: servicecontractsemea@Commvault.com
APJ: apjservicecontracts@Commvault.com

Product Obsolescence

Commvault is committed to providing all customers with one (1) year advanced notification of the obsolescence date of any Commvault product. At the time a product is declared obsolete, Commvault will also notify all customers of any specific maintenance arrangements associated with any products that have been declared obsolete. Customers can view the list of obsolete products on the Web at https://ma.commvault.com/Support/ProductSupport
Product License Registration

After a successful installation of Commvault software, the Customer has thirty (30) days to notify Commvault and request a permanent License Key. If the Permanent License Key is not ordered within the 30 day period following installation, the Commvault software will cease to function. This occurs because the License Key used during the new Commvault Pilot deployment was temporary. The following outlines the processes required to request a Permanent License Key:

E-mail prodreg@Commvault.com for US and APAC-based Customers, prodreg-canada@Commvault.com, or Licensekey@Commvault.com for EMEA and India-based customers and provide the following:

Company Name
Contact Name with email and phone number
CommCell-ID – This information can be obtained from the License Administration Window
License Summary Report
WINNTHOSTID – 8 character Hexadecimal version of the CommServe® IP address. (This information is necessary to ensure the correct IP address is obtained especially if multiple NIC cards are installed in the server)

Alternately, the license activation process may be completed online at the following URL: https://ma.commvault.com/Support/ProductRegistration

If for any reason the received Permanent License Key fails to apply, please check the following:

If the number of licenses in the license key corresponds to the installed items in the license summary report
If the WINNTHOSTID output corresponds with the CommServe ID of the license key.

If the above checks do not resolve the issue, please contact via email the appropriate license alias listed above with the following information:

Company Name, Contact Name and Contact info
CommCell-ID
License summary report of the licenses used
Was a pilot key used for installing the software (Y/N)
Screenshot of the failure message at the moment the Permanent License Key is applied
Global Support and Services Resource Allocation

Worldwide Regional Locations

<table>
<thead>
<tr>
<th>Commvault Location</th>
<th>North America</th>
<th>Latin America</th>
<th>APJ</th>
<th>EMEA</th>
<th>China</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Support Center</td>
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<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineering</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Commvault’s World Wide Headquarters is located in Tinton Falls, New Jersey, United States

Regional Technical Service Professionals and Resource Locations

**United States**
- Western Region (AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY, Mexico)
- Central Region (AR, IA, IL, IN, KS, LA, MI, MN, MO, ND, NE, OK, SD, TX, WI)
- Eastern Region (AL, CT, DE, FL, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WV)

**Canada**
- National Capital Region (Ottawa/Hull, Federal Government)
- Western Region (British Colombia, Alberta)
- Central Region (Ontario, Manitoba, Saskatchewan)
- Eastern Region (Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland)

**APAC**
(Bangladesh, Bhutan, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, South Korea, Vietnam, Philippines, Republic of Korea, Taiwan, Singapore, Thailand, Australia, New Zealand, Papua New Guinea)

**EMEA**
- FRANCE, SPAIN, ITALY, & PORTUGAL
- SOUTHERN EUROPE, MIDDLE EAST, & AFRICA
- UNITED KINGDOM & IRELAND
- GERMANY, SWITZERLAND & AUSTRIA
- BELGIUM, NETHERLANDS, LUXEMBOURG (BENELUX)
- SWEDEN, NORWAY, DENMARK & FINLAND
- SOUTH AFRICA
- MIDDLE EAST
### Resource Directory

#### Department and Contact Information

<table>
<thead>
<tr>
<th>Commvault Corporate Office</th>
<th>Tinton Falls, New Jersey 1-732-870-4000</th>
</tr>
</thead>
</table>
| Commvault Technical Support | North America Toll-Free # (877) 780-3077  
|                           | North America Direct Toll# (732) 571-2160  
|                           | Brazil 0-800-892-2288  
|                           | Columbia 01800-719-2063  
|                           | Mexico 01-800-681-1581  
|                           | EMEA:  
|                           | Belgium 0800-79392  
|                           | Denmark 8088-9260  
|                           | France 0800-918893  
|                           | Germany 0800-1012330  
|                           | Ireland 1-800-608176  
|                           | Israel 1-80-9494177  
|                           | Italy 0800-782147  
|                           | Netherlands 0800-0227402  
|                           | Norway 800-11-985  
|                           | Portugal 800-8-14516  
|                           | Russia 8-800-100-9423  
|                           | Saudi Arabia 8000-3577005  
|                           | South Africa 080-09-81266  
|                           | Spain 0900-991600  
|                           | Sweden 0200-896316  
|                           | Switzerland 0800-836023  
|                           | United Arab Emirates 8000-3577005  
|                           | United Kingdom 0800-9171424  
|                           | Other EMEA Countries +44-1189522030  
|                           | APAC:  
|                           | Australia 1300 368 528  
|                           | China 400-818-5908  
|                           | India 1800-425-2951  
|                           | Japan 0120-938-003  
|                           | Korea 00-308-13-1763  
|                           | Malaysia 1-800-813-686  
|                           | New Zealand 0800 002 032  
|                           | Singapore 800-101-2206  
|                           | Thailand 001-800-13-204-2904  

| Product License Registration | North America/APAC: ProdReg@Commvault.com  
|                             | EMEA: Licensekey@Commvault.com  

| Maintenance Advantage | https://ma.commvault.com/  
|----------------------|-----------------------------|

| Service Contracts | US: servicecontracts@Commvault.com  
|                   | Canada: servicecontractsca@Commvault.com  
|                   | EMEA: servicecontractsemea@Commvault.com  
|                   | APJ: apjservicecontracts@Commvault.com  

| Training | North America: training@Commvault.com  
|          | EMEA: trainingEMEA@CommvaultEMEA.com  
|          | APJ: RegistrarANZ@Commvault.com  

| Professional Services | US: PSUSA@Commvault.com  
|                       | Canada: PSCanada@Commvault.com  
|                       | EMEA: PSEMEA@Commvault.com  
|                       | APJ: PSAustralia@Commvault.com  

| Account Management Information | Contact Sales Representative  
|-------------------------------|-----------------------------|

| Invoice and Product Questions | Contact Sales Representative  
|-------------------------------|-----------------------------|
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

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

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

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

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https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
Government Indemnities. This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
COUPA SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement ("Agreement") is between Coupa Software Inc. ("Coupa") and the Ordering Activity ("Customer"). This Agreement incorporates the Subscription Schedule, attached as Exhibit A, which describes the following operational matters of the Hosted Applications (as defined below): (1) technical support & update process; (2) service level agreement; and (3) data security measures.

1. DEFINITIONS

1.1. "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity, and "control" for the purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity, provided that any such Affiliate shall be deemed an Affiliate only for so long as such control lasts.

1.2. "Confidential Information" means all confidential and proprietary information of a disclosing party or any of its Affiliates disclosed by or on behalf of such party to the receiving party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including Customer Data, business and marketing plans, technology and technical information, product designs, and business processes. Notwithstanding anything to the contrary, the Hosted Applications and Coupa Platform are deemed to be Confidential Information of Coupa. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction prior to its disclosure by the disclosing party and without breach of any obligation owed to the disclosing party; (iii) was independently developed by the receiving party without either use of or reference to any Confidential Information or breach of any obligation owed to the disclosing party; or (iv) is received from a third party without restriction and without breach of any obligation owed to the disclosing party.

1.3. "Coupa Platform" means any software and hardware that enables Coupa to provide Customer with access to and use of the Hosted Applications as contemplated by this Agreement.

1.4. "Customer Data" means any data, information or material provided or submitted by Customer or on behalf of Customer to the Coupa Platform in the course of using the Hosted Applications.

1.5. "Documentation" means the Coupa product documentation relating to the operation and use of the Hosted Applications, including technical program or interface documentation, operating instructions, update notes, and support knowledge base, as made available and updated from time to time by Coupa.

1.6. "Hosted Application(s)" means applications and associated content (as identified on an Order Form) to be provided by Coupa to Customer as a subscription service and made accessible on a website designated by Coupa.

1.7. "Order Form" means a purchase order mutually executed by the parties evidencing the purchase of subscriptions to the Hosted Applications specifying, among other things, the Subscription Term, the number of Users, the applicable fees, and the billing period as agreed between the parties. Each Order Form, once mutually executed, shall be governed by and become part of this Agreement, and is hereby incorporated by this reference.

1.8. "Protected Health Information" has the meaning given to it in the Health Insurance Portability and Accountability Act ("HIPAA").

1.9. "Regulated Information" means Protected Health Information and Regulated Information.

1.10. "Regulated Information" means, where applicable, (a) from the perspective of EU law: special categories of data as defined in Article 8 of EU Directive 95/46/EC or Article 9 of the GDPR; and/or (b) from the perspective of US law: an individual’s first name and last name (or first initial and last name) in combination with any one or more of the following data elements that relate to such individual: (i) Social Security number; (ii) driver’s license number or state-issued identification card number; or (iii) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual’s financial account.

1.11. "Subscription Term" means the period(s) during which Customer is authorized to use the Hosted Applications pursuant to an Order Form.

1.12. "Support" means the Coupa technical support as specified on the Order Form in accordance with the terms in Exhibit A-1.

1.13. "Updates" means Coupa’s updates of the Hosted Applications for repairs, enhancements or new features applied by Coupa to Customer’s instances, including updates to the Documentation as a result of such updates, at no additional fee during the Subscription Term. Updates shall not include additional functionality or upgrades to the Hosted Applications that Coupa requires a separate charge from its other customers generally.

1.14. "Users" means employees of Customer and its Affiliates and their representatives, consultants, contractors, subcontractors, or agents who are authorized to use the Hosted Applications and have been supplied unique user identifications and passwords by Customer.

2. COUPA’S OBLIGATIONS

2.1. Provision of the Hosted Applications. Coupa will make available to Customer, and Customer is authorized to use, the Hosted Applications during the Subscription Term as set forth in an applicable Order Form for its and its Affiliates’ internal business purposes in accordance with the Documentation.

2.2. Support, Uptime & Updates. Coupa shall: (i) provide the level of support specified in the Order Form in accordance with Exhibit A-1; (ii) provide Updates at no additional charge as part of Customer’s subscription during the Subscription Term in accordance with Exhibit A-1 and (iii) make the Hosted Applications available in accordance with Exhibit A-2.

2.3. Security. Coupa shall maintain a written information security program of policies, procedures and controls ("Security Program") governing the processing, storage, transmission and security of Customer Data. The Security Program as of the Effective Date is set forth in Exhibit A-3. The Security Program shall include industry standard practices designed to protect Customer Data from unauthorized access, acquisition, use, disclosure, or destruction. Coupa may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, provided that any such update does not materially reduce the overall level of security provided to Customer as described herein.

2.4. Breach Notification. Unless notification is restricted by law, Coupa shall report to Customer’s support contacts designated in Coupa’s customer support portal ("Support Portal") any unauthorized acquisition, access, use, disclosure or destruction of Customer Data ("Breach") promptly without undue delay after Coupa determines that a Breach has occurred. Unless prohibited by law, Coupa shall share information
about the nature of the Breach that is reasonably requested by Customer to enable Customer to notify affected individuals, government agencies and/or credit bureaus. Customer has sole control over the content of Customer Data that it enters into the Coupa Platform and is responsible for determining whether to notify impacted individuals and the applicable regulatory bodies or enforcement commissions and for providing such notice.

2.5. **Audit Report.** During the Subscription Term, except as stated otherwise on the Order Form, Coupa shall engage at its expense, an independent accounting firm to conduct an audit of Coupa’s operations with respect to the Hosted Applications in accordance with the Statement on Standards for Attestation Engagements No. 18 (the “SSAE 18”), and have such accounting firm issue SSAE 18, SOC 1 Type 2 and SOC 2 Type 2 reports (or substantially similar report of a successor auditing standard in the event the SSAE 18 auditing standard is no longer an industry standard) (the “Auditor’s Report”), which shall cover Coupa’s security policies, procedures, and controls. Upon Customer’s request, Coupa shall provide Customer and its external auditors with a current copy of such Auditor’s Report, provided that such report shall be deemed Confidential Information of Coupa.

2.6. **Insurance.** Coupa shall maintain during the term of this Agreement: (a) Commercial General Liability Insurance with minimum limits of US$1,000,000 combined single limit and combined bodily injury and property damage per occurrence and US$3,000,000 dollars in the aggregate; (b) Commercial Automobile Liability Insurance providing coverage for owned, hired, and non-owned motor vehicles used in connection with this Agreement in an amount of not less than US$1,000,000 per accident combined single limit for bodily injury and property damage; (c) Umbrella Liability providing excess liability coverage in the minimum amount of US$5,000,000.00 per occurrence, to supplement the primary coverage provided in the policies listed above; (d) Professional Liability Insurance (Errors and Omissions Insurance) with minimum limits of US$5,000,000.00; (e) Workers Compensation Insurance covering Coupa employees pursuant to applicable state laws, and at the maximum limits statutorily required for each such state; and (f) Commercial Crime Insurance including coverage for loss or damage resulting from theft committed by the Coupa’s employees, acting alone or in collusion with others, and coverage for computer crime, with a minimum per event and annual aggregate limit of US$2,000,000. Upon request, Coupa shall promptly furnish Customer with a certificate evidencing the coverages set forth above.

3. **CUSTOMER’S USE OF THE HOSTED APPLICATIONS**

3.1. **User Accounts.** Customer is responsible for activity occurring under its User accounts and shall ensure that it and its Users abide by all local, state, national and foreign laws, treaties and regulations applicable to Customer’s use of the Hosted Applications. Customer shall: (i) notify Coupa promptly of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) notify Coupa promptly and use reasonable efforts to promptly stop any unauthorized use, copying, or distribution of the Hosted Applications that is known or suspected by Customer or its Users; (iii) not impersonate another Coupa user or provide false identity information to gain access to or use the Hosted Applications or Coupa Platform; and (iv) restrict each User account to only one authorized User at a time.

3.2. **Restrictions.** Customer shall not (i) license, sublicense, sell, resell, transfer, rent, lease, assign (except as provided in Section 11.3 (Assignment)), distribute, disclose, or otherwise commercially exploit or make available to any third party the Hosted Applications; (ii) copy, modify or make derivative works based upon the Hosted Applications; (iii) “frame” or “mirror” the Hosted Applications on any other server or device; (iv) access the Hosted Applications for any benchmarking or competitive purposes or use the Hosted Applications for application service provider, timesharing or service bureau purposes, or any purpose other than its own internal use; (v) decompile, disassemble, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of the Hosted Applications (except to the extent reverse engineering restrictions are prohibited by applicable law); (vi) remove, obscure or modify a copyright or other proprietary rights notice in the Hosted Applications; (vii) use the Hosted Applications to create, use, send, store, or run material containing software viruses, worms, Trojan horses or otherwise engage in any malicious act or disrupt the security, integrity or operation of the Hosted Applications or the Coupa Platform; (ix) attempt to gain or permit unauthorized access to the Hosted Applications or its related systems or networks; (x) use the Hosted Applications other than in compliance with all applicable laws and regulations or (x) permit or assist any other party (including any User) to do any of the foregoing.

3.3. **User Reassignment.** User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned or replaced by User replacing the former User who no longer require use of the Hosted Applications. Unless otherwise specified in the relevant Order Form, the replacement User shall be under the same Subscription Term of the original User.

3.4. **Additional Users.** Additional Users may be purchased pursuant to the parties signing an Order Form and unless otherwise specified in the relevant Order Form, the Subscription Term of additional Users shall be coterminous with the Subscription Term in effect at the time the additional Users are added.

3.5. **Protected Information.** The intended purpose of the Hosted Applications is to optimize Customer’s corporate spend management processes and Customer acknowledges and agrees that use of the Hosted Applications does not require Customer to provide any Protected Information to or through the Hosted Applications or Coupa Platform. Protected Information should not be stored by any Hosted Applications or Coupa Platform, and Coupa shall have no liability to Customer or its suppliers, Users or any other party related to any Protected Information. Customer shall not (and shall ensure that its suppliers and Users do not) upload, provide or submit any Protected Information to the Hosted Applications or Coupa Platform.

3.6. **Third Party Interactions.**

No Supplier Fees. Each party agrees that it shall not charge Customer’s suppliers for the right to interact with Customer through the Coupa Platform.

Supplier Interactions. During the Subscription Term, Customer may enter into correspondence with and purchase goods and/or services from suppliers on or through the Hosted Applications. Any such activities and associated terms are solely between Customer and the applicable third party supplier. Customer agrees that Coupa shall have no liability, obligation or responsibility for any such correspondence or purchase between Customer and any such third party supplier.

4. **RESERVED**

5. **PROPRIETARY RIGHTS**

5.1. **Coupa’s Intellectual Property Rights.** As between Coupa and Customer, all rights, title, and interest in and to all intellectual property rights in the Hosted Applications and Coupa Platform (including all modifications and enhancements thereof) are and shall be owned exclusively by Coupa notwithstanding any other provision in this Agreement or Order Form. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Hosted Applications or Coupa Platform. The Coupa name, logo and product names associated with the Hosted Applications or Coupa Platform are trademarks of Coupa, and no right or license is granted to use them. All rights
not expressly granted to Customer are reserved by Coupa. Coupa alone shall own all rights, title and interest in and to any suggestions, enhancement requests, feedback, or recommendations provided by Customer or any third party relating thereto.

5.2. Customer Data. As between Customer and Coupa, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of and right to use all Customer Data, and hereby warrants that that it has and will have all rights and consents necessary to allow Coupa to use all such data as contemplated by this Agreement. Customer hereby grants to Coupa a royalty-free, fully-paid, non-exclusive, non-transferable (except as set forth in Section 11.3 (Assignment)), sub-licensable, worldwide right to use and process Customer Data solely for the purpose of providing to Customer the Hosted Applications and any other activities expressly agreed to by Customer in a written document signed by both parties.

6. CONFIDENTIAL INFORMATION

6.1. Obligations. The receiving party shall not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement, except with the disclosing party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at disclosing party's cost, if the disclosing party wishes to contest the disclosure, and any information so disclosed shall continue to be treated as Confidential Information for all other purposes.

6.2. Reserved.

6.3. Use of Aggregate Data. Customer agrees that Coupa may collect, use and disclose quantitative data derived from the use of the Hosted Applications for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer or its Users.

7. WARRANTIES

7.1. Coupa's Obligations. Coupa warrants that during the Subscription Term (i) Customer's production instances of the Hosted Applications shall materially conform to the Documentation and (ii) that the functionality of the Hosted Applications at the time of the Order Form shall not materially decrease during the Subscription Term.

7.2. Procedure. To submit a warranty claim under this Section, Customer shall (1) reference this Section; and (2) submit a support request to resolve the non-conformity as provided in the Subscription Schedule. If the non-conformity persists without relief more than thirty (30) days after written notice of a warranty claim provided to Coupa under this Section, then Customer may terminate the affected Hosted Applications and Coupa, as its sole liability in connection with a breach of this warranty, shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected subscription after the effective date of termination. Notwithstanding the foregoing, this warranty shall not apply to any non-conformity due to any modification of or defect in the Hosted Applications that is made or caused by someone other than Coupa (or someone acting at Coupa's direction).

8. INDEMNIFICATION

8.1. Coupa's Obligations. Subject to this Agreement, Coupa shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, or demand (each a "Claim") that alleges the Hosted Applications used in accordance with this Agreement and the applicable Order Form infringe any issued patent, copyright, trademark or misappropriation of any trade secret of, such third party; and (ii) pay any court-ordered award of damages or settlement amount which may include any expense, liability, loss, damage, costs or reasonable attorneys' fees, each to the extent payable to a third party, to the extent arising from such Claims. Notwithstanding the foregoing, if Coupa reasonably believes that Customer's use of any portion of the Hosted Applications is likely to be enjoined by reason of any Claims then Coupa may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Hosted Applications; (ii) replace the same with other products of substantially equivalent functions and efficiency that are not subject to any Claims of infringement; or (iii) modify the applicable Hosted Applications so that there is no longer any infringement, provided that such modification does not materially and adversely affect the functional capabilities of the Hosted Applications as set out herein or in the applicable Order Form. If (i), (ii), and (iii) above are not available on commercially reasonable terms in Coupa's judgment, Coupa may terminate the affected Hosted Applications and refund to Customer the fees paid by Customer covering the remaining portion of the applicable Subscription Term for the affected Hosted Applications after the date of termination. The foregoing indemnification obligation of Coupa shall not apply: (1) if the Hosted Application is modified by any party other than Coupa (or someone acting at Coupa's direction), but solely to the extent the alleged infringement is related to such modification; (2) the Hosted Application is used in combination with any non-Coupa products, applications, or processes not authorized by Coupa, but solely to the extent the alleged infringement is related to such combination; (3) to the extent the Claim arises in connection with any unauthorized use of the Hosted Application, or use that is not in compliance with all applicable laws and related Documentation; (4) to any third party products, processes or materials that are not provided by Coupa; or (5) to any Claims arising as a result of the content of the Customer Data. THIS SECTION SETS FORTH COUPA'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT. Nothing contained in this Agreement shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

8.2. Process. Coupa's indemnity obligations are subject to the following: (i) Customer shall promptly notify Coupa in writing of any Claims; and (ii) Customer shall cooperate fully to the extent necessary at Coupa's cost in such defense and settlement.

9. DISCLAIMER

9.1. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, COUPA DOES NOT MAKE ANY OTHER REPRESENTATION, WARRANTY, OR GUARANTEE, AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES PROVIDED OR OFFERED HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED TO CUSTOMER HEREUNDER ARE PROVIDED STRICTLY ON AN "AS IS" BASIS AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
10. **TERM; TERMINATION**

10.1. **Term.** The Agreement commences on the Effective Date and continues until all Order Forms subject to this Agreement have expired or terminated, unless this Agreement is earlier terminated in accordance with this Section 10. User subscriptions commence on the subscription start date specified in the relevant Order Form and continue for the Subscription Term specified therein.

10.2. **Reserved.**

10.3. **Transition Services.** Upon termination of the Agreement, at Customer’s election, Coupa shall provide transition services to facilitate the orderly and complete transfer of the Customer Data to Customer or to any replacement provider designated by Customer (“Transition Services”), provided that the scope and fees of the Transition Services shall be mutually agreed to by the parties in an Order Form prior to commencing Transition Services. Notwithstanding the provisions of this subsection, in no event shall Coupa be required to disclose any of its Confidential Information or provide a license under any of its intellectual property to Customer or any third party as part of the Transition Services. For the avoidance of doubt, Customer shall continue to pay the subscription fees for the use of the Hosted Applications during the transition period set forth in an applicable Order Form.

10.4. **Survival.** Upon expiration or termination of the Agreement, Sections 1 (Definitions), 3.2 (Restrictions). 5 (Proprietary Rights), 6 (Confidential Information), 8 (Indemnification), 9 (Disclaimer), 10 (Term; Termination), and 11 (General Provisions) of this Agreement shall survive.

11. **GENERAL PROVISIONS**

11.1. **Compliance with Laws and Export Control.** Each party shall comply with all applicable laws and government regulations, including the export laws and regulations of the United States and other applicable jurisdictions, in connection with providing and using the Hosted Applications and/or Coupa Platform. Without limiting the foregoing, (i) each party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not, and shall ensure that Users do not violate any export embargo, prohibition, restriction or other similar law in connection with this Agreement.

11.2. **Reserved.**

11.3. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.4. **Reserved.**

11.5. **Entirety.** The Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and applicable Order Forms, comprises the entire agreement between Customer and Coupa and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. In the event of any conflict between this Agreement and the Order Form, the Order Form shall govern. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. Customer agrees that Customer’s purchase of any subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Coupa with respect to future functionality or features. No joint venture, partnership, employment, or agency relationship exists between Customer and Coupa as a result of the Agreement or use of the Hosted Applications or Coupa Platform. The failure of a party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision.

11.6. **Force Majeure.** This Agreement is subject to FAR 52.212-4 (f) Excusable delays. (JUN 2010).

**EXHIBIT A-1: TECHNICAL SUPPORT**

The following describes the technical support services (“Technical Support”) Coupa shall provide for the support level purchased by Customer (“Support Level”) as stated on the Order Form. The following terms may be updated from time to time, however, for each Order Form, the terms effective as of the execution of the Order Form shall apply for the duration of the applicable Subscription Term.

**Scope.** The purpose of Technical Support is to address defects in the Hosted Applications that prevent them from performing in substantial conformance with the applicable Documentation. A resolution to such a defect may consist of a fix, workaround or other relief reasonably determined by Coupa’s Technical Support staff.

**Online Support Portal.** The Support Portal includes an online knowledge base, best practices for use of the Hosted Applications, and a portal for the Designated Support Contacts (as defined below) to submit support tickets.

**Live Phone Support.** Coupa personnel is available to provide Technical Support to Customer, depending on the Support Level (as defined below) purchased by Customer.

**Severity Levels.** Each support ticket shall be categorized by Customer into one of the following severity levels.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Severe error that results in the Hosted Applications experiencing complete unavailability and halting transactions with no workaround.</td>
</tr>
<tr>
<td>Level 2</td>
<td>Serious error that results in a major function of the Hosted Applications suffering a reproducible problem causing either major inconvenience to Users or consistent failure in a common functionality.</td>
</tr>
<tr>
<td>Level 3</td>
<td>Error that results in a common functionality experiencing an intermittent problem or a consistent failure in a less common functionality.</td>
</tr>
<tr>
<td>Level 4</td>
<td>Service requests such as sandbox refreshes, SSO setups, and other how-to type of questions.</td>
</tr>
</tbody>
</table>
5. **Support Levels**

<table>
<thead>
<tr>
<th>Support Level</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online Ticket Submission</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Phone Support</td>
<td>Weekdays (8 am to 6 pm at Customer's headquarters)</td>
<td>24x7 for Severity 1 cases</td>
<td>24x7 for Severity 1 cases</td>
</tr>
<tr>
<td>Designated Support Contacts</td>
<td>Maximum of 3</td>
<td>Maximum of 5</td>
<td>Maximum of 7</td>
</tr>
</tbody>
</table>

6. **Customer Responsibilities**

   Customer shall designate no more than the number of Coupa Platform administrators ("Designated Support Contacts") set forth above who may contact and interact with Coupa in connection with Technical Support requests. Customer’s Designated Support Contacts shall answer questions and resolve issues as needed when they arise from other Users of the Hosted Applications. Customer’s Designated Support Contacts enter support request tickets, work through Technical Support issues with Coupa, and take action as needed to implement the resolution to the issue. Customer agrees that Coupa may communicate, and follow instructions to make changes to Customer Data and/or Customer’s instances, with its Designated Support Contacts via email, phone or through the Support Portal.

   Customer shall ensure that Customer’s Designated Support Contacts are trained on the use and administration of the Hosted Applications. Customer shall ensure that the name, contact and other information for these Designated Support Contacts are current in the Support Portal. Customer may replace Designated Support Contacts by updating the applicable information in the Support Portal, provided that at no time may Customer have more than the number of Designated Support Contacts permitted based on its Support Level.

7. **Support Exclusions**

   Coupa is not required to provide resolutions for immaterial defects or defects due to modifications of the Hosted Applications made by anyone other than Coupa (or anyone acting at Coupa’s direction). Technical Support does not include professional services for implementation, configuration, integration or customization of a Hosted Application or custom software development, training or assistance with administrative functions.

8. **Update Process**

   Coupa shall use commercially reasonable efforts to (1) monitor the Hosted Applications and related infrastructure for opportunities to address performance, availability and security issues; and (2) at Coupa’s discretion, deliver functionality enhancements to address customer and market requirements to improve such Hosted Applications based on Coupa innovation.

   Coupa’s update and release process, as updated from time to time, is described at [https://success.coupa.com/Success/Release_Management/01_Release_Types](https://success.coupa.com/Success/Release_Management/01_Release_Types) ("Update Process"). Customer shall upon notice comply with the Update Process and understands that not all Technical Support may be available if Customer does not comply with the Update Process and only the latest release of the Coupa Platform and Hosted Applications contains the most current features, availability, performance and security, including software fixes. Coupa is not responsible for product defects or security issues affecting the Hosted Applications or failure to meet the Uptime SLA (defined in Exhibit A-2) for Hosted Applications when Customer is not in compliance with the Update Process.

**EXHIBIT A-2: SERVICE LEVEL AGREEMENT (SLA)**

If service outages result in a failure of any production instance of a Hosted Application to meet an uptime availability requirement of 99.8% over a calendar month ("Uptime SLA"), Customer’s sole and exclusive remedy shall be a service credit equal to the greater of:

Ten percent (10%) of the subscription fees set forth in the applicable Order Form for the applicable Hosted Application for that calendar month; or

The actual unavailability rate for that calendar month (as an example, if the Hosted Application has an uptime availability of 85% during a calendar month, then the service credit shall be fifteen percent (15%) of the applicable subscription fees for that calendar month).

The following events shall be excluded in calculating Uptime SLA:

- Planned maintenance windows, which are described at [https://success.coupa.com/Success/Release_Management/03_Maintenance_Windows](https://success.coupa.com/Success/Release_Management/03_Maintenance_Windows); and

- Emergency maintenance required to address an exigent situation with the Hosted Application or Coupa Platform that if not addressed on an emergency basis could result in material harm to the Hosted Application or Coupa Platform. Coupa shall provide advance notice of emergency maintenance via the Support Portal to the extent practicable.
Any unavailability caused by circumstances beyond Coupa’s reasonable control, including without limitation, unavailability due to Customer or its Users’ acts or omissions, a Force Majeure Event, Internet service provider failures or delays, failure or malfunction of equipment or systems not belonging to or controlled by Coupa, Items (a) – (c) collectively, “Excused Downtime”.

Coupa reserves the right to perform planned maintenance outside the target periods above if circumstances require, and Coupa shall provide prior notice to Customer via the Support Portal before doing so.

Uptime SLA is calculated as follows:

\[
\frac{(x - y - z)}{(x - z)} \times 100
\]

where:

- \(x\) = total number of minutes in a calendar month
- \(y\) = downtime that is not excluded
- \(z\) = Excused Downtime (as defined above)

Customer must request all service credits in writing to Coupa within thirty (30) days of the end of the month in which the Uptime SLA was not met, including identifying the period Customer’s production instance of the Hosted Applications was not available. Coupa shall apply the service credit during Customer’s next billing cycle unless the service credit is reasonably disputed by Coupa, in which case Customer and Coupa shall work together in good faith to resolve such dispute in a timely manner. The total amount of service credits for any month may not exceed the applicable monthly subscription fee for the affected Hosted Applications, and has no cash value (unless a service credit is owed at the termination or expiration of this Agreement without a renewal order, in which case, such service credit shall be paid to Customer within ninety (90) days of the end of the Subscription Term.). Uptime and other system performance metrics can be found on trust.coupa.com.

EXHIBIT A-3: DATA SECURITY MEASURES

The following terms may be updated from time to time, however, for each Order Form, terms effective as of execution of the Order Form shall apply for the duration of the applicable Subscription Term.

(A) ORGANIZATIONAL ACCESS CONTROL

Control Environment. Coupa employees are required to sign a written acknowledgement form documenting their receipt and understanding of the employment handbook and their responsibility for adhering to the policies and procedures therein. Employees are also required to sign a confidentiality agreement agreeing not to disclose proprietary or confidential information, including client information, to unauthorized parties.

Access Administration. Coupa employees do not have direct access to Customer Data, except where necessary for Technical Support, system management, maintenance, backups and other purposes separately authorized by Customer in writing. Access to Customer Data is further restricted to technical and customer support staff on a need-to-know basis. When an employee or contractor no longer has a business need for these privileges, his or her access is revoked in a timely manner, even if he or she continues to be an employee or contractor of Coupa. Coupa’s policies require Coupa personnel to report any known security incidents to Coupa management, including the Coupa Security Officer, for investigation and action.

Personnel Screening. Criminal background checks are performed for employees with access to Customer Data as a component of the hiring process.

Security Awareness and Training. Coupa maintains a security awareness program that includes appropriate training of Coupa personnel on Coupa’s security program. Training is conducted at the time of hire and periodically in accordance with the Coupa Information Security Policy.

Subprocessors and Data Transfer. Coupa may engage Subprocessors and other Third-Party Suppliers (each as defined below) to perform some of its obligations under the Agreement. Coupa shall ensure that Subprocessors only access and use Customer Data in accordance with the terms of the Agreement and that they are bound by written obligations to protect Customer Data. At the written request of Customer, Coupa shall provide additional information regarding Third Party Suppliers and their locations. Customer may send such requests to Data Privacy Officer at legalnotices@coupa.com. “Third-Party Suppliers” means third-party contractors and suppliers engaged by Coupa in the context of the provision of the Hosted Applications orCoupa Platform. “Subprocessors” means those Coupa Affiliates and Third-Party Suppliers that have access to, and process, Customer Data. As part of providing the Hosted Applications or Coupa Platform, Coupa may transfer, store and process Customer Data in the Europe Economic Area, United States of America, and India or any other country in which Coupa and its Subprocessors maintain facilities.

Business Continuity Management Process. Coupa shall maintain a business continuity plan (BCP) that defines the processes and procedures for the company to follow in the event of a disaster and shall review and shall regularly test Coupa’s disaster recovery plan to ensure that it is capable of recovering Coupa assets and continuing key Coupa business processes in a timely manner.

(B) PHYSICAL ACCESS CONTROL

Physical Protection of the Data Centers. Physical access to data centers is strictly controlled by the cloud infrastructure provider ("IaaS Provider") both at the perimeter and at building ingress points by security staff. Authorized staff must pass a two-factor authentication to access data center floors which are monitored by cameras. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff. The IaaS Provider only provides data center access and information to employees and contractors who have a legitimate business need for such privileges. When an employee or contractor no longer has a business need for these privileges, his or her access is immediately revoked, even if he or she continues to be an employee or contractor of the IaaS Provider. All physical access to data centers is logged and audited routinely.

Availability. Data centers are built in various global regions. All data centers are online and serving customers; no data center is “cold.” In case of failure, automated processes move Customer Data traffic away from the affected area.

The datacenters have backup power and environmental protection systems, which are regularly maintained and tested.

Disaster Recovery. Coupa shall create a disaster recovery plan designed to provide appropriate technical and operational controls to deliver a recovery time objective (RTO) of no more than 1 hour and a recovery point objective (RPO) of availability with data loss of no more than 1 hour for the Hosted Applications.

Fire Detection and Suppression. Automatic fire detection and suppression equipment has been installed to reduce risk and damage to data center environments.

Power. The data center electrical power systems are designed to be fully redundant and maintainable without impact to operations, 24 hours a day, and seven days a week. Data center facilities have power backup and environmental protection systems in the event of an electrical failure for critical and essential loads in the facility.

Climate and Temperature. Data centers are conditioned to maintain atmospheric conditions at optimal levels. Personnel and systems monitor and control temperature and humidity at appropriate levels.

Monitoring. The IaaS Provider monitors electrical, mechanical, and life support systems and equipment so that any issues are immediately identified. Preventative maintenance is performed to maintain the continued operability of equipment.

TECHNICAL SECURITY MEASURES

Database Protection. Database infrastructure is completely segregated from the application servers and the Internet via firewalls.

Encryption. All communications are encrypted between the data exporter and the data centers using high-grade encryption (AES-256). Access to Coupa’s on-demand applications and services is only available through secure sessions (https) and only available with an authenticated login and password. Passwords are never transmitted or stored in their original form.

Intrusion Protection. The application infrastructure is protected against intrusion by industry standard firewalls at the network, host, and application levels, and intrusion detection systems across all servers. Customer is prohibited from performing its own penetration on any system of Coupa or its supplier.

Instance Isolation. Different IaaS instances are hosted on the same physical machine and are isolated from each other through the hypervisor layer. All packets pass through this layer, so that another instance has no more access to Customer’s instance than any other host on the Internet – the instances look like they are on separate physical hosts. Customer instances in the IaaS infrastructure have no access to raw disk devices, but instead are presented with virtualized disks.

Malicious Software Protection. Coupa and the IaaS Provider shall ensure that the Hosted Applications and the Coupa Platform include reasonably up-to-date versions of system security agent software which shall include reasonably current and tested malware protection, patches and anti-virus protection.

RETURN OF CUSTOMER DATA

Customer will have a period of 30 days after the effective date of termination of the Agreement (“Transition Period”) to download any available data produced by the Hosted Applications (“Transactional Data”) based on Customer Data. Customer may seek assistance from Coupa during the Transition Period to download large files of the Transactional Data. Upon such request, Coupa will promptly make available for download Transactional Data in comma separated value (.csv) format along with attachments in their native format. For clarity, such Transactional Data will not include system generated log files or Coupa specific configuration data. After such Transition Period, Coupa shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

EXCLUSIONS

If Customer installs, uses, or enables third party services that interoperate with the Hosted Applications then the Hosted Applications may allow such third party services to access, use, or otherwise process and transmit Customer Data. Coupa’s Security Program does not apply to any processing, storage, or transmission of any such Customer Data, and Coupa is not responsible for the security practices (or any acts or omissions) of such third party service providers with respect to data transmitted to and from such third party services. The Security Program excludes: (i) data or information shared with Coupa that is not stored in the applicable Coupa Platform; (ii) data in Customer’s virtual private network (VPN) or a third party network other than one that is under a subcontract with Coupa to assist Coupa in fulfilling its obligations in the Agreement; or (iii) any data used, processed, stored or transmitted by Customer or Users in violation of this Agreement.

***
EC America Rider to Coursera, Inc. Terms and Conditions (for U.S. Government End Users)

Scope. This Rider and the attached Coursera, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4(u) Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee” or “Organization”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-82, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) shall take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Termination shall be governed by the FAR. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act (41 U.S.C. §§ 7101-7109), the Tucker Act (28 U.S.C. § 1491), the Administrative Procedures Act (5 U.S.C. §§ 701-706), and the Federal Tort Claims Act (28 U.S.C. § 1346(b)), and other applicable Federal law, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States, except as otherwise set forth in the Manufacturer’s Specific Terms. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. While equitable remedies are generally not awarded against the Government absent a statute providing therefore, it is not the intention of either party to waive any rights it may have to seek an equitable remedy in any court of competent jurisdiction. All clauses in the Manufacturer Specific Terms referencing equitable remedies which are expressly prohibited by applicable Federal Law are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
Excusable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall promptly notify the Contracting Officer in writing after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with commercially reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor when the Contractor is indemnifying the Government are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute. Notwithstanding the foregoing, Contractor shall not be bound by any settlement or waiver of rights that is entered into by the Government without the Manufacturer’s prior written consent.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412). Notwithstanding the foregoing, the GSA Customer shall make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 C.F.R. Part 1315.

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, the Contract Disputes Act, and other applicable Federal Law.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a
Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider nor the Manufacturer’s Specific Terms nor the Contractor’s Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the Order of Precedence clause in FAR 52.212-4(s) shall govern. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Obligations.

As of the Launch Date (as defined herein), Coursera grants to Organization and its users ("Users") a non-exclusive, non-transferable, revocable right to access and use the User Services and Content Services (collectively, "Services") subject to the terms and conditions set forth in this Order Form. "Launch Date" shall mean the date that Coursera gives "super administrator" access to Organization, which shall give Organization the ability to invite Users to access the Content Services. The Launch Date shall be evidenced by an email notification to Organization. "User Services" means (i) customized landing page featuring the Organization logo and selected courses, (ii) User engagement reports, (iii) payment solution(s) that allow Users to seamlessly access premium course experiences and skip checkout, and (iv) enterprise-level User support. "Content Services" means access to Coursera's Course and/or Specialization certificate service, including access to Course assessments and grades, for certain massive open online content offerings to be mutually agreed upon in writing by Coursera and Organization. "Courses" or "Specializations" means courses and specializations from the world's top universities and instructors, for consumption via the proprietary platform developed by Coursera ("Platform"). "User License" means the right for a single User to access the Content Services for an unlimited number of Enrollments. "Enrollment" means registration to participate in a single Course, and such Enrollment shall be deemed used once a User registers for a Course and does not either (i) manually opt out or (ii) automatically unenrolled due to low activity, in both cases during the trial period. User Licenses are transferable among Users, provided however, Users will lose paid access to all then enrolled Courses if they are not holding a User License (or other paid Enrollment) through completion of such Courses. If a Course or Specialization becomes unavailable prior to the end of the Term, Coursera may replace such Course or Specialization with a reasonable alternative Course or Specialization. The Courses and Specializations offered in the Coursera for Business catalogue are determined by such factors as availability, pricing, and other restrictions.

If Organization has opted to (1) create a learning plan for its users, (2) implement Single Sign-On ("SSO") or (3) request that Coursera integrate with its learning management system ("LMS"), Organization shall reasonably and timely provide Coursera with all requested materials, APIs, systems information, Course and/or Specialization choices, and any other cooperation necessary to allow the Platform to be implemented (including testing and debugging) on or before the Launch Date. Organization will collaborate with Coursera to jointly market and promote the relationship contemplated by this Order Form as well as the value of Coursera services to Organization. Coursera may, in accordance with Organization's branding guidelines, use Organization's name and logo(s) to list Organization as a customer and create mutually acceptable case studies highlighting the relationship of the Parties. Coursera may identify Organization and provide the number of participating Organization Users to the creators and instructors of Course, Coursera’s Specializations accessed by Organization's Users. Neither Party will, without the prior written approval of the other Party, issue any public statements or promotional materials disclosing the existence of this Order Form or the performance of Services hereunder. In addition, the Parties may, subject to mutual agreement as to the specific content, issue joint publicity materials, including, but not limited to, press releases. Other than as set forth herein, neither Party will, without the prior written approval of the other Party, issue any public statements or promotional materials disclosing the existence of this Order Form or the performance of Services hereunder. Coursera recognizes that when the end user is the Federal Government neither the Order Form nor this Agreement is confidential; provided, however, the Organization shall, in accordance with their regulations and standard operating procedures, give Coursera prior written notice and an opportunity to redact confidential or proprietary information prior to any public release or disclosure of this Agreement or an Order Form.

In order to allow the Parties to evaluate the effectiveness of Course content for Organization training purposes and for purposes of allowing Coursera to continually improve upon its Platform and related offerings, Coursera will provide aggregate level data about the participation of Users in Courses selected and paid for by Organization, subject to and in accordance with Coursera’s privacy policies attached hereto as Attachment A and incorporated by this reference. The Parties will cooperate to ensure each User's compliance with Coursera's user policies. Each party will respect the confidentiality and privacy of such User data and operate in accordance with applicable law with respect to its use and handling of same. Organization agrees to implement and maintain technical and organizational measures and procedures to ensure an appropriate level of security for participants' personal information, including protecting such personal information against the risks of accidental, unlawful or unauthorized destruction, loss, alteration, disclosure, dissemination or access.

The rights set out in Section 1(a) do not include the right to, and Organization will not (either directly or indirectly): (i) copy, sublicense, rent, lease, barter, swap, resell, or commercialize the Platform, Courses, or Specializations, in whole or in part; (ii) transfer, transmit, enable, or allow access to or use of the Platform, Courses, or Specializations, whether in whole or in part, by any means, to a third party; (iii) create external derivative works of the Platform, Courses, or Specializations; (iv) use the Platform, Courses, or Specializations in any manner that is fraudulent, deceptive, threatening, harassing, defamatory, unlawful, illegal, obscene, or otherwise objectionable in Coursera's reasonable discretion; (v) "crawl," "scrape," "spider," or otherwise copy or store any portion of the Platform, Courses, or Specializations for any purpose not contemplated under this Order Form (e.g., in order to mimic the functionality and/or output of the Platform, Courses, or Specializations, in whole or in part); (vi) disassemble, reverse engineer, decompile, or otherwise attempt to obtain the source code or underlying logic of any portion of the

¹ For internal accounting purposes, Coursera will allocate 70% of these fees for Content Services and 30% for User Services.
Platform, Courses, or Specializations; (vii) use the Platform, Courses, or Specializations as part of any machine learning or similar algorithmic activity; or (viii) publish or distribute the Platform, Courses, or Specializations, or materials derived from the Platform, Courses, or Specializations, to third parties.

**Intellectual Property.** Coursera retains all rights, titles, and interests in and to the Platform, Courses, and Specializations and improvements thereto, together with any tools, materials, specifications, guidelines, and instructions provided by Coursera to Organization, as well as all intellectual property rights, including all copyrights, trademarks, patents, rights in databases, goodwill, trade secrets, and moral rights. Organization will not remove, obscure, or alter any copyright or trademark notices or other notices provided in or through the Platform, Courses, or Specializations. Any rights not expressly granted to Organization in this Order Form are reserved by Coursera.

**Fees and Billing.** The GSA Schedule Contract Holder will invoice Organization for the Fees set forth herein upon execution of an Order Form. Organization will pay the invoice on the payment terms set forth in this Order Form in accordance with the GSA Schedule Pricelist.

**Taxes.** The GSA Schedule Contract Holder shall state separately on invoices taxes excluded from the fees, and the Organization agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Term.** The term of this Order Form shall commence on the Effective Date and shall continue in full force and effect for the agreed upon period from the Launch Date, unless terminated in accordance with Section 6 (Termination) (the "Term"). Upon expiration of the Term, access to the Platform will no longer be made available by Coursera under this Order Form (including paid access to uncompleted Courses).

**Termination.**

**Termination for Breach.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under FAR 52.233-1, Disputes. During the pendency of any dispute under FAR 52.233-1, Disputes, Coursera shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement.

**Effects of Expiration or Termination.** Upon expiration or termination of this Order Form for any reason: (i) all rights granted and obligations incurred by one Party to the other that are intended to cease upon expiration or termination will cease immediately; (ii) upon request each Party will promptly return or destroy all Confidential Information of the other Party; and (iii) all Services shall immediately cease.

**Confidential Information.**

**Obligations.** Each Party will: (i) protect the other Party’s Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (ii) not disclose the Confidential Information, except to affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential and who are trained and reliable. Each Party (and any affiliates, employees, and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Order Form, while using reasonable care to protect it. Each Party is responsible for any actions of its affiliates, employees, and agents in violation of this section. “Confidential Information” means information disclosed by a Party to the other Party under this Order Form that is marked as confidential or would normally be considered confidential under the circumstances.

**Exceptions.** Confidential Information does not include information that: (i) the recipient of the Confidential Information already knew; (ii) becomes public through no fault of the recipient; (iii) was independently developed by the recipient; or (iv) was rightfully given to the recipient by another Party.

**Required Disclosure.** Each Party may disclose the other Party’s Confidential Information when required by law and must notify the other party of such disclosure. Coursera recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, (“FOIA”) which may require that certain information be released, despite being characterized as “confidential” by the vendor. Organization shall give Coursera prior written notice and an opportunity to redact pricing and other sensitive information in connection with any FOIA request.

**Representations and Disclaimers.**

**Representations.** Each Party represents that: (i) it has full power and authority to enter into the Order Form; and (ii) it will comply with all laws and regulations applicable to its performance of its obligations under this Order Form. Notwithstanding any other provision of this Order Form, neither Party shall take any action or omit to take any action under this Order Form or in connection with its business that would cause it to be in violation, in any applicable jurisdiction, of: (i) antitrust and anticompetitive laws and regulations, including but not limited to the Foreign Corrupt Practices Act (U.S) and The Bribery Act 2010 (U.K.); or (ii) anti-money laundering laws or regulations. Organization represents that it is in compliance with the various economic sanctions programs administered by the U.S. Department of Treasury’s Office of Foreign Assets Control and that Organization is not currently listed on any Excluded or Denied Party List maintained by any U.S. Government agency.

**Limited Warranty and Disclaimers.** COURSERA WARRANTS THAT THE PRODUCTS AND SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCTS AND SERVICES, WRITTEN MATERIALS ACCOMPANYING IT. ORGANIZATION’S SOLE REMEDY, AND COURSERA’S SOLE OBLIGATION UNDER THE FOREGOING WARRANTY SHALL BE THE ENTERPRISE-LEVEL USER SUPPORT AND COURSERA’S USE OF COMMERCIALLY REASONABLE EFFORTS TO HAVE THE PRODUCTS AND SERVICES PERFORM IN SUBSTANTIAL COMPLIANCE WITH THE WRITTEN MATERIALS ACCOMPANYING IT. ORGANIZATION’S RIGHTS AND COURSERA’S OBLIGATIONS ARE CONDITIONED ON COURSERA RECEIVING WRITTEN NOTICE FROM THE ORGANIZATION DURING THE WARRANTY PERIOD THAT PROVIDES A COMPLETE DESCRIPTION OF THE ALLEGED DEFECT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NONINFRINGEMENT. COURSERA PROVIDES ITS PRODUCTS AND SERVICES “AS IS” AND DOES NOT WARRANT THAT THE OPERATION OF ITS PRODUCTS AND SERVICES WILL BE ERROR-FREE OR
UNINTERRUPTED. COURSERA MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH ITS PRODUCTS AND SERVICES.

Government Contracts. If this Order Form is entered into by a U.S. Government agency, the Order Form shall be modified as follows:

Add the following paragraph (c) to Paragraph 6, "Termination": “Termination for the Government’s convenience. Organization reserves the right to terminate this Order Form, or any part hereof, for its sole convenience. In the event of such termination, Coursera shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Order Form, Coursera shall be entitled to receive and retain payment in the amount of the Order Form prorated price for products and services provided prior to the termination date, plus reasonable charges Coursera can demonstrate to the satisfaction of Organization using its standard record keeping system, have resulted from the termination. For clarity, subscription purchases are deemed consumed in their entirety upon purchase. Organization will only pay such reasonable fees as are legal. Coursera shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. Subject to GSA Schedule Contract Clause 552.215-70, Examination of Records by GSA (Multiple Award Schedule). This paragraph does not give the GSA Schedule Contract Holder any right to audit Coursera’s records. Coursera shall not be paid for any work performed or costs incurred which reasonably could have been avoided.”

Add the following to Paragraph 7(c), “Confidential Information – Required Disclosures”: “Any provisions that require Organization to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. § 552.”

Remove Paragraph 10(a), “Indemnification - By Organization.”

Replace Paragraph 12(b), “Miscellaneous - Assignment with the following: “All clauses regarding assignment are subject to FAR clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements.”

Replace Paragraph 12(i), “Miscellaneous - Governing Law” with the following: “This Order Form shall be governed by and interpreted according to applicable federal law. Any disputes involving the Order Form shall be handled in accordance with FAR clause 52.212-4(d), "Disputes.”

If this Order Form is entered into by a U.S. Government agency or in support of a U.S. Government contract, Coursera expressly rejects any Federal Acquisition Regulation (FAR) clause or FAR agency supplemental clause that is not a required flowdown for a firm-fixed-price, commercial item subcontract. Only the FAR clauses below are incorporated herein and are made part of this Order Form, provided the conditions described below apply to the Order Form, and all other FAR and FAR agency supplemental clauses are hereby rejected, unless Coursera expressly agrees to such clauses in writing.

52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015) (if the Order Form exceeds $5.5M and has a performance period of more than 120 days)

52.219-8 Utilization of Small Business Concerns (Oct 2014)

52.222-21 Prohibition of Segregated Facilities (Apr 2015)
52.222-26 Equal Opportunity (Sep 2016)
52.222-35 Equal Opportunity for Veterans (Oct 2015) (if the Order Form equals or exceeds $150,000)
52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) (if the Order Form exceeds $15,000)
52.222-37 Employment Reports on Veterans (Feb 2016) (if the Order Form equals or exceeds $150,000)
52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011)
52.222-50 Combating Trafficking in Persons (Mar 2015)
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)

Indemnification.

Reserved.

By Coursera. Coursera will indemnify, have the right to intervene to defend, and hold harmless Organization from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of a third party claim that Coursera’s technology used to provide the Platform or any Coursera brand features used in accordance with this Order Form infringe or misappropriate any intellectual property rights of such third party. Notwithstanding the foregoing, in no event shall Coursera have any obligations or liability under this section arising from: (i) use of the Platform or Coursera brand features in a modified form or in combination with materials not furnished by Coursera; or (ii) any content, information, or data provided by Organization, Users, or other third parties.

General. The Party seeking indemnification will promptly notify the other Party of the claim and cooperate with the other Party in defending the claim. The indemnifying Party has control and authority over the defense, except that: (i) any settlement requiring the Party seeking indemnification to admit liability or to pay any money will require that Party’s prior written consent, such consent not to be unreasonably withheld or delayed; and (ii) the other Party may join in the defense with its own counsel at its own expense. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., at its own sole expense and pursuant to its jurisdictional statute 28 U.S.C. §516. THE INDEMNITIES ABOVE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

Limitation of Liability.

Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS ORDER FORM FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS ORDER FORM FOR MORE THAN THE AMOUNT PAID OR PAYABLE BY ORGANIZATION TO COURSERA FOR THE PURCHASE ORDER(S) GIVING RISE TO THE CLAIM.
Exceptions to Limitations. These limitations of liability do not apply to breaches of confidentiality obligations, violations of a Party’s intellectual property rights by the other Party, or indemnification obligations. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Miscellaneous.

Notices. All notices must be in writing and addressed to the attention of the other Party’s legal department and primary point of contact. Notice will be deemed given: (i) when verified by written receipt if sent by personal or overnight courier, when received if sent by mail without verification of receipt, or within five business days of posting if sent by registered or certified post; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or by email to the fax number or email address, as applicable, explicitly provided by one Party to the other Party for this purpose, provided that if a notice is sent by email to Coursera, a copy must also be sent to legal-notices@coursera.org.

Assignment. Neither Party may assign or transfer any part of this Order Form without the written consent of the other Party.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

No Waiver. Failure to enforce any provision of this Order Form will not constitute a waiver.

Severability. If any provision of this Order Form is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision’s essential purpose, and the remainder of this Order Form will continue in full force and effect.

No Agency. The parties are independent contractors, and this Order Form does not create an agency, partnership, or joint venture.

No Third-Party Beneficiaries. There are no third-party beneficiaries to this Order Form.

Equitable Relief. Nothing in this Order Form will limit either Party’s ability to seek equitable relief if permitted by law.

Governing Law. This Order Form is governed by the applicable Federal law of the United States.

Amendments. Any amendment must be in writing and expressly state that it is amending this Order Form. The enforceability, terms and conditions of this Agreement shall not be affected, amended or superseded by the issuance or acceptance of a purchase order delivered for the Services that are the subject of this Agreement.

Survival. Those provisions that by their nature should survive termination of this Order Form, will survive termination of this Order Form.

Entire Order Form. This Order Form, and all documents referenced herein and attached hereto, is the parties’ entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.

Counterparts. The parties may enter into this Order Form in counterparts, including facsimile, PDF, or other electronic copies, which taken together will constitute one instrument.

[The remainder of this page left intentionally blank]
Attachment A

DATA PROTECTION ADDENDUM

"Data Protection Laws" means any laws and regulations in any relevant jurisdiction, relating to privacy or the use or processing of data relating to natural persons, including without limitation: (a) EU Regulation 2016/679 ("GDPR") and any laws or regulations ratifying, implementing, adopting, supplementing, or replacing GDPR; and (b) the California Consumer Privacy Act of 2018 ("CCPA") and any laws or regulations ratifying, implementing, adopting, supplementing, or replacing the CCPA; in each case, to the extent in force, and as such are updated, amended, or replaced from time to time.

"DP Regulator" means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws. "Privacy Shield" means the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks as administered by the U.S. Department of Commerce.

Data protection

The terms "Data Subject", "Data Controller", "Personal Data" and "processing" shall have the meanings set out in GDPR, except to the extent that any personal data or information applies to a California resident, in which case the equivalent and/or additional meanings (including for “Business”, “Service Provider”, and “Resident”) set out in the CCPA, shall apply.

Coursera shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement. Ordering Activity shall comply with United States Federal Data Protection Laws, but is not bound by the obligations of the GDPR, or the CCPA.

Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

For avoidance of doubt, Coursera is the processor of the Personal Data your organization provides in order to invite users to the Coursera platform (such as name and email address) ("Invitation Data"). Coursera is the controller of user data, information that is confirmed, inputted, or generated by users on the Coursera platform.
Coursera, in its capacity as a processor of Invitation Data, uses the following subprocessors to carry out its processing activities:

<table>
<thead>
<tr>
<th>Subprocessor Name</th>
<th>Purpose</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amazon Web Services, Inc.</td>
<td>Cloud service provider</td>
<td>Virginia, USA and Oregon, USA</td>
</tr>
<tr>
<td>Message Systems, Inc. (DBA Sparkpost)</td>
<td>Cloud-based email service</td>
<td>USA</td>
</tr>
</tbody>
</table>

Your organization grants Coursera permission to use the above named subprocessors (that may change from time to time) in order to send invitation messages to the employees you designate to Coursera.

To the extent that Coursera (the "Receiving Party") receives Invitation Data from the other party (the "Providing Party"), the Receiving Party, acting as a new Data Processor/Service Provider of such Invitation Data, shall:

- comply with the provisions and obligations imposed on it as a Data Processor/Service Provider by Data Protection Laws at all times;

- take reasonable steps to ensure the reliability of all its personnel who have access to such Invitation Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Invitation Data;

- implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Invitation Data, including protecting such Invitation Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access;

- not transfer such Invitation Data outside the European Economic Area unless in accordance with applicable Data Protection Laws and, as applicable, in accordance with;

- the Privacy Shield framework; or

- Standard Contractual Clauses;
inform the Providing Party within 48 hours of becoming aware that any such Invitation Data is (while within the Receiving Party or its subprocessor’ or affiliates’ possession or control) subject to a personal data breach (as defined in Article 4 of GDPR) or is lost or destroyed or becomes damaged, corrupted or unusable;

provide to the Providing Party and any DP Regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause and/or Data Protection Laws;

notify the Providing Party within two (2) business days if it receives a request from a Data Subject to exercise their rights under the Data Protection Laws in relation to that Data Subject's Invitation Data; and

provide the Providing Party with its full co-operation and assistance in relation to any request made by a Data Subject to exercise their rights under the Data Protection Laws in relation to that Data Subject's Invitation Data.

To the extent that a Receiving Party receives any Personal Data from the Providing Party, the Providing Party warrants and represents that it has the right under applicable Data Protection Laws to share such Personal Data with the Receiving Party and that, where applicable, it has obtained all necessary consents from the Data Subjects whose Personal Data is being shared to do so.

If either party receives any complaint, notice, or communication which relates directly or indirectly to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other party and it shall provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

To the extent that a party is a Service Provider, as that term is defined in the CCPA, that party certifies that it shall not (a) sell the Invitation Data, (b) retain, use, or disclose the Invitation Data for any purpose other than for the specific purpose of performing its obligations under the Agreement, or (c) retain, use, or disclose the Invitation Data outside of the direct business relationship between the parties.

Please note that we review our privacy practices from time to time, and that these practices are subject to change. Any change, update, or modification will be effective immediately upon posting.
STANDARD CONTRACTUAL CLAUSES (Processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: Organization specified in the relevant order form
Address: As specified in the order form
Tel.: As specified in the order form; fax: As specified in the order form; e-mail: As specified in the order form

And

Name of the data importing organisation: Coursera, Inc.
Address:

381 E. Evelyn Ave., Mountain View, CA 94041

Tel.: (650) 963-9884; fax: (650) 265-2681; e-mail: privacy@coursera.org

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions
For the purposes of the Clauses:

‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

‘the data exporter’ means the controller who transfers the personal data;

‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.
Clause 3

Third-party beneficiary clause

The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter’s behalf and in accordance with the applicable data protection law and the Clauses;

that the data importer will provide sufficient guarantees in respect of the technical and organisational
security measures specified in Appendix 2 to this contract;

that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

that it will ensure compliance with the security measures;

that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:
to process the personal data only on behalf of the data exporter and in compliance with its instructions and the
Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter
of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or
terminate the contract;

that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received
from the data exporter and its obligations under the contract and that in the event of a change in this legislation
which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will
promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to
suspend the transfer of data and/or terminate the contract;

that it has implemented the technical and organisational security measures specified in Appendix 2 before
processing the personal data transferred;

that it will promptly notify the data exporter about:

any legally binding request for disclosure of the personal data by a law enforcement authority unless
otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law
enforcement investigation,

any accidental or unauthorised access, and

any request received directly from the data subjects without responding to that request, unless it has been
otherwise authorised to do so;

to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal
data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of
the data transferred;

at the request of the data exporter to submit its data processing facilities for audit of the processing activities
covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of
independent members and in possession of the required professional qualifications bound by a duty of
confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

to make available to the data subject upon request a copy of the Clauses, or any existing contract for
subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

that the processing services by the subprocessor will be carried out in accordance with Clause 11;

to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.
Mediation and jurisdiction
The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely the location of the data exporter.
Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor’s obligations under such agreement.

The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the location of the data exporter.

The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter’s data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless
legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.
APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

**Data exporter** The data exporter is: The Organization that will be using the data importer’s learning platform.

**Data importer** The data importer is: An online learning and training platform.

**Data subjects** The personal data transferred concern the following categories of data subjects: Employees or affiliates of the data exporter.

**Categories of data** The personal data transferred concern the following categories of data: Primarily name and email address, potentially other fields such as employee ID to properly send invitations.

**Special categories of data (if appropriate)** The personal data transferred concern the following special categories of data: None.

**Processing operations** The personal data transferred will be subject to the following basic processing activities: Inviting data subjects to the data importer’s platform.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES
This Appendix forms part of the Clauses and must be completed and signed by the parties. Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

**INFORMATION, PHYSICAL, AND ORGANISATIONAL SECURITY STANDARDS**

Data Importer maintains a risk-based approach to security assessments and will provide adequate and appropriate administrative, physical, technical, and organizational safeguards to uphold the protection, confidentiality, integrity, availability, and security of information covered by these Standard Contractual Clauses. Data Importer will not materially decrease the security standards contemplated at the time of contracting.

Security measures will be designed to:

- deny unauthorized persons access to equipment used for processing personal data;
- prevent unauthorized reading, copying, modification, or removal of media containing personal data;
- prevent unauthorized input of personal data and unauthorized inspection, modification, or deletion of personal data;
- prevent use of automated data-processing systems by unauthorized persons;
- provide that persons authorized to use an automated data-processing system only have access to the personal data covered by their access authorization;
- enable Data Importer to verify and establish what personal data has been or may be transmitted or made available; and
- include commercially reasonable disaster recovery procedures to provide for the continuation of services under the Agreement and backup of personal data.

Where appropriate, data will be encrypted in transmission and at rest, using industry-standard cryptographic techniques and secure management of keys.

Data Importer will take reasonable steps to ensure the reliability of its employees and other personnel having access to personal data covered by these Standard Contractual Clauses, and will limit access to such data to those personnel who have a business need to have access to such data, and have received reasonable training regarding the handling of personal data and pursuant to relevant Data Protection Laws.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached CyberSponse Federal, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted by the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et.seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 518 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.227-14, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 (Juni 2002) and the Office of Legal Counsel opinion dated March 12, 2012 prohibiting such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges
or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 522.03-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

**CYBERSPONSE FEDERAL LICENSE, WARRANTY AND SUPPORT TERMS**

**ON PREMISE SERVICE AGREEMENT**

This On Premise Service Agreement (the “Agreement”) sets forth the terms and conditions governing CyberSponse’s provision to Customer of a On Premise incident response solution.

**ON PREMISE SERVICE AGREEMENT – ADDITIONAL TERMS AND CONDITIONS**

1. **DEFINITIONS.**
   - “Affiliate” means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where “control” means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).
   - “Customer Data” means all electronic data submitted by Customer to the On Premise Service network.
   - “Deliverable” is any work developed or created by CyberSponse during the course of providing support or Professional Services to Customer. A Deliverable does not include any Customer Data or Customer Confidential Information.
   - “Documentation” means the description of the software contained in the then current software data sheet, a copy of which will be provided by CyberSponse to Customer upon request.
   - “On Premise Service” means CyberSponse software provided, under a limited license, for Customer use on Customer systems.
   - “Mobile SDK” means CyberSponse’s mobile/tablet Software Development Kits.
   - “Professional Services” means the activation, implementation, training, and other consulting and professional services provided by CyberSponse to Customer as specified in a Statement of Work.
   - “Schedule” means an ordering document for the On Premise Service that is signed by CyberSponse and Customer. Each Schedule will reference and be subject to this Agreement. The initial Schedule entered into under this Agreement is attached as Schedule A-1.
   - “Statement of Work” or “SOW” means the document that describes the Professional Services provided by CyberSponse to Customer. Each Statement of Work will reference and be subject to this Agreement.
   - “Subscription Fees” means the fees paid by Customer for the right to access and use the On Premise Service and receive Support during the applicable Term.
   - “Transaction” has the meaning specified in the applicable Schedule.
   - “Users” means Customer’s employees, agents, contractors, and consultants who are authorized by Customer to use the On Premise Service.

2. **PROVISION OF THE ON PREMISE SERVICE.**
   a. **Availability and Use of the On Premise Service.**
      CyberSponse will make the On Premise Service available to Customer in accordance with each Schedule entered into by the parties and the then current Documentation. Customer’s use of the On Premise Service is limited to its internal business purposes solely for the scope and use limitations specified in the applicable Schedule.
   b. **Software Provided for Use with the On Premise Service.**
      The Application. Subject to the terms and conditions set forth in this Agreement, CyberSponse grants Customer the nonexclusive, non-transferable, worldwide, internal use only license during the Term to use the application and its component parts.
   c. **Support for the On Premise Service.**
      CyberSponse will provide Customer with the support described in CyberSponse’s then current
technical support policy, a copy of which is attached to this Agreement as Exhibit A.

3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF ON PREMISE SERVICE.

Access to the On Premise Service. Customer is responsible for (i) all activities conducted under its User logins; and (ii) obtaining and maintaining any hardware, software and network infrastructure ("Customer Equipment") and any ancillary services needed to connect to, access or otherwise use the On Premise Service, and ensuring that the Customer Equipment and ancillary services comply with the configuration requirements specified in the Documentation.

Use of the On Premise Service. Customer agrees to use the On Premise Service solely for its internal business purposes. Customer will not: (i) resell, sublicense, lease, time-share or otherwise make the On Premise Service to any third party; (ii) upload or store infringing or unlawful material; (iii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the On Premise Service or the data contained therein; (iv) modify, copy or create derivative works based on the On Premise Service; (v) reverse engineer the On Premise Service; (vi) access the On Premise Service for the purpose of building a competitive product or service or copying its features or user interface; (vii) use the On Premise Service, or permit its use, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without CyberSponse's prior written consent; or (viii) permit access to the On Premise Service, by a direct competitor of CyberSponse.

INTELLECTUAL PROPERTY OWNERSHIP RIGHTS.

By CyberSponse. CyberSponse retains all ownership rights in the On Premise Service (including CyberSponse software and other software utilized to provide the Service), including all intellectual rights in any of the foregoing. CyberSponse grants Customer the nonexclusive, paid-up right to use Deliverables solely for its internal business purposes in connection with its use of the On Premise Service.

By Customer. Customer retains all ownership rights in the Customer Data, including all intellectual rights in the Customer Data. Customer grants CyberSponse the nonexclusive, paid-up right to use the Customer Data to provide the On Premise Service to Customer, including to monitor and improve the Services.

No Other Rights. Except as expressly set forth in this Agreement, neither party grants any rights to the other including any license, right or interest in any CyberSponse or Customer trademark, copyright, trade name or service mark.

RESERVED.

WARRANTIES.

a. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it will comply with all other applicable laws in its performance hereunder.

b. By CyberSponse.

"AS IS" SERVICE. The Software warrants that the SOFTWARE will, for a reasonable period from the date of your receipt, perform substantially in accordance with CyberSponse; SOFTWARE PRODUCT written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SOFTWARE AND SERVICES PROVIDED ARE PROVIDED ON AN "AS IS" BASIS. CYBERSPONSE AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE ON PREMISE SERVICE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CYBERSPONSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE.

FURTHER, CYBERSPONSE MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH THE INTERNET OR THE SERVERS UPON WHICH THE ON PREMISE SERVICE IS PROVIDED. CUSTOMERS ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT CUSTOMER SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

NO LEGAL ADVICE. NOTHING CONTAINED WITHIN THE ON PREMISE SERVICE IS TO BE CONSTRUED AS LEGAL ADVICE. CUSTOMER EXPRESSLY AGREES TO CONSULT WITH ITS OWN INDEPENDENT COUNSEL AND TO NOT RELY ON ANYTHING CONTAINED IN CYBERSPONSE'S SYSTEMS, SOFTWARE, SERVICES, OR ANY OTHER COMMUNICATIONS FOR LEGAL MATTERS. ANY REFERENCE WITHIN THE SERVICES OR SOFTWARE TO LAWS OR REGULATIONS ARE FOR GENERAL REFERENCE ONLY. CUSTOMER UNDERSTANDS THAT IT HAS THE OPPORTUNITY AT ANY TIME DURING THE USE OF THE SERVICES TO REVIEW ALL POTENTIAL COURSES OF ACTION WITH ITS OWN COUNSEL AND AGREES TO TAKE FULL RESPONSIBILITY FOR ITS OWN COMPLIANCE WITH ALL APPLICABLE LEGAL, REGULATORY, AND CONTRACTUAL REQUIREMENTS.

Warranty for Professional Services. CyberSponse warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of three months after completion the Professional Services will conform to the applicable Statement of Work. In the event of any breach of the foregoing warranty, CyberSponse will re-perform the Professional Services or, if CyberSponse is unable to do so, return the fees paid to CyberSponse for the nonconforming Services.

EXHIBIT A TO ON PREMISE SERVICE AGREEMENT

CyberSponse Support Policies

CyberSponse provides support for the On Premise Service as described in this Exhibit.

Communication

Issues or problems (for convenience, each is referred to as an "issue") with the On Premise Service are reported via the web-based customer support tool. In the event the web-based customer support tool is unavailable, the path outlined in the Escalation Section may be used to seek assistance from CyberSponse.

Severity Level Definitions / Response Time Targets / Resolution

Resolution of reported issues with the On Premise Service will depend upon a complete understanding of the variables unique to each situation. CyberSponse will provide routine updates on resolution efforts.

<table>
<thead>
<tr>
<th>Level / Impact</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 – Critical</td>
<td>On Premise Service is down, business operations fail. Customer unable to use, or benefit from critical financial impact on Customer operations. Failure in internal troubleshooting process to eliminate infrastructure (hardware, network, etc). The effect is expected to last for more than 24 hours.</td>
</tr>
<tr>
<td>Severity 2 – Significant</td>
<td>An issue other than a Severity 1 issue in which the use of any one or more functions of the On Premise Service is impaired. Customer, or CyberSponse on Customer's behalf, must avoid on a temporary basis without expenditure, the use of any one or more functions of the On Premise Service</td>
</tr>
</tbody>
</table>
| Severity 3 – Moderate | An issue other than a Severity 1 or Severity 2 data occurs and which Customer, or CyberSponse, reasonably circumvent or avoid on a temporary basis without expenditure of significant time or effort.
Severity 4 – Minimal

A non-critical function or component of the On Premise Service is malfunctioning causing minimal impact on Customer’s business.

Within two business days

After CyberSponse completes its initial investigation of the issue, CyberSponse will label it with one of the following categories and responses:

- Known Defect
  - Fix or workaround is provided to circumvent or correct the issue.
  - If no workaround is available and it is determined that one is required, CyberSponse will work with Customer to find the best feasible workaround.
  - CyberSponse will advise Customer when the issue is resolved and ticket closed.

- New Defect
  - If CyberSponse determines the defect has not been reported before, resolution efforts will be logged into the web-based customer support tool.
    - If the defect is deemed to be high impact, a code fix will be created, tested and released in the On Premise Service. CyberSponse will advise Customer on how soon the fix will be implemented.
    - If the defect is determined to be of lesser impact not requiring immediate implementation of a fix, then CyberSponse may defer the fix. In that event, Customer will be apprised accordingly.
      - Once a plan is created for a future fix, CyberSponse will work as appropriate to resolve the issue.

- Not Product-Related
  - If it is determined that the issue is not related to the On Premise Service, the problem resolution will be Customer’s responsibility. NOTE: Professional Services are available (per an executed Statement of Work) to assist Customer in resolving the issue.
    - Ticket will be closed.

Escalation

Escalation may be initiated from either CyberSponse or Customer (via the following escalation path):
- Online Support
- E-mail Support
- Phone escalation

- CyberSponse Escalation Criteria:
  - Severity 1 issue – If not resolved within 4 hours and no material progress has been made, the issue is escalated within CyberSponse for additional action and resources as needed.
  - Executive management monitors the issue closely until it is resolved.
  - Severity 2 issues – escalated after one business day.
  - Severity 3 issues – escalated after three business days.
  - Severity 4 issues – escalated after five business days.

Requests for Enhancements

Customers are required to use the web-based support tool to submit recommendations or suggestions for enhancements to the On Premise Service. Using the tool for submitting enhancements assists CyberSponse in evaluating and prioritizing the suggestion.

Releases to the On Premise Service

CyberSponse provides and manages all software releases to maintain the On Premise Service at the latest version. CyberSponse does not support versions older than 6 months. Some resolutions may require an upgrade to the most recent release.

Disaster Recovery

Customer is solely responsible for all Disaster Recovery and Business Continuity plans and operations. CyberSponse cannot make any guarantees for Customer systems.

Data Storage

Customer is solely responsible for configuring appropriate backups and redundant systems. CyberSponse cannot make any guarantees for Customer data storage.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Cyviz, LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in unknown occurrence. The Government shall have the option to settle to the Contractor are hereby superseded.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-Of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All GSA clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2421).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation for the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

CYVIZ, LLC

CYVIZ LICENSE, WARRANTY AND SUPPORT TERMS

I. Return to Factory (RTF) Warranty

All Cyviz solutions come with a two-year return to factory (RTF) hardware and software warranty included in the price of the solution. While under RTF warranty, all defective components will be replaced via advanced parts replacement. If the Ordering Activity operates in a 24/7 environment, 24/7 kits will need to be purchased separately. There are separate 24/7 kits, which cover the color wheels and the fans.

II. Start of the RTF Warranty Period

The hardware and software RTF warranty period starts when the Cyviz Solution Architect (SA) obtains a system sign-off from the Ordering Activity. This normally happens at the completion of the installation of the Cyviz solution. The start of the SLA period will also coincide with the start of the RTF warranty period.

III. Extension of the RTF Warranty Period

After the included two-year RTF Warranty for hardware and software, the Ordering Activity may purchase additional warranties in one-year increments up to a total of three (3) additional years. Therefore, the maximum time for the RTF Warranty period for hardware and software is five (5) years. However, certain conditions must be met. The ability to extend the RTF warranty after the initial purchase is an exclusive benefit from the Contractor, through Cyviz.

IV. Conditions to Extend the RTF Warranty Period

During the initial two-year RTF warranty period, it is strongly encouraged for the Ordering Activity to have an SLA in place for preventative maintenance. Starting with the 3rd year, the customer can extend the warranty through hardware and software of the Cyviz solution for up to three (3) additional years, for a maximum of 5 years of RTF warranty. For each of the three additional years, it is strongly encouraged to also have an active SLA.

V. Factory Location for the Warranty

The return to factory (RTF) location is Cyviz Houston, 5555 San Felipe, Suite 1700, Houston, TX 77056 (unless otherwise noted). The Ordering Activity is responsible for shipping defective equipment to the RTF location, and then Contractor, through Cyviz will pay the shipping back to the Ordering Activity. Cyviz will ship ground, but if an Ordering Activity wishes to expedite shipping, then they will have to incur the additional shipping charges. All RTF shipments must have an RMA number.

VI. Ordering Activity Support During RTF Warranty

An Ordering Activity should e-mail support@cyviz.com as a first step to document any issue(s). A telephone call can also be made to support at (CTC Houston) 713-350-6700 after the initial e-mail.

VII. Covered Items Under the RTF Warranty

During the initial two-year RTF warranty period, if Contractor, through Cyviz, determines a product to be defective in material or workmanship, Cyviz will replace the defective part with a similar or like new part. If the issue is determined to be a manufacturing defect, then Cyviz will replace the product with a similar or like new product.

When a hardware and software warranty is in place, the Ordering Activity will receive advance parts replacement in the form of an equipment swap for such products as the Cyviz scalar, XR301 video processor, XPO cards, Xéd Blending Cards, Cyviz Touch Panel, Cyviz CDC computer, and CDC...
software BEFORE the defective equipment is shipped back to Cyviz. This will ensure minimal downtime of a Cyviz solution.

The Cyviz projectors and flat panel monitors are not covered under advance parts replacement. They would need to be sent back to the RTF site FIRST where they would need to be repaired or possibly replaced. It is highly recommended to those Ordering Activities who have a mission critical Cyviz solution to purchase one or more Cyviz spares kits. All LCD/LEDs must be shipped on a pallet (ideally in original packaging) and in a vertical position.

VIII. Equipment Swap During RTF Warranty

It is the Ordering Activity’s responsibility to swap out the defective components with the replacement components during the hardware and software warranty period. If an SLA is in place, and the Ordering Activity can wait, then Contractor, through a Cyviz Solution Architect (SA) or an authorized Cyviz reseller engineer, will visit at the normal SLA interval to swap out the equipment.

If the Ordering Activity does not have the ability to swap out possible defective equipment and cannot wait for the next SLA visit, then the Ordering Activity may purchase a Cyviz Emergency Site Visit (CESV). The Ordering Activity can also receive training on how to perform the equipment swap.

IX. Cyviz Emergency Site Visit (CESV)

For Ordering Activities who purchase a CESV, the response time is 72 business hours. For example, if the Emergency Call happens on a Monday afternoon, one of the Cyviz SA’s would be on-site at the Ordering Activity facility by Friday morning of the same week. If the CESV is not used within a one-year period, it will expire. The CESV cannot be converted to a regular SLA or any portion of an SLA.

X. Innovative Cyviz Technical Certification Training

Ordering Activities who wish to learn how to swap out or replace components may attend the Innovative Cyviz Technical Certification (ICTC) Training Level 1 or Level 2. It is the Ordering Activity’s responsibility to pay for travel and expenses for the training. A more advanced, ICTC Training Level 2 is held in Stavanger, Norway each year.

XI. Service Level Arrangement (SLA)

The Cyviz (SLA) includes full preventative maintenance of the complete Cyviz solution, and will cover ‘regular use’ issues that might arise. A SLA is designed as one (1), two (2) or four (4) visits per year. An SLA4 coincides with a 24/7 environment. Contractor, through Cyviz, will initiate contact with the Ordering Activity and find a mutually agreeable time to schedule the next SLA visit. However, the Ordering Activity must take ultimate responsibility for scheduling the SLA visit.

If an Ordering Activity has more than eight (8) total channels of a Cyviz solution at each distinct location (i.e. a location separated by a reasonable distance), then a Cyviz SLA – Extra Channel charge may apply beyond 8 channels. The parties will discuss and determine if there will be an extra channel charge.

The SLA is not a replacement for the RTF (return to factory) warranty on Cyviz projectors, flat panels or on other Cyviz components.

XII. Work Performed During an SLA Visit

Contractor, through a Cyviz solution architect, a Cyviz certified partner, or a Ordering Activity who has been certified at the Intermediate Cyviz Technical Certification (ICTC) Level 2, may perform the tasks associated with the SLA.

On the SLA visit, the following will happen, (1) Check lamp performance and replace lamps if necessary, (2) replace any malfunctioning components, (3) Fine adjustment of projector alignment, projector or flat panel monitor calibration of colors and brightness, (4) Upgrade of projector or flat panel monitor firmware if needed, (5) Source set up of additional Cyviz components if needed, (6) Upgrade of Cyviz Display Control Software, (7) Adjustment of the Cyviz flexible screen, and (8) Possible re-configuration of the complete system to its original state if the system has been changed/alterated.

Note1 – Extra lamps or projector bulbs must be purchased separately and will need to be delivered to the Ordering Activity PRIOR to the SLA visit.

Note2 – It is the Ordering Activity’s responsibility to inform Cyviz of any malfunctioning equipment. If the Ordering Activity would like an equipment swap to be performed at the next Cyviz SLA visit, then Cyviz will either send the equipment prior to the SLA visit or have the Cyviz SA bring the equipment to the next SLA visit.

Note3 – If the Ordering Activity would like to add additional secondary sources such as monitors, TV tuners, DVD or Blu-ray player, etc. (i.e. non-Cyviz components), then this service will need to be communicated to the Contractor. Additional Cyviz Installation charges may apply.

Note4 – During the time of an SLA visit, the Ordering Activity’s CDC software may be upgraded to the latest version. Unless the Ordering Activity has purchased Cyviz Multi-touch monitor, it is possible certain versions of the CDC software will not compatible with a non-Cyviz personal computer system for controlling the Cyviz solution.

XIII. Failure to Purchase an SLA

If the Ordering Activity decides not to purchase an SLA at the time of the equipment purchase, then two things will happen: (a) the maximum RTF warranty period for hardware and software maintenance will be two (2) years, and (b) it will be the Ordering Activity’s responsibility to perform preventative maintenance.

XIV. Equipment Outside of the RTF Warranty Period

An Ordering Activity’s RTF may expire at the end of two-years, three-years, four-years or at the end of five-years. At the time of the expired Cyviz RTF warranty, it is the Ordering Activity’s responsibility to send defective equipment back to Contractor, through Cyviz, at the Ordering Activity’s cost for possible repair or replacement. Cyviz will determine if said equipment is repairable, and if so, how much to invoice the Ordering Activity. It is the Ordering Activity’s responsibility to pay for travel and expenses for the training. A more advanced, ICTC Training Level 2 is held in Stavanger, Norway each year.

XV. Cyviz Spares Kits

For Ordering Activities who have multiple projectors or multiple flat panels, it is recommended to purchase one or more Cyviz Spares Kits. A Cyviz Spares Kit for Viz3D includes: 1 EVO-2 projector, an extra set of glass filters, 10 pair of stereo glasses, and 2 replacement bulbs. The Cyviz Spares Kit for Bizwall, Vizwall or Clusterwall includes: 1 F32 series projector, 4 replacement bulbs, an XPO.3 or XPO.4 card (if applicable), a Cyviz Scalar, and an edge blending card (if applicable). A Cyviz Spares Kit for Flat Panel Monitor includes 1 46” or 55” LCD/LED with redundant power supply, an XPO.3 or XPO.4 card (if applicable), 5 dynamic CDC clients, and a Cyviz Scalar.

XVI. Other Warranty and SLA Items

(a) The RTF warranty and SLA is non-transferrable, (b) The Ordering Activity should have all serial numbers of projectors, flat panel monitors, electronic components and software handy for smoother support, (c) the Contractor reserves the right to refuse RTF warranty coverage to a Ordering Activity who is not current on his or her warranty payments. (d) the Contractor does not make any claims express or otherwise listed outside of this RTF Warranty and SLA document.
Cyxtera Master Agreement

This Cyxtera Master Agreement (this "MA") is the standard Master Agreement used by Cyxtera Federal Group, Inc. for the Products and Services covered hereunder which EC America, Inc. has adopted for purposes of the resale of such Products and Services to the Ordering Activity issuing an order under the GSA Schedule contract ("Ordering Activity" or "Customer"). All references to Cyxtera Federal Group, Inc. or Cyxtera herein (other than the references in the immediately following sentence) shall be deemed references to EC America, Inc. For avoidance of doubt, nothing herein shall establish privity of contract between Cyxtera and the Ordering Activity. This MA is entered into by and between Cyxtera Federal Group, Inc. ("Cyxtera"), and Customer, and is effective on the Effective Date for this MA. This MA provides the general terms and conditions applicable to Customer's purchase of products and services ("Products" or "Services") under a schedule(s) or service schedule(s) (each, a "Schedule" or "Service Schedule").

Services; Service Schedules. The Schedules incorporated into this Master Agreement as Exhibit A shall set forth the terms and conditions relevant to, and the process for ordering, the Products and Services covered thereby.

Term; Termination.

Term of this MA. The term of this MA will commence on the Effective Date and continue until terminated in accordance with the terms hereof.

Termination Upon Expiration or Termination of all Services. The Agreement will automatically terminate following expiration or termination of the last effective Service being provided or to be provided under a Service Schedule.

Termination for Cause. Recourse for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Contract Disputes Clause, Cyxtera shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Reserved.

Reserved.

Confidentiality.

As used in this Section 5, the term "disclosing party" refers to either party to the Agreement that is disclosing Confidential Information to the other party thereto, and the party receiving such Confidential Information is referred to as the "receiving party". Except as set forth in the Agreement, receiving party shall not, without the prior written consent of the disclosing party, disclose or use the Confidential Information of the disclosing party for any purpose other than in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement. Receiving party will protect the disclosing party's Confidential Information using at least the same degree of care the receiving party uses to protect its own confidential information of a similar nature, but in no event less than commercially reasonable degree of care. Receiving party agrees to limit disclosure and access to the disclosing party's Confidential Information to those of its officers, employees, contractors, attorneys, or other representatives who (a) reasonably require such access in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement, (b) are made aware of the Confidential Information's confidential nature and (c) are subject to confidentiality obligations at least as restrictive as those set forth herein. Nothing in the Agreement shall be deemed or construed to grant to the receiving party a license to sell, develop, exploit or create derivatives of the disclosing party's Confidential Information. A receiving party may disclose the disclosing party's Confidential Information to the extent required to do so by applicable law, provided, that, (i) to the extent legally permissible, the receiving party notifies the disclosing party prior to making any such disclosure so as to enable the disclosing party to seek such protection as may be available to preserve the confidentiality of such Confidential Information and (ii) the receiving party discloses only such information as its counsel advises is legally required to be disclosed.

Notwithstanding the obligations in this Section 5, receiving party's obligations under this Section 5 shall not apply to information that (a) is at the time of disclosure by the disclosing party to the receiving party in the public domain or, at any time thereafter enters the public domain through no breach of this Agreement by the receiving party, (b) is already known to the receiving party at the time of its disclosure by the disclosing party or to the receiving party in the public domain or, at any time thereafter enters the public domain through no breach of this Section 5, by the receiving party, (c) is independently developed by the receiving party without use of or reference to Confidential Information of the disclosing party, or (d) is received by the receiving party from a third party who is not known to the receiving party to be subject to any restriction on disclosure. Promptly following receipt of the disclosing party's written request, the receiving party shall return to the disclosing party the disclosing party's Confidential Information and destroy all copies of the disclosing party's Confidential Information to the extent required to do so by applicable law.

Reserved.
Information retained in standard archival or computer back-up systems or pursuant to the receiving party's normal document or email retention practices, provided, that, the receiving party's obligations under this Section 5 with respect thereto shall survive for two (2) years following the date such Confidential Information is no longer retained pursuant to this sentence (but no less than two (2) years following expiration or termination of the Agreement). Each party's obligations under this Section 5 shall survive for two (2) years following expiration or termination of the Agreement, provided, that, to the extent any of the disclosing party's Confidential Information constitutes a trade secret, the receiving party's obligations under this Section 5 with respect thereto shall survive until such Confidential Information ceases to so constitute a trade secret (but no less than two (2) years following expiration or termination of the Agreement). The receiving party will be responsible for any violation of the terms of this Section 5 committed by its officers, employees, contractors, attorneys or other representatives. Cyxtera recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which, subject to applicable exemptions, requires that certain information be released, despite being characterized as "confidential" by the vendor.

Use of Name and Marks. Notwithstanding anything in this Section Error! Reference source not found., in the event Customer is a U.S. Federal Government Agency, the following shall only be permissible to the extent permitted by GSAR 552.203-71. Each party may reference the other party's status as a customer or vendor, as applicable, of the referencing party in marketing materials, sales presentations, on such referencing party's website and for other valid business purposes. Each party may use the other party's tradenames, and domain names in connection with the foregoing, provided, that, any use thereof by Customer shall be in accordance with Cyxtera's tradename/trademark usage policy, a copy of which is available to Customer upon request. Neither party may issue a press release referencing the other party, directly or indirectly, without such other party's prior written consent.

DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN THE APPLICABLE SERVICE SCHEDULE, (A) ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IS SOLELY AT ITS OWN RISK, (B) CYXTERA DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY, COMPLETENESS, COMPATABILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM, (C) CYXTERA MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY PRODUCT OR SERVICE WILL BE COMPLETELY SECURE, FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF CUSTOMER, AND (D) CYXTERA DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT, THE UNDERLYING GSA SCHEDULE CONTRACT OR ANY PURCHASE ORDER TO THE CONTRARY, ORDERING ACTIVITY'S INFRINGEMENT OR MISAPPROPRIATION OF CYXTERA'S INTELLECTUAL PROPERTY RIGHTS SHALL NOT BE SUBJECT TO ANY LIMITATION OF LIABILITY IN THE AGREEMENT, THE UNDERLYING GSA SCHEDULE CONTRACT OR ANY PURCHASE ORDER.

Intellectual Property. All Products and Services provided under this Agreement are "commercial Items" as that term is defined at 48 C.F.R. § 2.101. All software products are classified as "Commercial Computer Software" and "Commercial Computer Software Documentation" developed at private expense, contain confidential information and trade secrets of Cyxtera and its licensors, and are subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). Cyxtera provides the Products and Services, including any related documentation, technical data, and/or professional services, in accordance with 48 C.F.R. § 12.211 (Technical Data) and FAR 12.212 (Computer Software), and only those rights in technical data and software customarily provided to the public as more fully set forth in the Agreement. In addition, 48 C.F.R. § 252.227-7015 (Technical Data – Commercial Items) apply to technical data and software acquired by Department of Defense agencies. Any U.S. Federal Government Agency shall obtain only those rights in technical data and software customarily provided to the public. If any U.S. Federal Government Agency has a need for rights not conveyed under the terms described in this Section 9, it must negotiate with Cyxtera to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. The terms of this Section 9 regarding U.S. Federal Government Agency rights are in lieu of, and supersede, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data being provided under the Agreement. Except as set forth in the applicable Service Schedule, nothing in the Agreement or the performance thereof shall convey, license or otherwise transfer any right, title or interest (express, implied or otherwise) in any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of a party, its Affiliates or their respective licensors to the other party. Except as set forth in the applicable Service Schedule, Cyxtera's intellectual property and proprietary rights include any skills, know-how, modifications, other enhancements, providing or managing the Service. Customer agrees that it will not, directly or indirectly, circumvent, reverse engineer, decompile, disassemble, reproduce, otherwise attempt to derive source code, trade secrets or other intellectual property, or modify or make derivative works from any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other intellectual property of Cyxtera, its Affiliates or their respective licensors. Customer agrees that it will not disclose or publish performance benchmark results or test results with respect to the Services. Ownership of derivative works should be as set forth in the copyright
statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a
minimum, the Ordering Activity shall receive unlimited rights to use such
derivative works at no further cost.

Miscellaneous

Entire Agreement. The Agreement together with the underlying GSA
Schedule contract, Schedule pricelist and applicable purchase order(s)
constitutes the sole and entire agreement between the parties with
respect to the subject matter thereof and supersedes all prior and
contemporaneous agreements, representations, warranties and
understandings, verbal and/or written, with respect thereto.

Amendments. Except as otherwise set forth in the Agreement, the
Agreement may only be amended, modified, supplemented or revoked
by an instrument in writing signed by both parties.

Waiver. No waiver by any party of any of the provisions hereof shall be (i)
effective unless explicitly set forth in writing and signed by the party so
waiving or (ii) construed as a waiver of the same provision at any time in
the future or of any other provision. No failure to exercise or delay in
exercising any right, remedy, power or privilege arising from the
Agreement shall operate or be construed as a waiver thereof.

Headings. The headings in the Agreement are for reference only and shall
not affect the interpretation of the Agreement.

Severability. If any term or provision of the Agreement is invalid, illegal or
unenforceable in any jurisdiction, such invalidity, illegality or
unenforceability shall not affect any other term or provision of the
Agreement or invalidate or render unenforceable such term or provision
in any other jurisdiction and, in the jurisdiction in which such term or
provision is invalid, illegal or unenforceable, such term or provision will be
modified as nearly as possible to reflect the intentions of the parties so as
to no longer be invalid, illegal or unenforceable in such jurisdiction.

Governing Law. All matters arising out of or relating to the Agreement
shall be governed by and construed in accordance with the Federal laws of
the United States.

Reserved.

Reserved.

Reserved.

Counterparts; Delivery. (i) This MA, (ii) each Service Schedule and (iii)
each other document governed by, or that is incorporated by reference into,
this MA or a Service Schedule, may be executed in two (2) or more
counterparts, each of which shall be deemed an original, but all of which
together shall be deemed to be one and the same instrument. A signed
copy of this MA, any Service Schedule or any such document delivered by
facsimile or other electronic means shall be deemed to have the same
legal effect as delivery of an original signed copy of this MA, such Service
Schedule or such other document, as applicable.

Survival. Notwithstanding anything contained in the Agreement to the
contrary, the terms of any sections of the Agreement which by their
nature are intended to extend beyond expiration or termination of (i) this
MA, (ii) any Service Schedule or (iii) any other document governed by, or
that is incorporated by reference into, this MA or a Service Schedule, will
survive expiration or termination of this MA, such Service Schedule or
such other document, as applicable.

Conflicts. If a conflict exists among provisions within the Agreement,
unless otherwise expressly stated to the contrary, the following order of
precedence will apply in descending order of control:
(i) a negotiated Service Order, Statement of Work, Order Form or Quote
that is executed by Cyxtera and Ordering Activity, (ii) this MA,
(iii) a Service Schedule, (iv) an SLA, (v) a Service Guide or AUP and (vi) any
other document governed by, or that is incorporated by reference into,
this MA or any of the documents referenced in subclauses (iii) through (v)
hereof.

Relationship of the Parties. Cyxtera is an independent contractor and
shall not be deemed an employee or agent of Customer. Nothing in the
Agreement shall be construed to create a joint venture, partnership,
association or other form of legal entity or business enterprise between
the parties hereto. Neither party hereto shall have any express or implied
right or authority to assume or create any obligations (on behalf of or in
the name of the other party or to bind the other party to any contract,
agreement or undertaking.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Assignment, Successors and Assigns. Assignments are subject to FAR
52.232-23, Assignment of Claims (JAN 1986) and FAR
42.12 Novation and Change-of-Name Agreements (Sep. 2013).

Reserved.

No Third-party Beneficiaries. Except as otherwise set forth in the
Agreement, no person or entity, other than the parties and their
respective successors and permitted assigns, shall be a direct or indirect
beneficiary of, or shall have any direct or indirect cause of action or claim
in connection with, the Agreement.

Resale, Leasing, Licensing or Sublicensing of Services. Customer shall not
be permitted to resell, lease, license or sublicense any of the Services
provided hereunder without Cyxtera’s prior written consent, which can
be withheld in Cyxtera’s sole and absolute discretion.

Indemnification Provisions. In the event Customer is a U.S. Federal
Government Agency or Ordering Activity under GSA Schedule Contracts,
any indemnification obligations in the Agreement imposed on Customer
shall not apply to Customer to the extent Customer is prohibited from
being bound by such indemnification obligations by applicable law.
Definitions.

“Affiliate” means any entity controlled by, controlling, or under common control with a party, where the term "control" and its correlative terms, “controlling”, “controlled by” and “under common control with”, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity. With respect to Cyxtera, the term “Affiliates” shall not include AppGate (the holding company of Cyxtera’s former cybersecurity business that was spun out as a separate company on December 31, 2019) and its subsidiaries.

“Agreement” means (i) this MA, (ii) all Service Schedules, Service Orders, Statements of Work, Order Forms, Quotes, Service Guides, AUPs and SLAs, (iii) the underlying GSA schedule, and (iv) any other document governed by, or that is incorporated by reference into, this MA or any of the documents referred to in subclauses (ii) or (iii) hereof.

“Confidential Information” means all information (including, for the avoidance of doubt, information about the disclosing party’s Affiliates) that is disclosed by or on behalf of the disclosing party to the receiving party, during the term of the Agreement, whether written, oral, visual or otherwise that (i) is identified as confidential using an appropriate legend, marking, stamp, or other clear and conspicuous written identification that unambiguously indicates the information being provided is Confidential Information (or, in the case of information provided in other than written form, is identified as confidential at the time it is first disclosed, with such identification to be confirmed in writing by the disclosing party to the receiving party promptly following disclosure) or (ii) should reasonably be understood to be confidential or proprietary based on the content of the information and/or the circumstances of its disclosure. Cyxtera does not have access to information (x) on Customer Equipment or Compute Nodes or (y) transmitted or processed by Customer through use of the Services. Therefore, for the elimination of doubt, such information is not considered “Confidential Information” solely as a result of it being (i) stored by Customer on customer equipment or compute nodes or (ii) transmitted or processed by Customer through use of the Services.

“U.S. Federal Government Agency” means any agency or department that is an instrumentality of the United States under the executive, legislative, or judicial branch of the United States government, or any independent instrumentality of the United States, such as the U.S. Securities and Exchange Commission or the U.S. Federal Communications Commission.
Exhibit A

Cyxtera Colocation Service Schedule

This Cyxtera Colocation Service Schedule (this “Service Schedule”) is entered into by and between the GSA Schedule Contractor, acting by and through its supplier, Cyxtera Federal Group, Inc., a Delaware corporation (“Cyxtera”), and the Ordering Activity purchasing under the GSA Schedule Contract (“Customer” or “Ordering Activity”), and is effective on the date the last party signs this Service Schedule (the “Effective Date”). This Service Schedule is governed by that certain Cyxtera Master Agreement (the “MA”) entered into by and between Customer, or its Affiliate, and Cyxtera. In the event the MA is executed by an Affiliate of Customer, then the MA shall apply to this Service Schedule as if Customer was a party thereto in lieu of the Affiliate of Customer. Capitalized terms used, but not defined herein, shall have the meaning ascribed thereto in the MA.

Services; Rates.

Services. This Service Schedule sets forth the terms generally applicable across all colocation services provided hereunder (“Services”), as well as terms applicable only to specific Services as noted herein. The colocation Services covered by this Service Schedule are space, power, remote hands, structured cabling, cross-connects, CXD Port, Metro Connect Dedicated and any other colocation Services provided by Cyxtera to Customer, or an Affiliate thereof, from time to time. Cyxtera’s extensible data center (CXD) platform services are not covered under this Service Schedule and require a separate Service Schedule. Customer, or an Affiliate thereof, may purchase Services from Cyxtera pursuant to a Service Order, Statement of Work or through the Portal (each as defined herein).

Rates. Customer will pay all applicable rates and fees set forth herein as well as terms applicable only to specific Services as noted herein. The colocation Services covered by this Service Schedule are space, power, remote hands, structured cabling, cross-connects, CXD Port, Metro Connect Dedicated and any other colocation Services provided by Cyxtera to Customer, or an Affiliate thereof, from time to time. Cyxtera’s extensible data center (CXD) platform services are not covered under this Service Schedule and require a separate Service Schedule. Customer, or an Affiliate thereof, may purchase Services from Cyxtera pursuant to a Service Order, Statement of Work or through the Portal (each as defined herein).

Billing Commencement Date (BCD).

Billing Commencement Date. Cyxtera will deliver notice to Customer when the Service has been installed and is available for use by Customer. Unless otherwise set forth in Section 3.b, the BCD for the Service (other than professional Services) is the earlier to occur of the date (i) of delivery of such notice by Cyxtera to Customer and (ii) that Customer begins to use such Service. For professional Services, unless otherwise specified in the Service Order, Statement of Work or in the Portal (the “Initial Term”). The Initial Term and any renewal terms are collectively referred to as the “Service Term”.

Acceptance Period. Customer shall have five (5) business days after the earlier to occur (the “Acceptance Period”) of (i) receipt of Cyxtera’s notice under Section 3.a or this Section 3.b, as applicable, and (ii) its beginning to use a Service, to notify Cyxtera in writing of any deficiency. Such notice shall include a written description that demonstrates the deficiency in Service to Cyxtera’s reasonable satisfaction. In the event Customer provides a notice of a deficiency to Cyxtera in accordance with this Section 3 and Cyxtera reasonably agrees that there is such a deficiency, (x) Cyxtera will remedy the Service deficiency and provide Customer notification (the “Remedy Notice”) of such remedy at which time a new Acceptance Period shall begin, and (y) the BCD for the Service will be the date of delivery by Cyxtera to Customer of the Remedy Notice. In the event Cyxtera reasonably disagrees that there is such a deficiency, (1) Cyxtera will notify Customer of its determination, (2) no new Acceptance Period shall begin and (3) the BCD for the Service will be as set forth in Section 3.a.

Separate Billing. Subject to Section 3.b and the following sentence, Cyxtera may deliver notice to Customer pursuant to Section 3.a and commence billing for any individual Service on a Service Order as of the BCD of such Service. If a Service installation is delayed, incomplete, or is not usable by Customer due to Customer’s actions or
inactions (or the actions or inactions of any other party acting by or on behalf of Customer), Cyxtera will have the right to commence the BCD as if such Service was installed and commence billing for such Service as of such BCD.

Reserved.

Reserved.

Reserved.

Service Agreement; Cyxtera’s Lease; Relocation of Services.

Service Agreement. This is a services agreement and is not intended to and does not constitute a lease of any real or personal property or create any tenancy or other real property rights in favor of Customer. Customer acknowledges and agrees that it is granted only a license to use the Customer Area in accordance with the Service Schedule Agreement. The rights granted to Customer under the Service Schedule Agreement are, and shall at all times remain, subject and subordinate to any lease between Cyxtera or an Affiliate thereof and its landlord(s) (the “Landlord(s)”) and all superior instruments to such lease(s). Customer agrees that it will not make any claims against the Landlord(s) with respect to the Cyxtera premises.

Cyxtera’s Lease. Cyxtera shall have the right to terminate any or all of the affected Services without liability of any kind as a result of the expiration of or termination of Cyxtera’s underlying lease for the Cyxtera premises at which such Services are being provided. Cyxtera will use commercially reasonable efforts to provide Customer at least ninety (90) days advance written notice of termination of a Service(s) pursuant to this Section 7.b. In the event Cyxtera is unable to provide Customer with at least ninety (90) days advance written notice of such termination, Cyxtera will provide Customer as much notice as is reasonably possible. In the event Cyxtera terminates a Service in accordance with this Section 7.b, (i) Customer will not be liable for any “Early Termination Charge” in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Service relating to periods of time following such termination.

Relocation of Services. If the Customer Area and/or any Service needs to be moved due to Cyxtera’s reasonable business needs (e.g., repair, remodel or upgrade the area of Cyxtera premises at which the Customer Area is located), Cyxtera may notify Customer of Cyxtera’s intention to relocate such Customer Area and/or Service, as applicable, to another area within the same Cyxtera premises or to another Cyxtera premises. Customer may, within thirty (30) days of receipt of such notice from Cyxtera, elect to terminate any affected Services without any obligation to pay any “Early Termination Charge” to Cyxtera in connection with such termination by providing written notice to Cyxtera (the “Termination Notice”), otherwise Customer will be deemed to have consented to such relocation. In the event Customer terminates any Services pursuant to the preceding sentence, Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Services relating to periods of time following such termination. Any such termination shall be effective as of the date set forth in the Termination Notice, but in no event later than thirty (30) days from Cyxtera’s receipt of the Termination Notice. In the event Customer has consented (or is deemed to have consented) to such relocation, Customer will cooperate in good faith with Cyxtera to complete such relocation and ensure that the relocation is completed within Cyxtera’s timeframe for such relocation, provided, that, in no event shall such timeframe be less than thirty (30) days from Customer’s consent (or deemed consent) thereto, unless Customer agrees to a shorter timeframe. In the event Customer’s failure to cooperate with Cyxtera results or, Cyxtera reasonably believes is likely to result, in whole or in part, in the inability of Cyxtera to complete the relocation within the required timeframe, Cyxtera shall have the right to take any and all actions necessary to complete the relocation without Customer’s consent or cooperation. Cyxtera will use commercially reasonable efforts to minimize any interruption in Services during any such relocation.

Acceptable Use Policy. In connection with Customer’s receipt and use of the Services, Customer shall be subject to and comply with Cyxtera’s Acceptable Use Policy (“AUP”) attached hereto and located at https://www.cyxtera.com/legal/Cyxtera-Acceptable-Use-Policy.pdf as in effect on the Effective Date and which may be modified by Cyxtera from time to time by posting an updated AUP at such website or a successor website and providing at least thirty (30) days advance notice to Customer, provided the modifications are not material. A material change is defined as (1) terms that change Government rights; (2) terms that increase the Government prices; (3) terms that decrease overall level of service; or (4) terms that limit any other Government right addressed elsewhere in the contract. In accordance with GSAR 552.212-4(w)(1)(vi), for revisions that will materially change the terms of the contract, the revised terms must be incorporated into the contract using a bilateral modification. The current version of the AUP in effect as of June 12, 2020 is attached hereto as Schedule I.

Use of Service. In no event shall Customer, any Customer Representative or any Customer Materials (a) interfere with, harm or cause personal injury or property damage to (i) a Cyxtera premises, (ii) any of Cyxtera’s or any third party’s equipment or property contained at a Cyxtera premises or (iii) any of Cyxtera’s or any third party’s personnel at a Cyxtera premises, or (b) adversely impact or interfere with the services provided by Cyxtera to its other customers. Customer shall be subject to and shall ensure that all Customer Representatives comply with all data center operating policies and other terms and conditions in the Cyxtera Customer Information Guide & Handbook located at https://www.cyxtera.com/technology/service-guides/download/Customer-Guide-Handbook.pdf (the “Service Guide”), as in effect on the Effective Date and which Service Guide may be modified by Cyxtera from time to time by posting an updated Service Guide at such website or a successor website and providing at least thirty (30) days advance notice to Customer, provided the modification is not a material change. In the event such notice does not specify the date such modification is effective as of, such modification shall be effective thirty (30) days after Customer’s receipt.
of such notice. The current version of the Cyxtera Customer information Guide & Handbook in effect as of June 12, 2020 is attached hereto as Schedule II.

Reserved.

Equipment; Equipment Storage.

If the Service includes access to or the use of equipment or software provided by Cyxtera or its licensors ("Cyxtera Equipment"), Customer: (i) will not assert any ownership interest whatsoever in the Cyxtera Equipment, (ii) will not cause any liens, claims or encumbrances to be placed on the Cyxtera Equipment, (iii) shall protect and use all Cyxtera Equipment in accordance with the Service Schedule Agreement, and (iv) shall cooperate with Cyxtera to allow the maintenance and, upon termination, removal of the Cyxtera Equipment. Unless otherwise set forth in the Service Schedule Agreement, Customer is responsible for selecting, supplying, installing and maintaining any equipment, hardware, cabling, applications, systems and software used to access or receive the Services ("Customer Equipment"). For the avoidance of doubt, in no event shall "Customer Equipment" be deemed to include "Cyxtera Equipment".

Upon Customer’s request (which shall be deemed to include if Customer ships Customer Materials to a Cyxtera premises), Cyxtera may, as a convenience to Customer, store Customer Materials pending their installation in the Customer Area. In the event storage continues for more than thirty (30) days, (i) any such storage longer than thirty (30) days shall be at Customer’s sole cost and expense and (ii) Cyxtera may, at any time after providing Customer with at least ten (10) days advance written notice, and Customer’s failure to remove the Customer Materials from storage within such ten (10) day period, ship (at Customer’s sole cost and expense) such Customer Materials to Customer at Customer’s last address of record. Following termination of all of the Services at a Cyxtera premises at which Customer Materials are being stored pursuant to this Section 11.b, Cyxtera shall also have the right to take any and all actions set forth in Section 13 hereof with respect to such Customer Materials. Notwithstanding anything in the Service Schedule Agreement to the contrary, in no event shall Cyxtera have any liability to Customer (including liability for loss of or damage to any Customer Materials) arising out of Cyxtera’s exercise of its rights under this Section 11.b or (y) any liability to Customer for loss of or damage to any Customer Materials while being stored by Cyxtera pursuant to this Section 11.b.

Access. Subject to applicable Government security requirements, Cyxtera may enter the Customer Area, access Customer Materials and/or take any action reasonably deemed necessary by Cyxtera at any time for any legitimate business purpose of Cyxtera. “Legitimate business purpose” includes, but is not limited to, (a) installation, inspection, removal, relocation, replacement or maintenance (routine and emergency) of Services, (b) anything otherwise necessary for Cyxtera to provide the Services, (c) any action reasonably deemed necessary by Cyxtera to prevent Customer, any Customer Representative or any Customer Materials from violating Section 9, and (d) anything otherwise necessary so that Cyxtera can exercise its rights under the Service Schedule Agreement. Customer agrees to cooperate in a timely manner and provide reasonable access and assistance to Cyxtera and/or any third party designated by Cyxtera in connection with Cyxtera and/or any such third party taking any action pursuant to this Section 12.

Customer’s Obligations upon Termination of a Service; Holdover. Prior to termination of all of the Services in a particular Customer Area, Customer will (a) remove all Customer Equipment and any other Customer property (collectively, the “Customer Materials”) from such Customer Area (and either move such Customer Materials to another Customer Area or remove such Customer Materials from the Cyxtera premises), and (b) return such Customer Area to Cyxtera in the same condition as it was on the BCD, normal wear and tear excepted. If Customer fails to take any such action with respect to Customer Materials, Cyxtera may, at any time thereafter, (i) remove such Customer Materials from the Customer Area (or other area of the Cyxtera premises where they were left) and store them (either on the Cyxtera premises or an off-site location) or (ii) after providing written notice to Customer of its failure to remove such Customer Materials and Customer’s failure to do so within thirty (30) days of its receipt of such written notice, ship such Customer Materials to Customer at Customer’s last address of record. If Customer fails to return any Customer Area to Cyxtera in the same condition as it was on the BCD, normal wear and tear excepted, Cyxtera may take action to do so. In no event shall Customer Materials be construed as fixtures or fittings. Cyxtera’s initial election to store Customer Materials for Customer in accordance with this Section 13 shall not prohibit Cyxtera from subsequently deciding to take any of the other actions permitted under this Section 13. Notwithstanding anything in the Service Schedule Agreement to the contrary, in no event shall Cyxtera have any liability to Customer (including liability for loss of or damage to any Customer Materials) arising out of Cyxtera’s exercise of its rights under this Section 13 (including any loss of or damage to any Customer Materials during any period of time when such Customer Materials are being stored by Cyxtera pursuant to this Section 13). While Customer has no right to use any Customer Area or Service after the applicable Service expires or is terminated, if Customer continues to use any Customer Area or Service after the expiration or earlier termination of the Service Term (which, for the avoidance of doubt, will be deemed to have occurred until the later to occur of such time as (x) all Customer Materials have been removed from the Customer Area, and (y) the Customer Area has been restored to the same condition it was on the BCD, normal wear and tear excepted, in each case either by Customer or Cyxtera in accordance with this Section 13), then Customer shall remain subject to the terms and conditions of the Service Schedule Agreement and the usage charges during such holdover period shall be calculated in the same manner as they were, in each case during the last full month before expiration or earlier termination of such Service Term.

Insurance.

Cyxtera will, at its own cost and expense, maintain, during the term of this Service Schedule: (a) commercial general liability or public liability insurance with limits not less than $2,000,000 USD (or equivalent local
currency) per occurrence and $4,000,000 USD (or equivalent local currency) aggregate, covering personal and advertising injury, bodily injury and property damage, products/completed operations, and contractual liability, (b) workers’ compensation insurance or similar social insurance or government scheme in accordance with the applicable laws in each jurisdiction in which a Cyxtera premises at which Cyxtera is providing Services to Customer hereunder is located, (c) employers’ liability or stop gap insurance with limits not less than $1,000,000 USD (or equivalent local currency) each accident, (d) commercial automobile liability insurance with limits not less than $1,000,000 USD (or equivalent local currency), combined single limit per occurrence, covering bodily injury and property damage for all owned, non-owned and hired vehicles used in connection with the performance of the Service Schedule Agreement, and (e) “all-risk” or “special form” property insurance covering each Cyxtera premises at which Cyxtera is providing Services to Customer hereunder, with limits not less than $2,000,000 USD (or equivalent local currency) per occurrence. The insurance coverage(s) will be from a company or companies with either an A.M. Best’s rating of A-VII or better or a Standard and Poor’s rating of A- or higher. Each such company or companies must be authorized to do business in each jurisdiction in which a Cyxtera premises at which Cyxtera is providing Services to Customer hereunder is located. Cyxtera may obtain the limits required pursuant to subclauses (a), (c) and (d) through any combination of primary and excess or umbrella liability insurance. Customer must be included as an additional insured on the policy(ies) required to be maintained by Cyxtera pursuant to subclauses (a) and (d) hereof. The insurance policies required to be maintained by Cyxtera pursuant to subclauses (a), (b), (d) and (e) hereunder must include a waiver of subrogation in favor of Customer. Promptly upon Customer’s request, but in no event more than once per calendar year, Cyxtera will make available to Customer evidence of the insurance required herein.

Audits. Cyxtera has completed, and will continue to complete on an annual basis, an AICPA sanctioned Type II audit (i.e., SSAE18/ISAE3402 SOC 1 or AT-101 SOC2), or an audit using a substantially similar standard, covering each of the Cyxtera premises (other than third-party data centers whereby Cyxtera is reselling Services from such third-party to Customer) at which Cyxtera is providing Services to Customer hereunder. Upon Customer’s request, Cyxtera will provide Customer with a copy of the then-current audit report. Each audit-report provided by Cyxtera to Customer pursuant to this Section 15 shall be considered Cyxtera Confidential Information. Notwithstanding anything in the MA to the contrary, Customer shall not be permitted to make any such audit report available to any third party unless such third party has agreed to reasonable confidentiality terms required by Cyxtera.

Definitions.

“Customer Area” means the space (i.e., colocation environment, office space, storage space or roof space) within, or on the roof of, a Cyxtera premises specifically identified as available to Customer for the placement and operating of the Customer Materials.

“Customer Representative” means any Customer employee, agent, contractor or other third party who accesses a Cyxtera premises on behalf of Customer.

“Emergency” means a situation that, in Cyxtera’s reasonable discretion, is serious, unexpected and dangerous and requires immediate action.

“Service Order” means a service order, order form, quote or other ordering document that includes the type and details of the specific Services ordered by Customer and agreed to be provided by Cyxtera. Any Services purchased by Customer through the Portal will be deemed to be purchased pursuant to a “Service Order” notwithstanding that the Services are purchased through the Portal and neither party physically or electronically executed an actual “Service Order” document.

“Service Schedule Agreement” means (i) the MA (but only to the extent the MA applies to this Service Schedule), (ii) this Service Schedule, (iii) all Service Orders, Statements of Work, Order Forms, Quotes, Service Guides, and AUP, and (iv) any other document governed by, or that is incorporated by reference into, the MA (but only to the extent such document applies to this Service Schedule), this Service Schedule or any of the documents referred to in subclause (iii) hereof.

“Statement of Work” means a statement of work that includes the type and details of the specific Services ordered by Customer and agreed to be provided by Cyxtera.
Cyxtera Extensible Data Center (CXD) Platform Services Service Schedule

This Cyxtera Extensible Data Center (CXD) Platform Services Service Schedule (this “Service Schedule”) is entered into by and between the GSA Schedule Contractor, acting by and through its supplier, Cyxtera Federal Group, Inc., a Delaware corporation (“Cyxtera”), and the Ordering Activity purchasing under the GSA Schedule Contract (“Customer” or “Ordering Activity”), and is effective on the date the last party signs this Service Schedule (the “Effective Date”). This Service Schedule is governed by that certain Cyxtera Master Agreement (the “MA”) entered into by and between Customer, or its Affiliate, and Cyxtera. In the event the MA is executed by an Affiliate of Customer, then the MA shall apply to this Service Schedule as if Customer was a party thereto in lieu of the Affiliate of Customer. Capitalized terms used, but not defined herein, shall have the meaning ascribed thereto in the MA.

Services; Rates.

Services. This Service Schedule sets forth the terms generally applicable across all of the Cyxtera extensible data center (“CXD”) platform services provided hereunder ("Services"), as well as terms applicable only to specific Services as noted herein. The CXD Services covered by this Service Schedule are Compute Nodes, CXD IP Connect, CXD Cross Connect and any other CXD Services provided by Cyxtera to Customer, or an Affiliate thereof, from time to time. Cyxtera’s colocation services are not covered under this Service Schedule and require a separate Service Schedule. Customer, or an Affiliate thereof, may purchase Services from Cyxtera pursuant to a Service Order or through the Portal (each as defined herein).

Rates. Customer will pay all applicable rates and fees set forth in the relevant Service Order, any online purchasing website or portal made available by Cyxtera for Customer’s use (the "Portal"), or otherwise agreed to be paid by Customer to Cyxtera pursuant to the Service Schedule Agreement in accordance with the GSA Schedule pricelist. Except as set forth in the applicable Service Order or on the Portal or otherwise in the Service Schedule Agreement, (i) monthly recurring charges (“MRCs”) will be billed monthly in advance, (ii) variable or usage-based charges will be billed monthly in arrears and (iii) installation or other non-recurring charges (“NRCs”) will be billed upon the Billing Commencement Date (“BCD”) of the applicable Service.

Term; Termination.

Term of this Service Schedule. The term of this Service Schedule will commence on the Effective Date and continue until terminated in accordance with the terms of the GSA Schedule Contract the FAR, and the GSAR.

Termination Upon Expiration or Termination of all Services. The Agreement will automatically terminate following expiration or termination of the last effective Service being provided or to be provided under the Service Schedule.

Termination for Cause. Recourse for any alleged breach of this Service Schedule must be brought as a dispute under the Contract Disputes Clause. During any dispute under the Contract Disputes Clause, Cyxtera shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Term of Service Orders and Services. Services have a minimum term which begins on the billing commencement date as determined in accordance with Section 3 of this Agreement (“BCD”) and continues for the period set forth in the relevant Service Order or in the Portal (the “Initial Term”). The Initial Term and any renewal terms are collectively referred to as the “Service Term”.

Billing Commencement Date (BCD).

Billing Commencement Date. The BCD for the Service is the earlier to occur of the date that (i) Cyxtera notifies Customer that such Service is available to be used by Customer and (ii) Customer begins to use such Service.

Separate Billing. Subject to the following sentence, Cyxtera may deliver notice to Customer pursuant to Section 3.a and commence billing for any individual Service on a Service Order as of the BCD of such Service. If a Service installation is delayed, incomplete, or is not usable by Customer due to Customer’s actions or inactions (or the actions or inactions of any other party acting by or on behalf of Customer), Cyxtera will have the right to commence the BCD as if such Service was installed and commence billing for such Service as of such BCD.

Third Party Services. As part of Customer’s use of the Services, Customer may receive access to third party systems, equipment, software and/or content (together, “Third Party Services”), which Third Party Services may be subject to separate terms. Prior to Customer being able to access or use any of such Third Party Services, Customer is required to consent to all required third party terms and conditions (the “Third Party T&Cs”). Customer is responsible for reviewing, accepting and complying with all Third Party T&C’s. In the event Cyxtera is obligated by the provider of a Third Party Service (a "Third Party Service Provider")
to suspend or stop such Third Party Service, Cyxtera reserves the right to suspend or stop such Third Party Service to satisfy Cyxtera's obligation to such Third Party Service Provider. Cyxtera will use commercially reasonable efforts to notify Customer prior to suspending or stopping any Third Party Service in accordance with this Section 23. In the event Cyxtera is unable to do so, Cyxtera will notify Customer as promptly as reasonably practical thereafter. Notwithstanding anything in the Service Schedule Agreement to the contrary, Cyxtera shall have the right to disclose Customer's name and contact information to any Third Party Service Provider. Third Party Services are provided "as is" without indemnification, support or warranties of any kind, provided, that, to the extent applicable to Customer's receipt or use of the Services during the Service Term, Cyxtera assigns to Customer during such Service Term, all assignable warranties and indemnities granted to Cyxtera by the Third Party Service Provider with respect to the applicable Third Party Service. In no event will Cyxtera be liable for any losses, costs, expenses or damages whatsoever, including without limitation, direct, incidental, special, indirect, or consequential damages, loss of business, loss of profits, loss of data, or tortious conduct relating to, or arising from the access to, use of or inability to use the Third Party Services.

Cyxtera's Lease; Relocation of Services.

Cyxtera's Lease. Cyxtera shall have the right to terminate any or all of the affected Services without liability of any kind as a result of the expiration of or termination of Cyxtera's underlying lease for the Cyxtera premises at which such Services are being provided. Cyxtera will use commercially reasonable efforts to provide Customer at least ninety (90) days advance written notice of termination of a Service(s) pursuant to this Section 7.b. In the event Cyxtera is unable to provide Customer with at least ninety (90) days advance written notice of such termination, Cyxtera will provide Customer as much notice as is reasonably possible. In the event Cyxtera terminates a Service in accordance with this Section 7.b, (i) Customer will not be liable for any “Early Termination Charge” in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Service relating to periods of time following such termination.

Relocation of Services. If the Service needs to be moved due to Cyxtera's reasonable business needs (e.g., repair, remodel or upgrade the area of Cyxtera premises at which the Service is located), Cyxtera may notify Customer of Cyxtera's intention to relocate such Service, as applicable, to another area within the same Cyxtera premises or to another Cyxtera premises. Customer may, within thirty (30) days of receipt of such notice from Cyxtera, elect to terminate any affected Services without any obligation to pay any “Early Termination Charge” to Cyxtera in connection with such termination by providing written notice to Cyxtera (the “Termination Notice”), otherwise Customer will be deemed to have consented to such relocation. In the event Customer terminates any Services pursuant to the preceding sentence, Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Services relating to periods of time following such termination. Any such termination shall be effective as of the date set forth in the Termination Notice, but in no event later than thirty (30) days from Cyxtera's receipt of the Termination Notice. In the event Customer has consented (or is deemed to have consented) to such relocation, Cyxtera will cooperate in good faith with Cyxtera to complete such relocation and ensure that the relocation is completed within Cyxtera's timeframe for such relocation, provided, that, in no event shall such timeframe be less than thirty (30) days from Customer's consent (or deemed consent) thereto, unless Customer agrees to a shorter timeframe. In the event Customer's failure to cooperate with Cyxtera results or, Cyxtera reasonably believes is likely to result, in whole or in part, in the inability of Cyxtera to complete the relocation within the required timeframe, Cyxtera shall have the right to take any and all actions necessary to complete the relocation without Customer's consent or cooperation. Cyxtera will use commercially reasonable efforts to minimize any interruption in Services during any such relocation.

Acceptable Use Policy. In connection with Customer's receipt and use of the Services, Customer shall be subject to and comply with Cyxtera's Acceptable Use Policy ("AUP") attached hereto and located at https://www.cyxtera.com/pdfs/legal/Cyxtera-Acceptable-Use-Policy.pdf as in effect on the Effective Date and which may be modified by Cyxtera from time to time by posting an updated AUP at such website or a successor website and providing at least thirty (30) days advance notice to Customer, provided the modifications are not material. A material change is defined as (1) terms that change Government rights; (2) terms that increase the Government prices; (3) terms that decrease overall level of service; or (4) terms that limit any other Government right addressed elsewhere in the contract. In accordance with GSAR 552.222-4(w)(1)(vi), for revisions that will materially change the terms of the contract, the revised terms must be incorporated into the contract using a bilateral modification. The current version of the AUP in effect as of June 12, 2020 is attached hereto as Schedule I.
**Equipment.** If the Service includes access to or the use of equipment or software provided by Cyxtera or its licensors ("Cyxtera Equipment"), Customer: (a) will not assert any ownership interest whatsoever in the Cyxtera Equipment, (b) will not cause any liens, claims or encumbrances to be placed on the Cyxtera Equipment, and (c) shall protect and use all Cyxtera Equipment in accordance with the Service Schedule Agreement. Unless otherwise set forth in the Service Schedule Agreement, Customer is responsible for selecting, supplying, installing and maintaining any equipment, hardware, cabling, applications, systems and software used to access or receive the Services.

**Insurance.**

Cyxtera will, at its own cost and expense, maintain, during the term of this Service Schedule, commercial general liability or public liability insurance with limits not less than $2,000,000 USD (or equivalent local currency) per occurrence and $4,000,000 USD (or equivalent local currency) aggregate, covering personal and advertising injury, bodily injury and property damage, products/completed operations, and contractual liability. Such insurance coverage will be from a company or companies with either an A.M. Best's rating of A-VII or better or a Standard and Poor's rating of A- or higher. Each such company or companies must be authorized to do business in each jurisdiction in which a Cyxtera premises at which Cyxtera is providing Services to Customer hereunder is located. Cyxtera may obtain the required insurance limits through any combination of primary and excess or umbrella liability insurance. Customer must be included as an additional insured on the policy required to be maintained by Cyxtera pursuant to this Section 14. The policy required to be maintained by Cyxtera hereunder must include a waiver of subrogation in favor of Customer. Promptly upon Customer's request, but in no event more than once per calendar year, Cyxtera will make available to Customer evidence of the insurance required herein.

**Definitions.**

“Service Order” means a service order, order form, quote or other ordering document that includes the type and details of the specific Services ordered by Customer and agreed to be provided by Cyxtera. Any Services purchased by Customer through the Portal will be deemed to be purchased pursuant to a “Service Order” notwithstanding that the Services are purchased through the Portal and neither party physically or electronically executed an actual “Service Order” document.

“Service Schedule Agreement” means (i) the MA (but only to the extent the MA applies to this Service Schedule), (ii) this Service Schedule, (iii) all Service Orders, Statements of Work, Order Forms, Quotes, and AUP, and (iv) any other document governed by, or that is incorporated by reference into, the MA (but only to the extent such document applies to this Service Schedule), this Service Schedule or any of the documents referred to in subclause (iii) hereof.
Schedule

Current version of Cyxtera’s Acceptable Use Policy (“AUP”)

[See attached.]
Current version of the Cyxtera Customer Information Guide & Handbook

[See attached.]

Cyxtera Colocation Customer Information Guide & Handbook

Document Version: v. 10.13
Last Updated: September 5, 2019
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The terms set forth in this Cyxtera Colocation Customer Information Guide & Handbook (“Service Guide”) apply to colocation services provided by Cyxtera to customer from time to time (the “Services”). With respect to a Service, "Cyxtera," "we," or “us” means (1) if customer has entered into a service order, statement of work or other signed agreement (the “Order”) with respect to such Service, the applicable affiliate or subsidiary of Cyxtera Data Centers, Inc. that is a party to such Order, or (2) if customer has not entered into an Order with respect to such Service, (a) if such Service is not a Federal Service, the applicable affiliate or subsidiary of Cyxtera Data Centers, Inc. set forth in the table below, or (b) if such Service is a Federal Service, Cyxtera Federal Group, Inc. “Federal Service” means a Service that is sold by Cyxtera to a (i) U.S. Federal Government Agency, (ii) customer that has notified Cyxtera that such Service is being purchased for use by such customer in fulfillment of, or for purposes of satisfying its obligations under, a contract for a U.S. Federal Government Agency(ies), (iii) customer that has notified Cyxtera that such Service is being purchased for incorporation of such Service into a product or service of such customer to be provided by such customer to a U.S. Federal Government Agency(ies), or (iv) partner or reseller that has notified Cyxtera that it is reselling such Service to a U.S. Federal Government Agency(ies). “U.S. Federal Government Agency” means any agency or department that is an instrumentality of the United States under the executive, legislative or judicial branch of the United States government, or any independent instrumentality of the United States, such as the U.S. Securities and Exchange Commission or the U.S. Federal Communications Commission.

<table>
<thead>
<tr>
<th>Location of Data Center at which the Service is to be Provided</th>
<th>Affiliate or Subsidiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States or Any Other Country Not Listed in this Table</td>
<td>Cyxtera Communications, LLC</td>
</tr>
<tr>
<td>Canada</td>
<td>Cyxtera Communications Canada, Inc.</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Cyxtera Technology UK Limited</td>
</tr>
<tr>
<td>Japan</td>
<td>Cyxtera Japan, Ltd.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Cyxtera Singapore Pte. Ltd.</td>
</tr>
<tr>
<td>Hong Kong or China</td>
<td>Cyxtera Hong Kong Limited</td>
</tr>
<tr>
<td>Germany</td>
<td>Cyxtera Germany GmbH</td>
</tr>
<tr>
<td>Australia</td>
<td>Cyxtera Australia Pty. Ltd.</td>
</tr>
</tbody>
</table>

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This Service Guide constitutes proprietary information of Cyxtera and may not be disclosed or used except as may be provided in the terms and conditions of the service agreement pursuant to which you have been authorized to use the Services or to review this Service Guide.
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Introduction

Welcome to Cyxtera. We are happy that you have become a Cyxtera customer and want you to know that we are committed to exceeding your expectations and are looking forward to developing a long and productive relationship.

The objective of this Service Guide is to provide you with sufficient information regarding the ongoing support of your Cyxtera colocation Services. This Colocation Customer Information Guide & Handbook covers essential processes and policies such as our data center visitation process, security and operational policies, installation and maintenance guidelines, how to request new Services and upgrades, issue reporting, problem escalations, and other items to ensure that the important aspects of your Cyxtera engagement are clear and straightforward.

For customers in third party data centers, Cyxtera will, upon customer’s request, provide you with a copy of the third- party vendors’ data center guidelines. The customer is responsible for following all third-party vendor guidelines for behavior in the data center as well as information contained within this Colocation Customer Information Guide & Handbook.

Cyxtera Customer Support Portal

In the fast-paced world of managing IT infrastructure it is critical to have the proper information at your fingertips. Whether it is bandwidth reports, case management, or change management status, up-to-date information is critical to making the right business decisions. Having access to critical information needs to be simple and intuitive. The information also needs to be presented in an informative manner. To help customers meet these needs Cyxtera has created the Cyxtera Customer Support Portal (the “Portal”).

The Portal is a web-based view of your Cyxtera colocation products and Services via a standard Internet browser and can be accessed at support.cyxtera.com. It provides a set of reports and interactive information on the Services received. Cyxtera customers manage their own access to the Portal. User access is controlled through three types of accounts: admin, data center access authorization admin, regular user.

Through the Portal you can update your company’s contact list from any location with Internet access, conveniently and easily, and with immediate results. See “Customer Access Authorization List” of this Service Guide.

The Portal provides a wealth of vital information including monitoring of real-time status of trouble tickets, billing invoices, remote hands metrics, status of open orders, physical security reports if you have incremental physical security at your cage and SLA failures affecting your environment that Cyxtera has become aware of. You can also create new cases, create and manage requests, create and manage contacts as well as user logins via the Portal.

In addition, you can view a range of statistics related to your remote hands support activity and information of those entering and leaving the environment. This data can be viewed on a daily, weekly, monthly, quarterly and yearly basis, providing you with critical information.

For additional Portal support, please refer to the Portal User Guide (by selecting “Portal Guide” under the Help menu in the Portal) or contact Customer Care at 1-800-884-3082.

Customer Support

Incident Management and Service Level Objectives

While Cyxtera strives to resolve all incidents and open requests as quickly and efficiently as possible, all requests will be prioritized based on the following criteria to ensure the highest levels of availability for all customers. A Services Level Objective (SLO) has also been assigned to each priority to ensure proper expectations are established. An SLO is a metric which Cyxtera makes all reasonable efforts to achieve. Cyxtera does not offer remediation for missed SLOs.
Priorities and Definitions

<table>
<thead>
<tr>
<th>Priority</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1 (Urgent)</td>
<td>Business impacting or imminent impact; full site outage.</td>
</tr>
<tr>
<td>A system or device is down; customer cannot perform business critical functions.</td>
<td></td>
</tr>
<tr>
<td>P2 (High)</td>
<td>Partial site outage/loss of redundancy.</td>
</tr>
<tr>
<td>A system or component is down.</td>
<td></td>
</tr>
<tr>
<td>Customer may be experiencing degradation of service.</td>
<td></td>
</tr>
<tr>
<td>Customer may be experiencing loss of resilience.</td>
<td></td>
</tr>
<tr>
<td>P3 (Medium)</td>
<td>Incident/non-business impacting.</td>
</tr>
<tr>
<td>A system is experiencing minor issues.</td>
<td></td>
</tr>
<tr>
<td>An individual system component has failed.</td>
<td></td>
</tr>
<tr>
<td>Customer is not experiencing degradation of service.</td>
<td></td>
</tr>
<tr>
<td>P4 (Low)</td>
<td>Incident/non-business impacting.</td>
</tr>
<tr>
<td>No service issues.</td>
<td></td>
</tr>
<tr>
<td>Low level incident required to investigate minor issue.</td>
<td></td>
</tr>
</tbody>
</table>

Response Service Level Objectives
Cyxtera will promptly respond to all facility and operational incidents (which, for the avoidance of doubt, includes SLA failures) upon becoming aware of any such incident. Cyxtera will also notify customers via email within fifteen (15) minutes of becoming aware of any (a) facilities / operational incident or (b) other non-facilities / operational incident that affects such customer.
In addition, customers may also report incidents by calling Customer Care at 1-800-884-3082 or emailing them at CustomerCare@Cyxtera.com, or by submitting a case via the Cyxtera Customer Support Portal. Cyxtera will make every effort to answer all phone calls immediately and respond to requests submitted by email within (48) hours or through the Portal within six (6) hours.
Target resolution and communication timeframes based on priority are as follows:

<table>
<thead>
<tr>
<th>Priority</th>
<th>Target Resolution</th>
<th>Communication Cadence</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1 (Urgent)</td>
<td>5 hours</td>
<td>Every 1 hour or as agreed to with customer.</td>
</tr>
<tr>
<td>P2 (High)</td>
<td>12 hours</td>
<td>Every 4 hours or as agreed to with customer.</td>
</tr>
<tr>
<td>P3 (Medium)</td>
<td>48 hours</td>
<td>Every 24 hours or as agreed to with customer.</td>
</tr>
<tr>
<td>P4 (Low)</td>
<td>60 hours</td>
<td>Every 48 hours or as agreed to with customer.</td>
</tr>
</tbody>
</table>

On-Site Support
Remote Hands support (formerly known as Gold Support) services provide on-site ("hands-on") support for our customers’ environments within Cyxtera’s data centers. Remote Hands are purchased in three forms:
1 All P₁ and P₂ incidents should be called into Customer Care to ensure a prompt response.
2 Target resolution is subject to the availability of the on-site operational and support teams.
Monthly Recurring Subscription is a fixed block of support hours purchased each month. Support hours provided at Customer’s request during a calendar month are subtracted from the number of hours purchased. Unused hours may not be carried into successive months. Customer shall remit payment for all hours in such fixed block regardless of whether hours are used. Overages are charged at the On-Demand rate.

Pre-Paid Support Blocks are fixed blocks of support hours purchased and consumed over several months. Support hours provided at Customer’s request are subtracted from the number of hours purchased until exhausted. Overages are charged at the On-Demand rate. On-Demand support is purchased for those instances where there are unplanned events and Remote Hands hours are not purchased in advance.

Each plan provides 24/7 support by Cyxtera support engineers and is billed in fifteen (15) minute increments. To request Remote Hands services, you may do so by opening a ticket in the Portal.

Cyxtera Facility Infrastructure Overview

Infrastructure Maintenance and Schedule
Cyxtera schedules routine maintenance to enable work to be performed that improves the Cyxtera network and facility infrastructures. Additionally, preventative maintenance is performed to remedy potential events that have been identified by Cyxtera. In the event of an urgent fault condition, service loss, or critical business need an emergency change could be raised.

All changes to the network and facilities are subject to Cyxtera’s change management process. During the process, work is reviewed for completeness (risk assessment, completed test procedure, metrics for measuring progress, validation, back out procedure, etc.) and accuracy prior to scheduling and implementation.

The goals of change management are:
- Implement changes to Cyxtera services, infrastructure, policies and procedures in an effective and efficient manner;
- Minimize risk and impact to our customers; and
- Enable Cyxtera to be proactive in notifying you of potential disruptions to Service.

Cyxtera strives to prevent disruptions in Service and targets to perform maintenance during low traffic times to minimize potential interruptions to customer operations.

Planned Maintenance Schedule

<table>
<thead>
<tr>
<th>Window</th>
<th>Work Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Monday – Friday</strong></td>
<td>Non-critical systems (NCS) and critical systems (CS) work allowed</td>
</tr>
<tr>
<td>8:00 – 17:00 Local Time</td>
<td>Standard and minor change supported</td>
</tr>
<tr>
<td></td>
<td>“N+1” or greater is maintained and required</td>
</tr>
<tr>
<td></td>
<td>Change management approval may not be necessary if using standard/pre-approved template</td>
</tr>
<tr>
<td>Monday – Friday</td>
<td>NCS, CS and multiple critical systems (MCS) work allowed</td>
</tr>
<tr>
<td>17:01 – 7:59 Local Time</td>
<td>“N” at a minimum requirement and maintained with no planned/expected outage</td>
</tr>
<tr>
<td></td>
<td>Significant change</td>
</tr>
<tr>
<td>Saturday and Sunday</td>
<td>NCS, CS, and MCS work allowed</td>
</tr>
</tbody>
</table>
Maintenance Notifications

Maintenance notifications are only issued to contacts that have been identified as “Technical Notification Contacts”.

The maintenance notification informs you of any impacting local or global improvements to Cyxtera’s infrastructure. In most instances, the maintenance notification will be issued fourteen (14) days prior to the scheduled impacting work except for expedited or emergency maintenance actions, which will be managed on an as needed basis. Notifications will be communicated for “Potential Impact” maintenance categories consisting of “Latency/Packet Loss, Loss of Redundancy, Other, and Service Impacting”. Customers will also receive “State” change maintenance notifications (Approved, In-Progress, Canceled, Closed) during the life-cycle of the Change Request to reflect current workflow.

If a mission critical situation arises, Cyxtera will promptly contact you using its emergency contact procedures. Only “Technical Notification Contacts” with e-mail addresses on the Cyxtera Customer Support Portal will be notified in the event (a) of a facilities event or (b) an event affects such customer, in each case, which notification will include details of the event. Periodic updates throughout the course of the incident will be provided.

Cyxtera strives to keep you informed of changes and maintenance. If you are ever in doubt as to whether a particular maintenance will affect (or has affected) your company, please call or e-mail Customer Care with the activity number and ask that a case be opened and/or escalated to determine the extent of impact. If you are not receiving maintenance notifications, please call Customer Care at 1-800-884-3082 or send an email to CustomerCare@Cyxtera.com.

Maintenance Terms

Emergency Change – Change required to restore loss of service, fix severe degradation, correct a fault condition, address a critical business driver, remediate a known vulnerability, or prevent an imminent outage situation from occurring. This change is normally executed in an urgent manner to ensure uptime and reliability of environment requiring change scheduling within 48 hours. Emergency changes can occur inside or outside a scheduled maintenance window.

Expedited Change - Changes that do not meet the lead time requirement for a normal change but are not an emergency change that is related to restoring services. Expedited changes are considered changes that have an urgent business need requiring change scheduling to be within 3 to 9 days.

Normal Change - Changes that must follow the complete Change Management process with Change Management review. This type of change is a non-emergency and non-standard change. These are often categorized according to risk and impact on the organization. Normal Changes are considered changes that have been well planned, documented, reviewed, coordinated and approved to allow for change scheduling.

Standard Change - A change to a service or infrastructure which is pre-approved by Change Management (a documented process that has already been approved and reviewed) that has an accepted and established procedure to provide a specific change requirement. A pre-approved/authorized template will be required.

Rescheduled Change – An Approved or In-Progress change that is delayed due to unforeseen events such as weather, vendor scheduling, supplier, resource assignment, etc. Reschedules are reviewed, re-approved, and documented. These messages are emailed to the “Technical Notifications Contact.”

Latency/Packet Loss – Service will be usable, but it may be degraded.

Loss of Redundancy – Service will be usable but lacks redundancy. Applies to N+1 scenarios

Non-Service Impacting – Service will be usable with no planned disruption. Applies to N+2 scenarios.
Other – Service may fall under any Potential Impact category and used for special free-text communication needs to our customer.
Service Impacting – Service will be disrupted or unusable.

**Data Center Locations**

**Cyxtera Operated Data Centers - Domestic**

<table>
<thead>
<tr>
<th>Data Center POD</th>
<th>Data Center Address</th>
<th>Data Center Location</th>
<th>Minimum Watts sq./ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABO1-A</td>
<td>400 Tijeras Ave NW Albuquerque</td>
<td>Albuquerque, NM (Floor 3)</td>
<td>150</td>
</tr>
<tr>
<td>ABO1-B</td>
<td>400 Tijeras Ave NW Albuquerque</td>
<td>Albuquerque, NM (Floor 4)</td>
<td>150</td>
</tr>
<tr>
<td>ATL1-A</td>
<td>375 Riverside Parkway</td>
<td>Atlanta, GA</td>
<td>165</td>
</tr>
<tr>
<td>BOS1-C</td>
<td>600 Winter St.</td>
<td>Boston, MA</td>
<td>150</td>
</tr>
<tr>
<td>BOS1-A</td>
<td>580 Winter St.</td>
<td>Boston, MA</td>
<td>150</td>
</tr>
<tr>
<td>BOS1-B</td>
<td>115 2nd Ave</td>
<td>Boston, MA</td>
<td>150</td>
</tr>
<tr>
<td>LAX2-A</td>
<td>3015 Winona Ave</td>
<td>Burbank, CA</td>
<td>150</td>
</tr>
<tr>
<td>ORD1-A</td>
<td>350 E Cermak Rd</td>
<td>Chicago, IL</td>
<td>150</td>
</tr>
<tr>
<td>ORD2-A,B</td>
<td>2425 Busse Road</td>
<td>Chicago, IL (Suite 410)</td>
<td>163</td>
</tr>
<tr>
<td>ORD1-B</td>
<td>350 E Cermak Rd</td>
<td>Chicago, IL (Suite 810)</td>
<td>200</td>
</tr>
<tr>
<td>ORD1-C</td>
<td>350 E Cermak Rd</td>
<td>Chicago, IL (Suite 830)</td>
<td>200</td>
</tr>
<tr>
<td>DFW1-A,B,C</td>
<td>14901 FAA Blvd</td>
<td>Dallas, TX</td>
<td>170</td>
</tr>
<tr>
<td>LAX1-A</td>
<td>200 N Nash St</td>
<td>El Segundo, CA</td>
<td>150</td>
</tr>
<tr>
<td>DEN2-A</td>
<td>8534 Concord Center Dr</td>
<td>Englewood, CO</td>
<td>150</td>
</tr>
<tr>
<td>STL1-A</td>
<td>587 James S. McDonnell Blvd</td>
<td>Hazelwood, MO</td>
<td>150</td>
</tr>
<tr>
<td>DEN1-A</td>
<td>9180 Commerce Center Circle</td>
<td>Highlands Ranch, CO</td>
<td>150</td>
</tr>
<tr>
<td>DEN1-B</td>
<td>9110 Commerce Center Circle</td>
<td>Highlands Ranch, CO</td>
<td>200</td>
</tr>
<tr>
<td>LAX3-A, B</td>
<td>17836 Gillette Ave</td>
<td>Irvine, CA</td>
<td>150</td>
</tr>
<tr>
<td>EWR1-A</td>
<td>34 Exchange Place</td>
<td>Jersey City, NJ</td>
<td>150</td>
</tr>
<tr>
<td>MHW1-A,B</td>
<td>4949 Randolph Rd NE</td>
<td>Moses Lake, WA</td>
<td>150</td>
</tr>
<tr>
<td>EWR4-A</td>
<td>165 Halsey St.</td>
<td>Newark, NJ</td>
<td>150</td>
</tr>
<tr>
<td>CMH1-A</td>
<td>8180 Green Meadows Dr. N.</td>
<td>North Lewis Center, OH</td>
<td>150</td>
</tr>
<tr>
<td>PHX1-D</td>
<td>616 N. 48th St.</td>
<td>Phoenix, AZ</td>
<td>150</td>
</tr>
<tr>
<td>EWR3-A,C</td>
<td>3 Corporate Place North</td>
<td>Piscataway, NJ</td>
<td>150</td>
</tr>
<tr>
<td>EWR3-B</td>
<td>365 S Randolphville</td>
<td>Piscataway, NJ</td>
<td>150</td>
</tr>
<tr>
<td>SFO1-A</td>
<td>2401 Walsh Ave</td>
<td>Santa Clara, CA</td>
<td>150</td>
</tr>
</tbody>
</table>
New site codes effective July 1, 2018. For a cross-reference list of site codes, please visit www.cyxtera.com/pdfs/site-codes.pdf
<table>
<thead>
<tr>
<th>Data Center</th>
<th>Data Center Address</th>
<th>Data Center Location</th>
<th>Minimum Watts sq./ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SFO1-B</td>
<td>2403 Walsh Ave.</td>
<td>Santa Clara, CA</td>
<td>150</td>
</tr>
<tr>
<td>SFO2-A</td>
<td>4700 Old Ironsides Drive</td>
<td>Santa Clara, CA</td>
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<tr>
<td>SFO2-B</td>
<td>4650 Old Ironsides Drive</td>
<td>Santa Clara, CA</td>
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<tr>
<td>PHX1-A,B,C</td>
<td>615 N. 48th St.</td>
<td>Scottsdale, AZ</td>
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<tr>
<td>SEA1-A</td>
<td>12301 Tukwila International Blvd</td>
<td>Seattle, WA</td>
<td>150</td>
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<tr>
<td>SEA1-B</td>
<td>3355 South 120th Place</td>
<td>Seattle, WA</td>
<td>150</td>
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<tr>
<td>MSP1-A,B</td>
<td>4450 Dean Lakes Blvd</td>
<td>Shakopee, MN</td>
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<td>IAD1-A</td>
<td>45901 Nokes Blvd.</td>
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<tr>
<td>IAD1-B</td>
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<td>Sterling, VA</td>
<td>150</td>
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<tr>
<td>IAD1-C,D,E</td>
<td>22110 Ridgetop Cir</td>
<td>Sterling, VA</td>
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<tr>
<td>IAD2-A</td>
<td>22810 International Dr</td>
<td>Sterling, VA</td>
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<td>IAD2-B</td>
<td>22860 International Dr.</td>
<td>Sterling, VA</td>
<td>150</td>
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<tr>
<td>IAD3-A</td>
<td>22995 Wilder Ct.</td>
<td>Sterling, VA</td>
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<tr>
<td>SFO3-A</td>
<td>1400 Kifer Road</td>
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<tr>
<td>SFO3-B</td>
<td>1320 Kifer Road</td>
<td>Sunnyvale, CA</td>
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<tr>
<td>TPA1-A</td>
<td>9310 Florida Palm Dr.</td>
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<tr>
<td>SEA2-A</td>
<td>6101 S 180th St</td>
<td>Tukwila, WA</td>
<td>150</td>
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<tr>
<td>EWR2-A</td>
<td>300 JFK Blvd East</td>
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<tr>
<td>EWR2-C,D</td>
<td>1919 Park Ave.</td>
<td>Weehawken, NJ</td>
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<tr>
<td>EWR2-B</td>
<td>300 JFK Blvd East</td>
<td>Weehawken, NJ (Suite 130)</td>
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**Cyxtera Operated Data Centers - International**

<table>
<thead>
<tr>
<th>Data Center</th>
<th>Data Center Address</th>
<th>Data Center Location</th>
<th>Minimum Watts sq./ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRA1-A</td>
<td>Hanauer Landstrasse 300a</td>
<td>Frankfurt, DE</td>
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<tr>
<td>HKG1-A,B</td>
<td>33 Chun Choi St</td>
<td>Hong Kong</td>
<td>150</td>
</tr>
<tr>
<td>HND1-A</td>
<td>1 Chome-2-1 Hitotsubashi, Chiyoda-ku</td>
<td>Tokyo, Japan</td>
<td>150</td>
</tr>
<tr>
<td>LHR1-A</td>
<td>630 Ajax Avenue</td>
<td>Slough, UK</td>
<td>150</td>
</tr>
<tr>
<td>LHR1-B</td>
<td>631 Ajax Avenue</td>
<td>Slough, UK</td>
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</tr>
<tr>
<td>LHR2-A</td>
<td>7 Greenwich View Place</td>
<td>London, UK</td>
<td>150</td>
</tr>
<tr>
<td>LHR2-B</td>
<td>6 Greenwich View Place</td>
<td>London, UK</td>
<td>150</td>
</tr>
<tr>
<td>LHR3-A</td>
<td>5 Eskdale Rd, Winnersh Triangle</td>
<td>Winnerish, UK</td>
<td>150</td>
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<tr>
<td>SIN1-A</td>
<td>05-01 Geo Tele Centre, 9 Tai Seng Drive Singapore</td>
<td>Geo-Tele Centre, SG</td>
<td>150</td>
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<tr>
<td>SIN2-A</td>
<td>DRT 03-01, 29A International Business Park Singapore</td>
<td>Jurong East, SG</td>
<td>150</td>
</tr>
<tr>
<td>Code</td>
<td>Address</td>
<td>City, Province</td>
<td>Zip Code</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------------------</td>
<td>---------------------</td>
<td>----------</td>
</tr>
<tr>
<td>YUL1-A</td>
<td>3000 Boulevard René Lévesque Montreal, QC H3E 1T9, Canada</td>
<td>Montreal, Quebec</td>
<td>150</td>
</tr>
<tr>
<td>YVR1-A,B</td>
<td>555 West Hastings Street, Harbour Centre</td>
<td>Vancouver BC</td>
<td>150</td>
</tr>
<tr>
<td>YYZ1-A</td>
<td>6800 Millcreek Drive Mississauga, ON L5N 4J9, Canada</td>
<td>Mississauga, Ontario</td>
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3rd Party Data Centers

<table>
<thead>
<tr>
<th>Data Center</th>
<th>Data Center Address</th>
<th>Data Center Location</th>
<th>Minimum Watts sq./ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNE1-A</td>
<td>20 Wharf Street Brisbane City, QLD 4000, Australia</td>
<td>Brisbane</td>
<td>150</td>
</tr>
<tr>
<td>CBR1-A</td>
<td>19 Battye Street Bruce, ACT 2617, Australia</td>
<td>Canberra</td>
<td>150</td>
</tr>
<tr>
<td>LAS1-A</td>
<td>5225 W Capovilla Ave Las Vegas, NV 891181</td>
<td>Las Vegas, NV</td>
<td>175</td>
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<tr>
<td>LV7</td>
<td>7135 S Decatur Boulevard, Las Vegas, NV 89118, USA</td>
<td>Las Vegas, NV</td>
<td>175</td>
</tr>
<tr>
<td>LV8</td>
<td>5225 W Capovilla Ave Las Vegas, NV 891181</td>
<td>Las Vegas, NV</td>
<td>175</td>
</tr>
<tr>
<td>LV9</td>
<td>7365 South Lindell Rd, Las Vegas, NV 89139, USA</td>
<td>Las Vegas, NV</td>
<td>175</td>
</tr>
<tr>
<td>MEL1-A</td>
<td>826 Lorimer Street Port Melbourne, VIC 3207, Australia</td>
<td>Melbourne</td>
<td>150</td>
</tr>
<tr>
<td>PER1-A</td>
<td>4 Millrose Drive Malaga, WA 6090, Australia</td>
<td>Perth</td>
<td>150</td>
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<tr>
<td>PVG1-A</td>
<td>6 Huajing Road, Bldg 1 Pudong, Shanghai, China</td>
<td>Shanghai, China</td>
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<tr>
<td>3PShG03</td>
<td>6 Huajing Road, Bldg 3 Pudong, Shanghai, China</td>
<td>Shanghai, China</td>
<td>150</td>
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<tr>
<td>SYD1-A</td>
<td>4 Eden Park Drive Macquarie Park, NSW 2113, Australia</td>
<td>Sydney</td>
<td>150</td>
</tr>
</tbody>
</table>

Colocation Customers

Data Center Power Specifications

All Cyxtera data centers provide uninterruptible power in-line with UPS and diesel generator backup in the event of a utility power failure. To conform to the National Electrical Code (NEC) for maximum power use, each power circuit is limited to 80% of the circuit breaker rating.

In addition, unless the agreement between Customer and Cyxtera expressly states otherwise, in no event shall Customer be entitled to use more power in a colocation environment (excluding cabinets) than the maximum CEC for such environment (excluding cabinets). With respect to cabinets, in no event shall Customer be entitled to use more power in such cabinet than the maximum allocated power for such cabinet. In the event Customer’s power usage in a colocation environment or cabinet, as applicable, in a calendar month is greater than the maximum CEC for such environment or allocated power for such cabinet, as applicable, Cyxtera reserves the right to charge an additional power allocation fee equal to the product of (a) the excess of Customer’s power usage over the maximum CEC or allocated power, as applicable, and (b) 150% of Customer’s then-current rate for power allocation in such colocation environment (excluding cabinets) or cabinet, as applicable. For the avoidance of doubt, this provision also applies to metered power colocation environments (including metered power cabinets).
Customer installation shall be consistent with Cyxtera’s requirement that customers distribute power evenly among all available power circuits. Care should be taken that you consider your future expansion plans and how this may affect your power distribution. If you do not plan this carefully from the beginning, you may exceed your power requirements.
on a particular circuit and you may need to power down some of your equipment in order to return your power configuration to a
Cyxtera approved load.
Daisy chaining of power strips or the use of extension cords of any type is strictly prohibited. When an additional outlet is needed, you
must purchase additional power circuits. Alternatively, if your existing power circuit can bear additional load and you are not exceeding
permitted power usage, you may purchase a power strip with additional outlets.
Customer provided power strips must be installed by Cyxtera if your power receptacle is located under the raised floor. Additional power
terms may be documented in a Colocation Service Description(s).

Hot and Cold Aisle Compliance
All computerized equipment generates heat. All equipment placed in any data center must vent the heat directly into the hot aisle
where it is then contained and prevented from mixing back into the cold aisle.
Customer must receive approval from Cyxtera with regards to hot and cold aisle layout configuration and adhere to those requirements
prior to equipment installation.
Special venting configurations must be pre-approved by Cyxtera and may incur additional customer set-up costs.
Customer must close any void in cabinet or rack space with a blanking panel, brush grommets or other approved means. Periodic
compliance audits may be conducted, and customer may be notified of containment violations and, in the event of any such violations,
customer is required to close any rack void with a blanking panel within five (5) business days of notification. If five (5) business days
have passed and the void in the rack or cabinet has not been closed, Cyxtera may perform this duty on behalf of Customer at the
Remote Hands rate.

Security Policies

Physical Security
The Cyxtera global data center security and physical security organizations have global responsibility for all physical security operations,
security systems, access administration, and security controls within Cyxtera data centers.
Cyxtera corporate security has implemented security policies to reinforce the importance of physical security of all data centers
including policies and procedures specific to data center physical security. Policies are reviewed annually, or as needed for relevance and
amended to reflect changes in requirements, technology and other circumstances.
Each data center has a security operations center (SOC) or security desk. Security personnel control access to the data center, monitor
security alarms and closed-circuit television (CCTV) cameras, and manage all security-related issues from the SOC or security desk.
The physical security command center (PSCC) provides global, 24/7 support to the local data center security teams with remote
monitoring, management, administration and maintenance of the access control systems and CCTV video surveillance systems used
throughout Cyxtera data centers. The PSCC also assists and directs local data center security in the response to critical alarms, physical
security incidents and critical events involving law enforcement, fire or emergency medical personnel.

Video Surveillance
Cyxtera data center premises are under twenty-four (24) hour CCTV video surveillance. Cyxtera CCTV systems are designed to cover the
exterior and common interior spaces of the data center. Customer colocation space is not included within Cyxtera CCTV surveillance. All
Cyxtera CCTV systems are designed to provide ninety (90) days of video retention.
Customer Installed / Managed Video Surveillance Equipment
The following terms and conditions apply to any video surveillance equipment to be installed and/or managed by, or on behalf of,
customer in its colocation space.
All cameras and associated cabling installed by, or on behalf of, customer within its colocation space:
Must not be interconnected with Cyxtera surveillance systems. May not block or interfere with any Cyxtera surveillance equipment.
Must be securely installed to assure that they do not present a safety issue (falling, head injuries, etc.).
May not extend below the data center floor tiles or into the plenum above the cage. Customer, or its contractors, may not lift the data center floor tiles or enter into the plenum above the cage for any reason.
May not block or interfere with cage or cabinet/rack access by Cyxtera or any other customer.
Must have a fixed camera view feature limited so the maximum field of view includes only the customer’s colocation space. No cameras that are pan or tilt enabled may be installed. May not view outside the customer colocation space into other cages, common areas or other areas of the data center.
May not include audio recording.
Must comply with local data protection legislation, including storage and retention of any recorded video.
Customer and all third-party contractors used by the customer to install the video surveillance equipment / system must adhere to Cyxtera data center work rules as outlined in the Data Center Work Rules section of this document. Customer video surveillance systems and the design for installation thereof (and any changes to either of the foregoing) must be approved by Cyxtera in writing prior to installation (or the making of any such changes). After installation (or the making of any such changes), customer must notify Cyxtera of completion of installation (or the making of any such changes) and demonstrate to Cyxtera data center facilities management and data center security its camera installation (or the making of any such changes) meets all of the requirements set forth herein. Cyxtera reserves the right to periodically perform unannounced inspections of the surveillance equipment to ensure continued compliance with such requirements. Cyxtera may notify customer of any non-compliance issues found. Customer shall remedy all non-compliance issues as promptly as possible following its becoming aware of any such non-compliance issues. In the event of any non-compliance issue, Cyxtera reserves the right to disconnect any non-complying equipment / camera until such time as all such non-compliance issues have been remedied. Any time spent by Cyxtera in taking an action pursuant to this paragraph shall be charged to customer at the applicable Remote Hands rate.
Customer accepts all responsibility for monitoring and maintaining the video surveillance equipment. Cyxtera will not monitor, nor respond to customer owned video surveillance equipment alarms or service issues related to the video surveillance equipment. Customer requests for assistance in responding to customer-owned video surveillance systems alarms will be assessed and billed at the applicable Remote Hands billing rates.

Data Center Cage and Cabinet Security Controls

All Cyxtera customer cages and cabinets come standard with either a metal lock with key, or combination code. You may sign out keys and obtain combination codes as needed from data center security. You are not permitted to alter, change, or install any locking mechanism on your space. Additionally, you are not permitted to alter or change any Cyxtera owned cabinet or rack. This includes, but is not limited to, removal of doors, drilling holes or mounting equipment to the exterior of the cabinet or rack. All customer equipment must fit in the cage or cabinet purchased by Customer so that the cage or cabinet can be secured in a locked position.

For an additional fee, Cyxtera will install, manage, and maintain proximity and/or biometric readers on your colocation space to replace the need for keys and/or combinations. Only Cyxtera approved and authorized security measures using the Cyxtera access control system may be installed in, or on, a customer colocation space. Customers may engage their Cyxtera account manager to request Cyxtera electronic access control measures for their colocation environment.

Cyxtera does not allow the installation of customer-owned security access control systems in the data center. This is necessary to preserve our compliance with various industry standards and ensure Cyxtera operations personnel and first responders have unimpeded, expeditious access to all colocation areas and occupants in life/safety emergency
situations. Cyxtera retains all necessary rights to respond to any emergency in the data center, including any emergency with respect to customer equipment.

**Metal Key Administration**

Data center security maintains a minimum of two keys for each Customer Area, one back-up and one loaner. All metal keys are secured within the SOC. The back-up key is maintained by data center security at all times in the event that an escort is needed to allow access to a customer's cage. Customers will not have possession of this back-up key at any time.

The loaner key will be available from data center security for use in accessing your colocation cage. Persons authorized by you for permanent or temporary data center access may be issued a loaner key. The loaner key is issued to you for your use each day you visit the data center. A loaner key is not required if you have access control card or biometric readers already installed on your cage doors.

The person assigned the loaner key is responsible for returning the key to data center security or in the key and badge drop box, where available, when departing the data center. Any loaner key that is reported as having left the data center premises is considered lost and may result in the customer colocation space being secured with a chain and padlock by data center security, in which case access to your space will be via escort only during this time. In such instance, the colocation space may be re-keyed. The customer may be charged for the cost of the re-key.

**Customer Metal Key Administrator**

As a colocation customer, you have the option of managing your metal key. You must appoint a "Key Administrator" who is authorized to receive the metal key on your behalf. Your Cyxtera Account Representative can assist you in establishing your Key Administrator. Cyxtera data center security will permanently issue your metal key to your Key Administrator. Once issued, it is the sole responsibility of the customer Key Administrator, and not Cyxtera, to manage ownership, distribution, possession, and use of the key. Customer Key Administrators may make as many copies of the key as needed. By agreeing to administer your key, you acknowledge and accept that any person with a valid Cyxtera access badge and key has unrestricted access to your colocation space and Cyxtera is not responsible for any unauthorized access to your space.

**Access Policies**

Customers and their authorized representatives can access the data center and their colocation space on a 24/7 basis. Individuals granted permanent or temporary access will have unescorted access to the assigned colocation space dependent upon local conditions. Minors, 16 years of age and younger, must have a legitimate business need and prior authorization from data center management to be granted access to the secured data center colocation areas.

All persons are to enter and exit the data center through the authorized main entrances only. Customers and their authorized representatives are not to enter or exit the data center through the loading dock and service exits.

Emergency exits are to be used only in the case of a fire or life safety emergency.

Cyxtera utilizes mantrap portals combined with a two-factor authentication of each individual entering the data center front entrance to control access to the data center and prevent tailgating, which is defined as the practice of one individual entering the data center or colocation area by following behind another individual with badge access. The two-factor authentication involves granting a person access based upon a combination of (a) presenting a valid Cyxtera access badge and (b) (i) a verification of the badge holder using a biometric (hand or finger) scan or personal identification number (PIN) code or (ii) being granted access by Cyxtera data center security. Two-factor authentication is always required to enter the secured, raised floor colocation areas of the data center.

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4 A ticket must be opened at least twenty-four (24) hours prior to arrival to gain access STL1, YUL1 and LHR2.
All persons requesting access to a Cyxtera data center must verify their identity by presenting valid government-issued photo identification or a Cyxtera issued photo access badge. Examples of valid government-issued photo identification include a passport, driver’s license, military ID, State identification card, etc.

Cyxtera reserves the right to inspect any and all incoming or outgoing property. Additionally, Cyxtera reserves the right to inspect any and all containers/items in the possession of any individual at any time while on Cyxtera property.

If you contract with third party technicians, they are held to the same standards as your employees for gaining access to our data centers. You are responsible for their actions within the data center and ensuring their compliance with the terms of your service agreement and the Cyxtera Acceptable Use Policy. Third party technicians who are listed as active contacts with permanent or temporary access permissions in the database will be allowed access to your space.

Customers and their authorized representatives may only access those portions of the data center made available by Cyxtera to customers for the placement of their equipment and use of the data center services (the “Customer Area”), and common areas of the data center (e.g., entryways and bathrooms) unless otherwise approved and accompanied by an authorized Cyxtera representative.

The following additional provisions shall apply to Customers and their authorized representatives when accessing a Cyxtera data center. Customers and their authorized representatives shall not:

- Allow any unauthorized persons to access the data center (e.g., by “tailgating” or other means),
- Use, touch, inspect or otherwise interface with any Cyxtera or third-party property or equipment,
- Harass or interfere with the activities of any individual within the data center, including any employees or representatives of Cyxtera or other customers,
- Engage in any activity that is in violation of law or the Cyxtera Acceptable Use Policy found at https://www.cyxtera.com/legal/Cyxtera-Acceptable-Use-Policy.pdf.

The above provisions are in addition to the individual data center policies or other Cyxtera security related policies.

**Access Control Systems and Badges**

Cyxtera uses an access control system (ACS) and access badges to restrict access within data centers to only those individuals with proper authorization. Cyxtera corporate security supports the distribution of all access badges and the administration of access permissions within the access control system. Badging hours are 8:00 a.m. to 5:00 p.m. local time, Monday through Friday. Before issuance of a badge, the individual must verify their identity with their valid, unexpired government-issued photo identification and be photographed. In addition, before issuance of permanent badges, the individual must complete a biometric enrollment using a hand or finger scan.

All persons entering the secured area of the data center are required to have a Cyxtera permanent, temporary or visitor access badge. Access badges are to be worn by the individual at, or above, the waist and be visible at all times. All access badges are the property of Cyxtera and must be returned upon request. No modifications or additions should be made that interfere with the visibility, clarity, or use of the badge.

Cyxtera access badges are issued to authorized individuals and are for their sole use only. The sharing of badges or PIN codes between individuals for any purpose whatsoever is strictly prohibited.

Customer is responsible for endorsing their employees and contractors access to the data center. This can be accomplished in the Portal. Customer badges remain active until the badge holder’s authorization is revoked by the customer. Cyxtera may, at its discretion and at any time, revoke the access privileges of any customer badge holder as a corrective measure to security violations, inappropriate behavior, non-payment of account or other instances deemed appropriate by Cyxtera.

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5 Badging hours for PHX1 are Monday through Thursday from 1:00 p.m. to 4:00 p.m. local time. Badging hours for 3rd Party data centers are by appointment only and are subject to approval.
All badge access privileges to Cyxtera data center(s) will cease on the earlier to occur of (i) the requested stop bill date for such services and (ii) the termination date of such services. In the event Cyxtera has the right to suspend services, such right shall include the right to suspend any or all badge access privileges.

Customer badges may be made inoperable if not used for more than ninety (90) consecutive days. The badge holder may request re-enablement of their badge on their next visit to the data center. Any badges which remain inoperable and unused for twelve (12) consecutive months may become completely inactive and require replacement.

Temporary badges are reserved for use by active Cyxtera access badge holders who have forgotten their badge or authorized individuals that only require temporary access. Any permanent access badge holder who has forgotten their badge should obtain a temporary access badge from data center security.

Temporary or visitor access badges are valid only for the day and time specified. All individuals assigned temporary or visitor badges are required to return the badges to data center security or deposit them in the key and badge drop box (where available) when departing the data center.

Customers and their authorized representatives may not enter the restricted or Cyxtera managed areas of the data center at any time.

Customer Access Authorization List

Customers are responsible to provide Cyxtera with, and maintain, an accurate listing of their employees, contactors and vendors requiring access into the Cyxtera data center and their colocation space. The customer maintains their current access authorization list within the Contact Administration section of the Portal. Customers have control of, and are responsible for, their access authorization list and can rapidly add or deactivate contacts as circumstances require, such as an employee departing the company. To access the contact management tool, you simply need to login to the Portal using your assigned user ID and password.

Only persons designated by the customer as an “Administrator” or “Access Authorization Administrator” within the Portal, may add, change or delete active contact records and add, change or remove access authorizations to an active contact record. Customer Care has the authority to make changes to the contact information in the database upon request, provided, that, Customer Care will only accept contact update requests from your designated “Administrator” or “Access Authorization Administrator”.

Data center security relies on your customer contact list in the database to verify access authorizations prior to granting access to the data center. All individuals who come to the data center to work on your behalf must also be listed in the database as an “active” contact and be assigned data center access permissions to be granted entry to the data center and to your space. The contact first and last name must match their name as it appears on their government-issued photo identification.

Access authorization may be granted on a permanent or temporary basis to any active contact on your account. Permanent access requires a start date and remains in effect until revoked by the customer. Permanent access is recommended for persons requiring frequent access to your colocation area over a long, sustained period of time. Temporary access requires a start date and end date and remains in effect during the time period specified. Temporary access is recommended for persons needing access during a short, specified period of time with known start and end dates.

Persons requiring access to more than one data center must have multiple instances of data center access permission, one for each data center, assigned to their contact record.

Your contact administrator may also revoke access authorizations at any time by removing data center access permissions from an active contact or simply making the contact inactive.
Customer Badge Issuance

Cyxtera customer badge issuance is authorized by the customer. Customer authorization is considered granted when the applicant is an active contact under the customer site record with permanent data center access permissions for the specified data center.

Only persons with permanent data center access permissions are eligible to be issued a Cyxtera customer badge. Persons with temporary data center access permissions are not eligible for a Cyxtera customer badge and are provided a Cyxtera temporary customer badge while in the data center.

Customer badges are issued upon request. Individuals with permanent data center access permission may request a Cyxtera customer badge by completing a badge request form in person with data center security.

Security officers may create and provide the customer with their customer badge based upon the customer authorization. For audit purposes, an approved badge request must be submitted and approved within Cyxtera for each new badge issued.

Security Access Reports

Security access reports requested by the customer for audit purposes are available in the Portal for those customers who have card or biometric readers on the entrance of their cage. Customers may view access reports via the Portal by choosing Reports -> Security Reports from the menu. Additional or custom reports may be requested via the Catalog in the Portal. Customers will be assessed the Remote Hands charges for assembling these reports. The timeframe for these types of requests is generally 7-10 business days. Electronic access reports for data center or cage access are available for ninety (90) days then archived.

Visitor Access

A person entering a Cyxtera data center, who is not an authorized customer, employee, or contractor will be considered a visitor and must demonstrate a legitimate business purpose for visiting the site. The visitor must be escorted by an authorized sponsor at all times. Authorized sponsors are Cyxtera employees or customers who have a permanent Cyxtera access badge and current access authorization to the data center. Authorized sponsors are permitted to escort up to five visitors at one time. Groups of six or more visitors must be processed as a data center group tour. Contractors and third-party vendors are not permitted to sponsor visitors.

All visitors must:

- Sign-in with data center security with their authorized sponsor upon entering the data center.
- Verify their identity with valid (unexpired) government-issued photo identification.
- Remain with their authorized sponsor at all times while in the data center.
- Sign-out with data center security and return the visitor badge at the end of their visit. All authorized sponsors must:
  - Maintain visual contact with visitors at all times while on the data center premises.
  - Ensure visitors wear and display a visitor badge at all times.
  - Escort visitors to data center security at the end of their visit.
  - Ensure visitors sign-out with data center security and return their visitor badge.
- Remain responsible for visitors and not switch authorized sponsors without first signing-out the visitors with data center security. The new authorized sponsor must then sign-in visitors with data center security.
Data Center Tours

Data center tours are coordinated by your Cyxtera account team. Any company requesting a tour must have a Non-Disclosure Agreement (NDA) on file with Cyxtera. It is important to schedule your tour with as much lead time as possible and ensure that NDAs have been properly executed. Data center tours require the approval of data center management. Tour approval must be received at least three (3) business days in advance of the date the tour is to occur. To expedite visitor processing, data center security should be provided the first and last name of all attendees at least one business day prior to the actual tour. The attendee first and last name must match their name as it appears on their government-issued photo identification. Attendees will be required to verify their identity by presenting a valid government-issued photo identification prior to accessing the data center.

The tour sponsor is responsible for the actions and safety of the visitors while they are in the Cyxtera data center.

General Policies

Signage

For aesthetic, privacy and security reasons the posting of signage is prohibited by customers and contractors inside the data center.

Photography Policy

Cyxtera prohibits image recording within restricted areas of data centers. Restricted areas do not include those parts of a data center, such as break rooms, conference rooms, offices, or other locations within the facility, that do not house or contain critical infrastructure. Customer may request Cyxtera DCS staff photograph, or image capture, within their colocation space for internal purposes on a request ticket.

This policy applies to all image-capturing devices with either traditional or digital imaging capabilities. This includes all cameras (digital or film), all video recording devices (camcorders) and any other devices capable of capturing images including, but not limited to, laptop computers, webcams, cellular phones, smartphones, tablets, and wearable devices such as a GoPro.

Video with audio recording capabilities within a Cyxtera data center is strictly prohibited.

Customer requests to photograph, or image capture, their colocation space for internal purposes must demonstrate a specific business need which cannot be met without the taking of video or photographic image and have prior written approval by the Cyxtera data center facilities or operations manager. Customer requests to photograph for marketing, or any other purpose, or photography to be conducted by a third party must have prior written approval by the relevant Cyxtera data center facilities or operations manager and Cyxtera corporate security.

Any persons engaged in unauthorized photography at a data center may be reported to data center security immediately for intervention and all photographic records may be required to be destroyed or deleted. Violations of this policy by customers will be considered a material breach of their contract with Cyxtera and subject violators to legal action.

WAP in Customer Area

Customers may install wireless surveillance systems, including but not limited to Web cams, or Wireless Access Point (WAP) devices in their Customer Area.

Customer must comply with the following provisions:

Customer shall provide Cyxtera with the SSID and MAC address of all access points deployed within the Customer Area prior to installation;
Customer shall ensure that the location and placement of all devices relating to customer's wireless network including, without limitation, wireless access points and associated network equipment including all parts thereto (collectively, "Devices") remain within the Customer Area;

Customer acknowledges and agrees that Cyxtera shall have no obligation to install or support the Devices, or to respond to any repairs, maintenance or distress calls regarding the Devices, and Cyxtera shall not be liable for any damage to or loss of the Devices;

Customer shall ensure that the Devices do not “block” or interfere with any wireless or other electronic signals;

Upon customer's receipt of written notice from Cyxtera that customer's Device is blocking or causing interference with any of Cyxtera's or its customers' equipment, customer shall immediately discontinue the use of any Device until such time as Cyxtera and customer agree that such interference is resolved.

Shipping and Receiving Policy

Inbound Receiving: Generally, Cyxtera’s data center shipping and receiving personnel are on-site during normal business hours. For your protection and the safety of all occupants of the data center, regardless of whether your delivery is during normal hours or after hours, a service ticket generated via the Portal or Customer Care is required. If a package is delivered to the data center and a service request ticket is not opened by the customer, Cyxtera data center personnel will open a service ticket on the customer's behalf thus notifying the customer that a delivery has been received. Applicable Remote Hands charges may apply and data center personnel reserve the right to refuse any shipments.

All customer equipment brought to the Cyxtera data center must enter the facility through the shipping and receiving area. Packages or equipment to be delivered to the data center must be addressed as follows:

“Customer Company Name”

“Ticket Number for this Shipment” “Your Customer ID”

“Customer Contact Name” “c/o Cyxtera”

“Cyxtera Address”

Cyxtera does not provide unlimited free storage. Unless the agreement between Customer and Cyxtera expressly states otherwise, items stored more than thirty (30) days may be subject to storage charges. If equipment storage continues for more than thirty (30) days, Cyxtera may, at any time after providing Customer with at least ten (10) days advance written notice, and Customer’s failure to remove such items from storage within such ten (10) day period, ship (at Customer’s sole cost and expense) such items to Customer at Customer’s last address of record. Cyxtera may, in its discretion, store abandoned customer equipment, at customer's expense, and/or take any other action Cyxtera is permitted to take with respect to abandoned equipment in accordance with its agreement between Customer and Cyxtera.

Unless the agreement between Customer and Cyxtera expressly states otherwise, Customer assumes any and all risk of loss or damage for any customer equipment during the equipment storage period. If a data center physical address is unknown, please contact your account team or Customer Care.

The customer may arrange to have their equipment moved from the shipping and receiving area to their cage by opening a service ticket. No cardboard is permitted on raised floor and, therefore, all packaging materials will be discarded. Remote Hands charges will be assessed to move customer equipment or packing materials from shipping and receiving to other areas of the data center.

Outbound Shipping: Upon request, Cyxtera will ship equipment on the customer's behalf. Customers are required to schedule the shipment with a carrier and for completing all necessary paperwork for the shipment. Customers are expected to provide appropriate containers and packing materials for the equipment to be shipped. As well, customers are required to pay for the shipping and insurance fees. Cyxtera will exercise due care in preparing the shipment requested by customer but will have no liability whatsoever in relation to the equipment or the shipping. This is a
chargeable service and therefore, a ticket must be submitted to request this service. Remote Hands support hours will be assessed for the time it takes to prepare and coordinate the shipment. Cyxtera may, in its discretion, store abandoned customer equipment, at customer’s expense, and/or take any other action Cyxtera is permitted to take with respect to abandoned equipment in accordance with its agreement between Customer and Cyxtera. Customers will be invoiced for abandoned equipment storage and shipping fees and any other costs incurred by Cyxtera in connection with its taking any permitted action with respect to abandoned equipment. All outbound shipment requests require a forty-eight (48) hour advance notice via a ticket submission with the following information:

The customer’s designated shipper’s name
The customer’s shipping account number
The customer’s billing address associated with the shipper’s account number. Cyxtera will use this address as the return address for the package
The “Ship To” address
The declared value of the shipment
Any special instructions regarding insurance, packing materials, shipment preparation, etc.
Documentation required for the shipment including packing slip/list, pro-forma order, etc.

Building Evacuation Policy

If the data center fire alarm or other life safety alarm is activated, customers must immediately evacuate the data center and report to an assembly point free and clear of danger. Evacuees are to remain at the assembly point until they are informed that they may leave the premises or enter the data center by data center security, data center management, or the local authorities. Approved evacuation plans can be reviewed on site with the operational team.

Parking Lot Policy

Parking is restricted to Cyxtera employees, customers, contractors, and visitors while performing work on site. Vehicles left on Cyxtera’s premises for extended periods of time are subject to being towed at the vehicle owner’s expense. All vehicles must be parked in designated parking areas only. Vehicles parked outside designated parking areas are subject to be towed at the vehicle owner’s expense. Customer or visitor designated parking spaces are restricted for customer or visitor use only, respectively. Handicapped parking spaces are restricted to those vehicles displaying a current handicapped license plate or hanging placard issued by the respective State Department of Motor Vehicles. These spaces are designated with the International Symbol of Access (wheelchair symbol) or a blue curb.

Conference Rooms

Customer is permitted to reserve available data center conference and team rooms on a first come, first serve basis. Customer must request a room at least 24 hours in advance via a service ticket. Customer’s use of these rooms is limited to one (1) day a week. Notwithstanding anything to the contrary, customer’s use or occupancy of the room shall not exceed five (5) days in any given month. Conference and team rooms are available during normal business hours, at the sole discretion of data center management. Customers are to return the conference room to the condition in which it was received. The room shall be left free of meeting materials and food items.

Floor Tile Lifting Policy and Under Raised Floor Access

Cyxtera prohibits you from lifting data center floor tiles. Only Cyxtera employees may access and work below the raised floor area. If access is necessary during installation, you may request access via ticket. This may incur an additional fee. If you are already an installed customer, please submit the request via the Portal or contact Customer Care. Floor tile
pullers are not allowed in the data center or customer cages and may be confiscated accordingly. Access under the raised floor is strictly limited to authorized Cyxtera personnel. Adherence to this policy is strictly enforced and violators may be reported. Any breach of this policy is considered a material breach of customer’s service agreement with Cyxtera and may be subject to termination.

**Moving Heavy Equipment**

Any customer equipment that is deemed too heavy to be moved by Cyxtera data center staff will be transported by a professional moving company and customer will be assessed appropriate charges for the move. Customers must take care to consider the weight of the equipment to be moved and consult with data center management to assure that no damage will be done to the data center flooring.

The following are basic guidelines for moving weight on the raised floors.

- Less than 800 pounds (363 kg): No floor protection mandated.
- Between 800 and 2500 pounds (363-1134 kg): 1/8” aluminum sheets to distribute weight staggered across multiple tiles.
- Over 2500 pounds (1134 kg): An approved local procedure must be used. The Facilities Manager will create a procedure to provide instructions on additional bracing required based on the site’s raised flooring requirements.

**Product Specific Terms and Conditions**

**Office Space / Storage Space**

These terms and conditions apply to any office space or storage space licensed by customer from Cyxtera.

With respect to office space, any such office space shall be used by customer solely for purposes of general office use. The charges for office space shall include electricity, provided, that, notwithstanding anything in the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer for any electricity failure. Such charges shall not include, among other matters, telephone services or internet connectivity. Customer shall have the right, at its sole cost and expense, to bring telephone facilities, including PBX, voice mail and other systems and internet connectivity in to any such office space.

With respect to storage space, any such storage space shall be used by customer solely for purposes of storage.

Prior to termination of customer’s right to use the office or storage space, as applicable, customer will (a) remove all customer equipment and other customer property (collectively, the “Office/Storage Materials”) from such office space or storage space, as applicable (and either move such Office/Storage Materials to another customer area that customer is licensing from Cyxtera or remove such Office/Storage Materials from the Cyxtera premises), and (b) return such office space or storage space, as applicable, to Cyxtera in the same condition as it was on the billing commencement date (“BCD”), normal wear and tear excepted. Unless the agreement between customer and Cyxtera expressly states otherwise, if customer fails to take any such action with respect to Office/Storage Materials, this will constitute abandonment of such Office/Storage Materials under the laws of the jurisdiction where the abandoned property is located and Cyxtera may, at any time thereafter, (i) remove such Office/Storage Materials from such office space or storage space, as applicable (or other area of the Cyxtera premises where they were left), and store them (either on the Cyxtera premises or an off-site location) or (ii) after providing written notice to customer of its failure to remove such Office/Storage Materials and customer’s failure to do so within thirty (30) days of its receipt of such written notice, (3) ship such Office/Storage Materials to customer at customer’s last address of record, (2) to the extent not prohibited by applicable law, destroy and dispose of (or have destroyed and disposed) such Office/Storage Materials or (3) to the extent not prohibited by applicable law, liquidate the Office/Storage Materials and retain the proceeds. If customer fails to return such office space or storage space, as applicable, to Cyxtera in the same condition as it was on the BCD, normal wear and tear excepted, Cyxtera may take action to do so. Customer shall be responsible for any costs incurred by Cyxtera in taking any action pursuant to this paragraph. In no event shall Office/Storage Materials be construed as
fixtures or fittings. Cyxtera's initial election to store Office/Storage Materials for customer in accordance with this section shall not
prohibit Cyxtera from subsequently deciding to take any of the other actions permitted under this section. Notwithstanding anything in
the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer (including liability
for loss of or damage to any Office/Storage Materials) arising out of Cyxtera's exercise of its rights under this section (including any loss
of or damage to any Office/Storage Materials during any period of time when such Office/Storage Materials are being stored by Cyxtera
pursuant to this section).

Express Entrance / Pathway Conduit

These terms and conditions apply to any express entrance or pathway conduit services provided by Cyxtera to customer.
In no event shall customer have the right to modify (including, but not limited to, splicing, cutting, attaching, detaching or pulling
cabling) the design, specifications, details or configuration of the conduit or cabling, or make any repairs to or perform any maintenance
on any such conduit or cabling, on the Cyxtera side of the demarcation point (whether the conduit or cabling is customer or Cyxtera-
provided) without Cyxtera's prior written approval. In the event Cyxtera approves customer, or customer using a third-party vendor, to
make any such modifications or repairs to, or perform any maintenance on, express entrance services (customer shall not be permitted
to make, or to use a third-party vendor to make, any modifications or repairs to, or perform any maintenance on, pathway conduit
services, with all such modifications, maintenance or repairs to be performed solely by Cyxtera or a vendor engaged by Cyxtera), Cyxtera
reserves the right to supervise any such approved modifications, maintenance or repairs and will charge customer for such supervision at
the applicable Remote Hands billing rate. If such modifications, maintenance or repairs are agreed to be conducted by Cyxtera, such
modifications, maintenance or repairs shall either be performed by Cyxtera at the applicable Remote Hands rate or, if required by
Cyxtera, require a service order or statement of work setting forth the costs and other terms and conditions relating thereto. Customer
shall be responsible for ensuring that all customer-provided conduit and cabling meets all applicable electrical and fire standards.
Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, Cyxtera may, in its sole discretion, require
the conduit or cabling being utilized by customer in connection with an express entrance or pathway conduit service being provided by
Cyxtera to customer to be moved, whether such move is required due to Cyxtera's election to move the demarcation point, its Meet Me Room (the "MMR") or for any other reason. Cyxtera will use commercially reasonable efforts to notify customer at least ninety (90) days prior to requiring any such conduit or cabling to be moved. In the event Cyxtera is unable to provide customer with at least ninety (90)
days advance written notice of such requirement, Cyxtera will provide customer as much notice as is reasonably possible. Customer will
cooperate in good faith with Cyxtera to complete any such move and ensure that the move is completed within Cyxtera's timeframe for
such move. In the event customer's failure to cooperate with Cyxtera results or, Cyxtera reasonably believes is likely to result, in whole or
in part, in the inability of the move to be completed within Cyxtera's timeframe for such move, Cyxtera shall have the right to take any
and all actions necessary to complete the move without customer's consent or cooperation. Any costs incurred by customer or Cyxtera
in connection with any such move will be the responsibility of customer.

Customer acknowledges that Cyxtera does not provide any security or access control with respect to any conduit or cabling that is
located outside of the portion of the Cyxtera data center that is owned or leased by Cyxtera and, as such, other third parties may have
access to such conduit and cabling. Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, in no
event shall Cyxtera have any liability to customer for any loss or damage to such conduit or cabling that is located outside of the portion
of the Cyxtera data center that is owned or leased by Cyxtera (other than loss or damage directly caused by an act of Cyxtera that rises
to the level of negligence or willful misconduct).

Upon termination of the express entrance or pathway conduit service, as applicable, all customer-provided conduit and cabling shall
become Cyxtera's property, customer shall have no further rights in any such conduit or cabling and customer shall not remove or make
any modifications to any such conduit or cabling on the Cyxtera side of the demarcation point.
Ecosystem Entrance Panel

These terms and conditions apply to any ecosystem entrance panel services provided by Cyxtera to customer.

Notwithstanding that a customer-provided patch panel may be installed in the MMR for customer’s use of the ecosystem entrance panel services provided by Cyxtera to customer, Customer shall not be granted access to the MMR.

All modifications, servicing, repairs and maintenance to, or removal of, the patch panel (whether customer or Cyxtera- provided) being utilized by customer in the MMR require Cyxtera’s prior written approval. Customer shall have no right to take any of such actions, all of which shall be conducted by Cyxtera or a contractor engaged by Cyxtera. Any such actions shall either be performed by Cyxtera at the applicable Remote Hands rate or, if required by Cyxtera, require a service order or statement of work setting forth the costs and other terms and conditions relating thereto, provided, that, there will be no charge to customer for any such actions that Cyxtera takes in connection with standard servicing, repairs and maintenance to Cyxtera-provided patch panels. In no event does Cyxtera have any duty to monitor, maintain or care for any customer-provided patch panel. Customer shall be responsible for ensuring that all customer-provided patch panels meet all applicable electrical and fire standards. Cyxtera will monitor, maintain, operate and care for all Cyxtera-provided patch panels.

In the event a customer-provided patch panel has been installed in the MMR in connection with an ecosystem entrance panel service, promptly following termination of such service, Cyxtera will remove such patch panel (at no cost to customer) and, if requested by customer, ship such patch panel to customer at customer’s sole cost and expense. If customer has not requested return of such patch panel, Cyxtera shall (a) store it (either on the Cyxtera premises or an off-site location) or (b) after providing written notice to customer of such patch panel having been removed and customer’s failing to pick up the patch panel or provide directions to Cyxtera where to ship the patch panel within thirty (30) days of its receipt of such written notice, (1) ship such patch panel to customer at customer’s last address of record, (2) to the extent not prohibited by applicable law, destroy and dispose of (or have destroyed and disposed) such patch panel or (3) to the extent not prohibited by applicable law, liquidate the patch panel and retain the proceeds. Unless otherwise set forth in this paragraph, customer shall be responsible for any costs incurred by Cyxtera in taking any action pursuant to this paragraph. Cyxtera’s initial election to store such patch panel for customer in accordance with this paragraph shall not prohibit Cyxtera from subsequently taking any of the actions permitted under this paragraph. Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer (including liability for loss of or damage to such patch panel) arising out of Cyxtera’s exercise of its rights under this paragraph (including any loss of or damage to any such patch panel during any period of time when such patch panel is being stored by Cyxtera pursuant to this paragraph).

Roof Rights

These terms and conditions apply to any use by customer of roof space licensed by Cyxtera to customer.

Any such roof space shall be used by customer solely for the purposes of installing and maintaining an antenna, microwave dish or other communications devices and related or ancillary uses, including necessary mounting structures (collectively, “Roof Equipment”). Customer shall be responsible for ensuring that all Roof Equipment provided by customer meets all applicable electrical and fire standards.

Customer shall only be permitted to access the roof space when escorted by a Cyxtera employee or representative. Cyxtera will charge customer for any time spent escorting customer at the applicable Remote Hands billing rate.

In no event shall customer have the right to modify the design, specifications, details or configuration of the Roof Equipment, or make any repairs to or perform any maintenance on any such Roof Equipment, without Cyxtera’s prior written approval. In the event Cyxtera approves customer, or customer using a third-party vendor, to make any such modifications or repairs to, or perform any maintenance on, any such Roof Equipment, Cyxtera reserves the right to supervise any such approved modifications, maintenance or repairs and will charge customer for such supervision at the applicable Remote Hands billing rate. If such modifications, maintenance or repairs are agreed to be conducted by Cyxtera, such modifications, maintenance or repairs shall either be performed by Cyxtera at the applicable Remote
Hands rate or, if required by Cyxtera, require a service order or statement of work setting forth the costs and other terms and conditions relating thereto.

The charges for roof space shall not include, among other matters, electricity, telephone services or internet connectivity. Customer can contract with Cyxtera to provide electricity to roof space for the operation or use of the Roof Equipment, provided, that, notwithstanding anything in the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer for any electricity failure with respect thereto.

Customer shall have the right, at its sole cost and expense, to bring telephone facilities and internet connectivity in to any such roof space for the operation or use of the Roof Equipment.

Customer shall not use the roof space in any way which interferes with Cyxtera’s, its landlord’s or any other third party’s use of the Cyxtera data center (including the roof of such Cyxtera data center). In the event that customer’s use of the roof space interferes with or is interfered with by Cyxtera or a third party, customer agrees to reasonably cooperate with Cyxtera and/or such third party, as applicable, to resolve such interference as promptly as possible. Cyxtera reserves the right to disconnect any Roof Equipment or suspend the roof space licensed by Cyxtera to customer until such time as such interference has been resolved. If the interference cannot be resolved within a reasonable period of time, as determined by Cyxtera in its sole discretion, Cyxtera reserves the right to terminate the license of roof space upon written notice to customer. Any costs incurred by customer or Cyxtera in connection with any such interference will be the responsibility of customer.

Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, Cyxtera may, in its sole discretion, relocate the roof space licensed by Cyxtera to customer. Cyxtera will use commercially reasonable efforts to notify customer at least thirty (30) days prior to relocating such roof space. In the event Cyxtera is unable to provide customer with at least thirty (30) days advance written notice of such requirement, Cyxtera will provide customer as much notice as is reasonably possible. Customer will cooperate in good faith with Cyxtera to complete the move of its Roof Equipment to the new area specified by Cyxtera and ensure that the move is completed within Cyxtera’s timeframe for such move. In the event customer’s failure to cooperate with Cyxtera results or, Cyxtera reasonably believes is likely to result, in whole or in part, in the inability of the move to be completed within Cyxtera’s timeframe for such move, Cyxtera shall have the right to take any and all actions necessary to complete the move without customer’s consent or cooperation. Any costs incurred by customer or Cyxtera in connection with any such move will be the responsibility of customer.

Customer acknowledges that Cyxtera does not provide any security or access control with respect to the roof at which roof space is licensed by Cyxtera to customer and, as such, other third parties may have access to customer’s roof space and Roof Equipment. Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer for (a) any loss or damage to Roof Equipment (other than loss or damage directly caused by an act of Cyxtera that rises to the level of negligence or willful misconduct) or (b) any interference with customer’s use of the roof space caused by (i) the equipment of Cyxtera or (ii) a third party.

Prior to termination of customer’s right to use the roof space, customer will (a) remove all Roof Equipment from such roof space (and either move such Roof Equipment to another customer area where customer is licensing from Cyxtera or remove such Roof Equipment from the Cyxtera premises), and (b) return such roof space to Cyxtera in the same condition as it was on the BCD, normal wear and tear excepted. Unless the agreement between customer and Cyxtera expressly states otherwise, if customer fails to take any such action with respect to Roof Equipment, this will constitute abandonment of such Roof Equipment under the laws of the jurisdiction where the abandoned property is located and Cyxtera may, at any time thereafter, (i) remove such Roof Equipment from such roof space (or other area of the Cyxtera premises where they were left), and store them (either on the Cyxtera premises or an off-site location) or (ii) after providing written notice to customer of its failure to remove such Roof Equipment and customer’s failure to do so within thirty (30) days of its receipt of such written notice, (iii) ship such Roof Equipment to customer at customer’s last address of record, (iv) to the extent not prohibited by applicable law, destroy and dispose of (or have destroyed and disposed) such Roof Equipment or (v) to the extent not prohibited by applicable law, liquidate the Roof Equipment and retain the proceeds. If customer fails to return such roof space to Cyxtera in the same condition as it was on the BCD, normal wear and tear excepted, Cyxtera may take action to do so. Customer shall be responsible for any costs incurred by Cyxtera in taking any action pursuant to this paragraph. In no event shall Roof Equipment be construed as fixtures or fittings. Cyxtera’s initial election to store Roof Equipment for customer in accordance with this section shall not
prohibit Cyxtera from subsequently deciding to take any of the other actions permitted under this section. Notwithstanding anything in
the agreement between Cyxtera and customer to the contrary, in no event shall Cyxtera have any liability to customer (including liability
for loss of or damage to any Roof Equipment) arising out of Cyxtera’s exercise of its rights under this section (including any loss of or
damage to any Roof Equipment during any period of time when such Roof Equipment is being stored by Cyxtera pursuant to this
section).

Month-to-Month Services

Notwithstanding anything in the agreement between Cyxtera and customer to the contrary, the following Cyxtera colocation services
are considered month-to-month services and may be cancelled by either party by providing at least thirty (30) days advance notice of
cancellation to the other party:
Cross Connect
Ecosystem Entrance Panel
Riser Connect
CXD Port

Data Center Work Rules

Cyxtera Policy

Cyxtera expects that anyone who enters the data center conduct themselves with the proper decorum and to honor all safety practices.
It is vitally important that everyone understands the severe, negative impact that workers’ actions can have on a site as a result of
working inappropriately. These rules and guidelines have been developed to clarify Cyxtera’s expectations and to reduce the chance of
mistakes and unintended events. Failure to comply with any procedure may result in immediate removal from the site, may result in
permanent loss of access to the facility, and possible loss of business for the company that the contractor represents.
In summary, the policy dictates that:
The definition of a contractor is any person performing work in a Cyxtera data center that is not a Cyxtera employee or is not an
authorized customer representative performing work in the Customer Area.
All contractors must be trained and, if requested, display an understanding of the Data Center Work Rules provided by Cyxtera.
Contractors must adhere to the rules and guidelines set forth by the facilities team at all times while on the premises.
Failure to know or comply with the policy is grounds for immediate removal from the site, perhaps permanently.

Data Center Safety and Environmental Policy

In order to provide a safe and secure service, Cyxtera requires that all customers adhere to the following guidelines:
Zero Tolerance Policy: Customers must keep their areas clean at all times. Cages must be free of debris. Cardboard, of any kind, is
strictly prohibited. Due to fire, safety, and environmental requirements, this policy is strictly enforced and Cyxtera reserves the right, in
its sole discretion, to immediately remove any cardboard, paper, debris etc. from any and all customer cages. Cyxtera will use
reasonable efforts to notify the customer of such non-compliance after removal. In the event Cyxtera removes such items, a Remote
Hands charge will be assessed to customer’s account and customer acknowledges and agrees to render payments for such Service at the
Remote Hands hourly rate as invoiced by Cyxtera.
Customers may not store combustible materials or paper products (including cardboard and boxes) anywhere in the data center. Unused
cabling must be stored out of sight and equipment stored without impeding airflow. Cabling may not be draped in aisle ways or hinder
clearance around cabinets or racks.
Customers must keep tile vents clear of any obstruction. Non-functioning equipment and miscellaneous items must be stored out of
sight and organized inside the customer’s cage at the end of each working day.
Prohibited Materials in Cyxtera Data Centers

The following items are prohibited in Cyxtera data centers:

- Food or drink – prohibited on the raised floor
- Tobacco and other smoke products are prohibited
- Explosives, firearms or weapons of any type (See “Weapons” section for further details)
- Hazardous materials or other chemicals
- Alcohol, illegal drugs, as well as other intoxicants
- Magnets and electromagnetic devices
- Radioactive materials
- UPS equipment, other than what is provided by Cyxtera, is strictly prohibited
- Paper products (other than equipment manuals) or other combustible materials of any kind, including cardboard and boxes

Weapons

Cyxtera strictly prohibits firearms or other form of weapons, including but not limited to knives (other than small pocket knives), explosives (including fireworks), chemicals or other substances, and/or hazardous devices in its data centers. Employees, contractors, customers and visitors are required to lock weapons safely in their personal vehicle whenever the vehicle is on Cyxtera property. When locking weapons in a personal vehicle, the weapon is expected to not have ammunition in it, and the ammunition stored in a separate part of the vehicle. Weapons are not to be removed from the vehicle while the vehicle is on Cyxtera property and should be out of visibility of others if possible. Further requirements for handling and storing weapons differ by location and are governed by state and local laws.

Bolt down, Seismic Bracing & Grounding of Cabinets and Racks; Customer Equipment

Customers who request seismic bracing may place an order for seismic bracing to be performed by the Cyxtera staff. Structural bracing systems and customer provided cabinets and racks must meet or exceed seismic design requirements of local building codes for lateral seismic design. Cyxtera customers are responsible for all costs associated with seismic bracing of cabinets and racks.

For the safety of customers and data center employees, all cabinets and racks in all data centers must be anchored, braced and grounded in accordance with the requirements of the 2012 International Building Code and the National Electric Code. All customer-owned cabinets and racks must be approved in advance by Cyxtera and installed by Cyxtera personnel. Customers must obtain prior written approval for their cabinet or rack layout from Cyxtera prior to installation and adhere to those requirements.

All Customer equipment must comply with all applicable manufacturer specifications, regulations and industry standards, including those relating to proper installation, power consumption and ventilation/heat dissipation. Specifically, all Customer equipment must be UL-listed and comply with the National Electrical Code. Cyxtera may require that Customer provide a current, written list of all Customer equipment located in its cage or cabinet and affix an asset tag on any such Customer equipment.
Compliance Audit Reporting
Cyxtera performs periodic audits of its data centers, which result in the issuance of audit reports or certificates. Customers may request copies of these reports through their account team or via Customer Care after signing Cyxtera's Non-Disclosure Agreement specific to the disclosure of audit documentation.
Customers may request additional audit information via a service ticket and subject to an additional charge at the Remote Hands rate. Depending on the request, customer may be required to enter into an amended NDA to cover additional information. All compliance requests should be sent to grc@cyxtera.com.

Customer Cabling
Cabling within customer cages must be installed in an appropriate industry standard discipline and professional manner. Customers may purchase cabling services through Cyxtera or may contract directly with a third party. Cabling must be properly run and secured within cabinets and racks, by using overhead and vertical cable management devices. Cabling must be installed in a safe manner so that it in no way impedes aisles, floor, and entranceways or presents a fire hazard.
Cyxtera's standard cable management will be defined as (1) overhead and/or under floor support such as basket tray, ladder rack, fiber guide and the associated support material, (2) the vertical and horizontal support panels designed and installed to accompany rack and cabinet configurations, and (3) routing of patch cords or interconnect cabling (copper and fiber) within the racks and cabinets between connectivity panels (patch panels) and/or active equipment. All other wire management equipment will incur an additional fee. All cabling must be plenum rated and meet the UL minimum code standards and the National Electrical Code NFPA-70. Cyxtera recommends clear labeling at each end of all installed cables. Cyxtera reserves the right to remove any non-compliant cabling without notification to Customer.

Billing and Service Credits

Billing Inquiries
Billing inquiries can be made by e-mail at arbilling@cyxtera.com. Up-to-date contact information can always be found on your invoice. You can also contact the alias above (Billing Support team) for copies of billing invoices, as well as via the Portal.

SLA Credit Requests
If you feel you are entitled to a credit, as per your Service Level Agreement, please submit your request to billing.services@cyxtera.com within the timeframe set forth in such Service Level Agreement. Include in your e-mail any trouble ticket/case information, dates, and other specifics that you feel will be useful in evaluating your request.

Key Contacts

Customer Care
North America: 800-884-3082
EMEA: 0800 0288563
Singapore: 800 1302 276
Hong Kong: 800 861 767
Japan: 00531 13 0249
China Telecom: 10800 1300389
Acceptable Use Policy

Introduction and Applicability of Acceptable Use Policy

Cyxtera Data Centers, Inc. and its subsidiaries, parent companies, and affiliates (collectively “Cyxtera” or “Company” or “we”) have adopted this Acceptable Use Policy (“AUP”) to govern the use of their Extensible Data Center Platform (CXD) and general interconnection services (the “Services”) by their customers (“Customers” or “you”) and by users that have gained access to the Services through Customer accounts (“Users”). As used in this AUP, any reference to “Users” is intended to encompass, as applicable, both Customers and their Users, and any reference to “Services” is intended to encompass, as applicable, both the Services and the Cyxtera Environment and Network (as defined below). Any use of the Services by a User in violation of this AUP shall also be considered a use of the Services by Customer in violation of this AUP and any other breach by a User of this AUP shall also be considered a breach by Customer of this AUP. In the event Cyxtera has a right hereunder to terminate or suspend an individual User’s right to use any or all of the Services, Cyxtera shall also have the right to terminate or suspend, as the case may be, Customer’s (and all other User’s) right to use such Services.

By both parties executing the Agreement to which this is attached, you acknowledge that you and your Users are responsible for compliance with this AUP, and agree to be bound by this AUP. You are responsible for violations of this AUP by any User that accesses the Services through your account. Cyxtera does not intend to control or monitor any User’s experience or the content of their online communications, however, Cyxtera reserves the right to disconnect or otherwise terminate your (and all of your Users’) access to the Services for usage that violates (or may violate) the AUP or that otherwise appears unlawful, harmful or offensive. This AUP applies to all aspects of the Company’s Services, including any aspects of such Services across Cyxtera’s network, including equipment, systems, facilities, services and products incorporated or used in such transmission network (“Cyxtera Environment and Network”). This AUP is designed to protect the Services (including the Cyxtera Environment and Network), Users, and the Internet community from improper or illegal activity across the Internet, to improve the Services and to improve Services offerings. In situations where data communications are carried across networks of other Internet Service Providers (ISPs), you and Users must also conform to the applicable acceptable use policies of such other ISPs.

The use of the Services by a Customer (and any other User accessing the Services through Customer) is subject to the terms and conditions of any agreements entered into by such Customer and Cyxtera. This AUP is incorporated into such agreements by reference. Certain Services may have additional terms and conditions, which govern in the event of any inconsistency with this AUP. Please refer to the specific products and services terms and conditions including any specification sheets as well as FAQs, and the agreements under which such products and services are being provided for further information.

If you do not wish to be bound to this AUP, you should not access, subscribe to, or otherwise use the Services or permit any Users to do any of the foregoing. Cyxtera may modify this AUP at any time, without notice to you or any of your Users. Modifications will be deemed effective immediately upon posting of the modified terms at Cyxtera’s website.

Prohibited Uses

Illegal Activity

Users may access and use the Services for lawful purposes only. You are responsible for any transmission you or your Users send, receive, post, access, or store using the Services, including via the Cyxtera Environment and Network. Users must at
all times use the Services in compliance with all applicable laws, rules and regulations. Cyxtera strictly prohibits the use of the Services for the transmission, distribution, retrieval, or storage of any information, data, or other material in violation of any applicable law or regulation (including, where applicable, any tariff or treaty). This prohibition
includes, but is not limited to, the use or transmission of any data that is protected by copyright, trademark, trade secret, patent or other intellectual property right without proper authorization and the transmission of any material that constitutes an illegal threat, violates export control laws, or is obscene, defamatory, or otherwise unlawful. Some examples of unlawful conduct include:

**Infringement**: Infringement of intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret or other intellectual property right. Infringement may result from the unauthorized copying, distribution and/or posting of pictures, logos, software, articles, musical works, and videos.

**Offensive Materials**: Disseminating or posting material that is unlawful, libelous, defamatory, obscene, indecent, explicit, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable.

**Export Violations**: Including, without limitation, violations of the Export Administration Act and the Export Administration Regulations administered by the Department of Commerce.

**Unauthorized Access/Interference**

A User may not attempt to gain unauthorized access to, or attempt to interfere with or compromise the normal functioning, operation, or security of any portion of the Services. A User may not use the Services to engage in any activities that may interfere with the ability of others to access or use the Services or the Internet. A User may not use the Services to monitor any data, information, or communications on any network or system. A User is strictly prohibited from attempting to gain access to the user accounts of other customers or users, or violating system or network security, each of which may result in criminal and civil liability. Cyxtera will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Cyxtera may, but is under no obligation to, monitor equipment, systems and network equipment at any time for security and management purposes. Examples of prohibited unauthorized access or interference include:

**Hacking**: Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without the express prior authorization of the owner of the system or network.

**Interception**: Unauthorized monitoring of data or traffic on any network or system without the express prior authorization of the owner of the system or network.

**Intentional Interference**: Interference with service to any user, host or network including, without limitation, denial-of-service attacks, mail bombing, news bombing, other flooding techniques, deliberate attempts to overload a system, and broadcast attacks.

**Falsification of Origin or Routing Information**: Using, selling, or distributing in conjunction with the Services, any computer program designed to conceal the source or routing information of electronic mail messages in a manner that falsifies an Internet domain, header information, date or time stamp, originating e-mail address, or other identifier.

**Avoiding System Restrictions**: Using manual or electronic means to avoid any limitations established by Company or attempting to gain unauthorized access to, alter, or destroy any information that relates to any Company customer or other end-user. Company may, but is not obligated to, take any action it deems necessary to protect the Services, its rights or the rights of its customers or third parties, or optimize or improve the Services, systems, and equipment. Users acknowledge that such action may include, without limitation, employing methods, technologies, or procedures to filter or block messages and data sent through the Services. Company may, in its sole discretion, at any time, filter “spam” or prevent “hacking,” “viruses” or other potential harms without regard to any preference Users may have communicated to us.

**Failure to Abide by Third-Party Policies**: Violating the rules, regulations, or policies that apply to any third-party network, server or computer database that a User accesses.

**Harmful Content**: Disseminating or posting harmful content including, without limitation, viruses, Trojan horses, worms, time bombs, zombies, cancelbots or any other computer or other programming routines that may damage, interfere with, secretly intercept or seize any system, program, data or personal information.
Spoofing/Fraud

Users are prohibited from intentionally or negligently injecting false data into the Internet via the Services, for instance in the form of bad routing information (including, but not limited to, the announcing of networks owned by someone else or reserved by the Internet Assigned Numbers Authority) or incorrect DNS information.

A User may not attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than such User for purposes of deception via the Services. Any attempt to impersonate someone else by altering a source IP address information or by using forged headers or other identifying information is prohibited. Any attempt to fraudulently conceal, forge, or otherwise falsify a User's identity in connection with use of the Services is also prohibited.

Unsolicited Commercial E-mail/Spamming

A User may not use the Services to transmit unsolicited commercial e-mail messages or deliberately send excessively large attachments to one recipient, or files that disrupt a server, account, newsgroup, or chat service. Any unsolicited commercial e-mail messages or a series of unsolicited commercial e-mail messages or large attachments sent to one recipient using the Services is prohibited. In addition, “spamming” or “mail-bombing” using the Services is also prohibited.

Likewise, Users are precluded from transmitting using the Services: (1) unsolicited informational announcements; (2) chain mail; (3) numerous copies of the same or substantially similar messages; (4) empty messages; or (5) messages which contain no substantive content. Use of the service of another provider to send unsolicited commercial e-mail, spam, or mail-bombs, to promote a site hosted on or connected to the Services, is similarly prohibited. Likewise, a User may not use the Services to collect responses from mass unsolicited email messages, e-mail addresses, screen names, or other identifiers of others (without Company's prior written consent), a practice sometimes known as spidering or harvesting. You and your Users may not use any of Company's mail servers or another site's mail server to relay mail without the express permission of the account holder or the site.

You and your Users will not access any Usenet newsgroups via any network other than one provided through the Services. Without notice to you, and at any time, Cyxtera may add, remove, or modify Usenet newsgroups or services and may modify or restrict the bandwidth available to download content from Usenet newsgroups.

Cyxtera may, in its sole discretion, rely upon information obtained from anti-spamming organizations (including, for example and without limitation, spamhaus.org, spamcop.net, sorbs.nie, and abuse.net) as evidence that a User is an active “spam operation” for purposes of taking remedial action under this AUP.

Usenet Postings

All postings to Usenet groups must comply with that group's charter and other policies. Users are prohibited from cross-posting to unrelated news groups or to any news groups where the post does not meet that group’s charter. Continued posting of off-topic messages, including commercial messages (unless specifically invited) is prohibited. Disrupting newsgroups with materials, postings or activities that are (as determined by Cyxtera in its sole discretion) frivolous, unlawful, obscene, threatening, abusive, libelous, hateful, excessive or repetitious is prohibited, unless such materials or activities are expressly allowed or encouraged under the newsgroup's name, Frequently Asked Questions, or charter.

Miscellaneous Prohibited Activities
Cyxtera prohibits Users from using the Services for any prohibited activities, including, but not limited to, the following activities:

Intentionally transmitting files containing a computer virus or corrupted data.
If Cyxtera has specified bandwidth limitations for your user account, use of the Services shall not be in excess of those limitations.
Attempting to circumvent or alter the processes or procedures to measure time, bandwidth utilization, or other methods to document use of the Services.
Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to deliver unsolicited commercial e-mail.
Any activity that disrupts, degrades, harms or threatens to harm the Services, including the Cyxtera Environment and Network.
Any use of another party's electronic mail server to relay email without express permission from such other party.
Any other inappropriate activity or abuse of the Services (as determined by Cyxtera in its sole discretion), whether or not specifically listed in this AUP, may result in suspension or termination of the User's access to or use of the Services.

Complaints

If Cyxtera receives complaints directly from Internet users, through Internet organizations and through other parties, Cyxtera shall not be required to determine the validity of complaints received, or of information obtained from anti-spamming organizations, before taking action under this AUP. A complaint from the recipient of commercial e-mail, whether received directly, or through an anti-spamming organization, shall be evidence that the message was unsolicited. Cyxtera has no obligation to forward the complaint to the User, or to identify the complaining parties.

Cyxtera Right of Action for Prohibited Actions

The actions described in this Section II are non-exhaustive, and Cyxtera reserves the right to take appropriate action to remedy any conduct which it deems to be a violation of this AUP or otherwise may be harmful to the Services, its customers, or Internet users.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUP, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A USER, SHALL BE CONSIDERED VIOLATIONS OF THE AUP BY SUCH USER.

Cyxtera’s Rights

Suspension or Termination of Services

If Users engage in conduct or a pattern of conduct, including without limitation repeated violations by a User whereby correction of individual violations does not, in Cyxtera’s sole discretion, correct a pattern of the same or similar violations, while using the Services that, in Cyxtera’s sole discretion, violates the AUP, or is otherwise illegal or improper, Cyxtera reserves the right to temporarily suspend the Services or the User's access to the Services. Cyxtera will generally attempt to notify the Customer of any activity in violation of the AUP and request that such Customer take whatever steps necessary to, or to get the User to, cease such activity; however, in cases
where the operation of the Services is threatened or cases involving unsolicited commercial e-mail/spam, a pattern of violations, mail relaying, alteration of the User’s source IP address information, denial of service attacks, illegal activities, suspected fraud in connection with the use of Services, harassment or copyright infringement, the Company reserves the right to temporarily suspend the Services or the User’s access to the Services. Cyxtera shall submit a claim for permanent suspension, or termination of the Services or the User’s access to the Services to the Ordering Activity’s contracting officer pursuant to the Contract Disputes Act.

In the event that Company becomes aware that any such material may violate the terms of this AUP and/or expose Company to civil or criminal liability including, without limitation, under the Digital Millennium Copyright Act (“DMCA”), Company reserves the right to block access to such material and temporarily suspend the access of any User creating, storing, copying, or communicating such material, including any User whom Company becomes aware the User has engaged in any of the foregoing activities multiple times.

Cyxtera reserves the right to avail itself of the safe harbor provisions of the DMCA. Cyxtera does not make any promise, nor does Cyxtera have any obligation, to monitor or police activity occurring using the Services and will have no liability to any party, including a User, for any violation of the AUP.

Investigation and Enforcement

Cyxtera has the right, but is not obligated, to strictly enforce this AUP through self-help, active investigation, litigation and prosecution. Company shall not be obligated to monitor or exercise any editorial control over any material stored, copied, or communicated using the Services, but reserves the right to do so. In addition, Cyxtera may take any other appropriate action against the User for violations of the AUP, including repeated violations wherein correction of individual violations does not, in Cyxtera’s sole discretion, correct a pattern of the same or similar violations.

Company further reserves the right to conduct investigations into fraud, violations of the terms of this AUP or other laws or regulations, and to cooperate with legal authorities and third parties in the investigation of illegal or inappropriate activity using the Services, including disclosing the identity of the User that Company deems responsible for the wrongdoing.

Cooperation with Law Enforcement

Cyxtera may also access and disclose any information (including transactional information) related to a User’s access and use of the Services if required by applicable law.

Cyxtera will cooperate with appropriate law enforcement agencies and other parties involved in investigating claims of illegal or inappropriate activity. Cyxtera reserves the right to disclose User information to the extent required by federal or state law. By using and accepting the Services, Customer consents to Company’s disclosure to any law enforcement agency, of Customer’s identity as the service provider of record (including basic contact information), as applicable, for any User about whom Cyxtera is required by applicable law to provide such information to such law enforcement agency. In instances involving child pornography, Cyxtera will comply with all applicable federal and state laws, including providing notice to the National Center for the Missing and Exploited Children or other designated agencies.

Filters and Service Information

Cyxtera reserves the right to install and use, or to have Customer install and use, any appropriate devices to prevent violations of this AUP, including devices designed to filter or terminate access to the Services. By accepting and using the Services and allowing Users to use the Services, Customer consents (on its own behalf and on behalf of all other Users) to allowing Company to collect service information and routing information in the normal course of its business, and to use such information for general business purposes.
Reserved

Customer and User Responsibilities

Notice of Security Issues

Users are entirely responsible for maintaining the confidentiality of password and account information, as well as the security of their network. Users agree to immediately notify Cyxtera of any unauthorized use of their accounts or any other breach of security known to such User. If the User becomes aware of any violation of this AUP by any person, the User is required to notify Company.

Configuration

All Users of the Services are responsible for configuring their own systems to provide the maximum possible accountability. Cyxtera shall not be liable for any damage caused by such system configurations regardless of whether such configurations have been authorized or requested by Cyxtera. For example, Users should ensure there are clear “path” lines in news headers so that the originator of a post may be identified. Users should also configure their Mail Transport Agents (MTA) to authenticate (by look-up on the name or similar procedures) any system that connects to perform a mail exchange, and should generally present header data as clearly as possible. As another example, Users should maintain logs of dynamically assigned IP addresses. Users of the Services are responsible for educating themselves and configuring their systems with an effective level of security. Should systems at a User's site be violated, the User is responsible for reporting the violation and then fixing the exploited system. For instance, should a site be abused to distribute unlicensed software due to a poorly configured FTP (File Transfer Protocol) Service, the User is responsible for reconfiguring the system to stop the abuse.

Impending Security Event Notification

All Users of the Services are responsible for notifying Cyxtera immediately if they become aware of an impending event that may negatively affect the Services. This includes extortion threats that involve threat of “denial of service” attacks, unauthorized access, or other security events.

Complaints

In most cases, Cyxtera will notify its customer(s) of complaints received by it regarding an alleged violation of this AUP. You agree to, and to cause the applicable User to, promptly investigate all such complaints and take all necessary actions to remedy any violations of this AUP. Company may inform the complainant that you and/or the applicable User are investigating the complaint and may provide the complainant with the necessary information to contact you and/or the applicable User directly to resolve the complaint. Users are required to identify a representative for the purposes of receiving such communications.

V. Privacy

Because the Internet is an inherently open and insecure means of communication, any data or information a User transmits over the Internet may be susceptible to interception and alteration. Subject to Cyxtera's online Privacy Policy, we make no guarantee regarding, and assume no liability for, the security and integrity of any data or information a User transmits via the Service or over the Internet, including any data or information transmitted via any server designated as “secure”.

Miscellaneous Provisions

No Waiver and Severability of AUP

Failure by Cyxtera to insist upon or enforce strict performance of any provision of this AUP will not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice will act to modify any provision of this AUP. If any provision of this AUP is found to be unenforceable or invalid, this AUP’s unaffected provisions will
Complaints and Contact Information

Any complaints regarding prohibited use or other abuse of the Services, including violation of the AUP, should be sent to Cyxtera at CustomerCare@Cyxtera.com or call Cyxtera at 800-884-3082. Please include all applicable information that will assist Cyxtera in investigating the complaint, including all applicable headers of forwarded messages. Sites experiencing live attacks from Cyxtera customers should call 800-884-3082 to submit a complaint as quickly as possible. Please state the urgency of the situation should you need immediate attention.

If you are unsure whether any contemplated use or action is permitted, please submit questions or comments to Cyxtera at CustomerCare@Cyxtera.com or 800-884-3082.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Dataiku, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer are deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

DATAIKU SOFTWARE LICENSE AND MAINTENANCE AGREEMENT
This Software License and Maintenance Agreement and its Exhibits ("Agreement") apply to an order that incorporates these terms and conditions entered into by and between GSA Multiple Award Schedule Contractor acting by and through its supplier, Dataiku Inc. ("Dataiku"), and the Ordering Activity purchasing from the GSA Schedule contract ("Customer" or "Ordering Activity"). This Agreement, the GSA Schedule contract, Schedule pricelist, and all applicable Ordering Documents ("ODs") represent the complete agreement governing the use of Software provided by Dataiku to Customer. In general, the ODs set forth specific configuration and usage details for the Software. In the event of a conflict, an OD prevails over this Agreement.

1. Definitions. Capitalized terms not otherwise defined in this Agreement are defined as follows:

- "Affiliate" means an entity Controlling, Controlled by, or under common Control with another entity, where "Control" and its variants means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of an entity through ownership of securities or partnership or other ownership interests, by contract or otherwise.
- "Documentation" means end user or technical documentation provided with the Software.
- "Intellectual Property Rights" means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction.
- "Internal Business Purposes" means use of the Software solely for Customer or Customer Affiliates' internal business projects, and deploying such projects in production mode. This definition does not include providing services using the Software to third parties.
- "License Term" means the License Term identified on an OD, including renewals. If no term is specified, the License Term is 1 year.
- "Maintenance Releases" takes its meaning from the Support and Maintenance Exhibit A attached below and incorporated by reference.
- "Software" means the object code of Dataiku's proprietary computer programs or modules identified in an OD, backup copies, Maintenance Releases, and modifications to any of the aforementioned.
- "User(s)" means any individual authorized by Customer to use the Software.

2. Software Use and License Grant

2.1 Software; Delivery. The Software is an offering provided by Dataiku and is subject to support and maintenance as specified in Exhibit A. Customer will receive electronic license keys enabling activation of the Software after an OD becomes effective.

2.2 License. For the duration of the License Term, Dataiku grants to Customer and Users a non-exclusive, non-transferable, and non-sublicensable license to: (i) install the Software on computers owned or controlled by Customer; and (ii) use the Software to process data owned, licensed, or controlled by Customer or Customer Affiliates for Internal Business Purposes in accordance with the Documentation, this Agreement, and any applicable OD. Customer may maintain a reasonable number of copies of the Software on its systems only for backup purposes.

2.3 Affiliates. Both Dataiku Affiliates and Customer Affiliate may enter into ODs. When a Customer Affiliate enters into an OD, it will be deemed to have made the purchase directly, and be bound by the terms and conditions of this Agreement as a "Customer."

2.4 Restrictions. Customer and Users will not (and will not permit any third party to): (i) copy or use the Software other than allowed by this Agreement or an applicable OD; (ii) use the Software with unauthorized equipment or products; (iii) modify the Software, create derivative works based upon the Software, reverse engineer, decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form; (iv) create programs similar or identical to the Software; (v) use the Software in violation of any applicable laws; (vi) distribute, sell, license or otherwise provide the Software to unauthorized third parties; (vii) install the Software on systems not under control by Customer or Customer Affiliates, or use or permit the Software to be used to perform services for third parties, including as a service bureau, SaaS, time sharing basis or otherwise; (viii) disclose the results of any performance or functional evaluation of the Software including benchmark results or competitive analyses; or (ix) alter or remove proprietary notices or legends contained on or in the Software. No implied licenses are granted by Dataiku under this Agreement. Customer is responsible for all use of the Software by anyone accessing the Software using User credentials.

3. Reserved. Ownership. The Software is licensed and not sold or for perpetual use. Dataiku and its licensors own and retain all title, Intellectual Property Rights, and interest in and to the Software and all copies or portions thereof. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. Suggestions or feedback provided by Customer to Dataiku relating to the Software will be Dataiku's property and deemed Confidential Information of Dataiku, and Customer consents to assignment of suggestions and feedback to Dataiku.

4. Warranties; Disclaimer.

4.1 Mutual Warranties. Each party represents and warrants that: (i) it has full power to enter into this Agreement; and (ii) this Agreement does not conflict with any other agreement with any third party.

4.2 Limited Software Warranty. Dataiku warrants that the Software will materially conform to specifications described in the Documentation under normal use and circumstances.

4.3 Malicious Code. Dataiku will use standard industry practices to test the Software for "Malicious Code" and remove any "Malicious Code" discovered prior to delivery of the Software. "Malicious Code" means viruses, worms, time bombs, Trojan horses, and any other harmful code, files, scripts, agents, or programs which may cause harm to Customer's files or systems. Malicious Code does not include standard routines in the Software intended to delete data and implicit in the standard functionality of the Software, or any software bugs or errors handled through Support and Maintenance Services specified in Exhibit A, or any license key or other equivalent code which may limit the functionality or scope of use of the Software to the Customer's specific license.

4.4 Restrictions. The warranties specified above do not apply if the Software or any portion: (i) has been altered, except by Dataiku or an authorized representative; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and the Documentation; or (iii) is licensed for beta, evaluation, or testing purposes. These warranties only apply to the original licensee who provides notice within the warranty period and does not apply if any bug, defect, or error is attributable to products or services not supplied by Dataiku.
5.5 Disclaimers; Exclusion of Implied Warranties. Except for the warranties specified above, the Software and Support and Maintenance Services are provided “as is.” Customer and Customer Affiliates assume sole responsibility for any results obtained from using the Software. Dataiku disclaims any and all warranties, conditions or representations (whether express or implied, oral or written), including without limitation any implied warranties of title, non-infringement, information, merchantability or fitness for any particular purpose (whether or not Dataiku knows or has reason to know of such purpose), whether arising by law, custom, usage in trade or by course of dealing. Dataiku and its licensors do not warrant the results of any use of the Software, or that it is bug or error free, or that its use will be uninterrupted. Dataiku does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack. Dataiku will in no way be held liable for any inability of, error, or fault of Customer or any third party appointed by Customer to install the Software. Data uploaded to the Software and any third-party databases, software, hardware, or services connecting from or to the Software (collectively, “Third Party Materials”) are not the responsibility of Dataiku and Dataiku does not make any warranties or promises with respect to the Third-Party Materials.

6. Reserved.
7. Reserved.
8. Reserved.
9. Reserved.
10. General

10.1 Open Source. The Software may contain or be provided with components subject to third party open source software licenses (“Open Source Software”). A list of current Open Source Software is provided at https://doc.dataiku.com/dss/latest/thirdparty.html. To the extent necessary, the license accompanying the Open Source Software will apply in lieu of the terms of this Agreement specifically with respect to such Open Source Software.

10.2 Reserved.
10.3 Reserved.
10.4 Reserved.
10.5 Reserved.
10.6 Reserved.
10.7 Reserved.
10.8 Reserved.
10.9 Reserved.
10.10 Reserved.
10.11 Reserved.
10.12 Reserved.
10.13 Export. The Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, or other export or import laws and regulations in other jurisdictions. Customer agrees to comply with all applicable laws and regulations.

10.14 Usage Information. The Software contains a usage data tool that collects limited information about use of the Software. Customer agrees that Dataiku may use usage data for development and support purposes relating to the Software. Dataiku does not require, and Customer undertakes not to transmit any personal data to Dataiku.

10.15 Data Privacy. Each party undertakes to process personal data in accordance with all applicable laws and regulations. Dataiku undertakes to process personal data in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such personal data. The obligations of the GDPR shall not apply to the Ordering Activity.

Exhibit A
Support and Maintenance

“Support and Maintenance Services” are provided to all customers paying fees for licensed usage of the Software.

1. Maintenance. Dataiku shall provide access to all generally available Maintenance Releases. “Maintenance Releases” means Maintenance Updates (defined below) and Major Versions (defined below) that are generally released during the License Term free of charge to Dataiku customers receiving Support and Maintenance Services. “Maintenance Update” means error corrections, bug fixes, patches, workarounds, or minor enhancements to the Software designated by a change to the 3rd version digit (e.g. version 3.4.1 to 3.4.2). “Major Version” means a revision to the Software containing new functionalities, major improvements, and generally designated by a change into the 1st or 2nd version digit (e.g. a change from version 3.0 to 4.0 or from 4.1 to 4.2). “Business Day” means a day (other than Saturday or Sunday or U.S. Federal holidays) on which financial institutions are normally open for business in the United States. “Business Hour” means an hour between 9am and 5pm (EST) on any Business Day.

2. Support. (i) Self Service Support Portal (Preferred method). Customers submit cases online, update existing tickets, and track case status 24 x 7 x 365 through a web-based support ticket system including self-service access to an extensive knowledge base. Available at https://support.dataiku.com. (ii) Email. Available at support@dataiku.com. Service levels and response times do not apply to questions submitted by email.

3. Error Correction. Customer may submit suspected errors or malfunctions to Dataiku’s case tracking system, or via email, and cooperate with Dataiku in any investigation. Dataiku will acknowledge with a ticket number (“Ticket”) and make commercially reasonable efforts to assign appropriate assets to resolve the issue according to the response expectation table below. Customer may use the ticket number to track the status of any confirmed failure of the Software to meet Dataiku specifications (“Confirmed Error”). If a Confirmed Error is discovered, the Customer will provide a description to Dataiku’s support team and co-operate with Dataiku to classify the error. Failure by Customer to respond to Dataiku’s requests within 5 business days may result in Dataiku closing the Ticket. Customer may add a new Ticket at any time.

4. **Classifications of Errors; Service Levels.** Dataiku offers the service levels and response times as shown in table below. Classification of Confirmed Errors will be determined by Dataiku based on factors including input obtained from Customer.

5. **Limitations.** Dataiku shall be responsible for any Confirmed Error. However, Dataiku shall not be responsible for errors that cannot be reproduced by Dataiku on unmodified Software, for software, firmware, or hardware not supplied by Dataiku, or for information or data contained in, stored on or integrated with any Software returned to Dataiku. Support and Maintenance Services do not include support for any failure, defect, or damage of the Software caused by Customer or User(s) through unauthorized use, accident, abuse, or misuse of the Software, or if the Software has not been used or maintained in conformance with the Documentation or the Agreement, or if Software is used by Customer or User(s) on an unsupported platform or hardware, beyond the licensed capacity, or altered or modified by Customer or User(s). Service or repair of the Software by anyone other than Dataiku (or an authorized representative) will void Dataiku's obligations under this Support and Maintenance Exhibit. Dataiku's support and maintenance obligations for the Software are applicable to: (a) the latest Major Version; and (b) any Major Version publicly released during the past 1 year for Enterprise Server modules and the past 6 months for Team server modules; so long as the latest Maintenance Update for that Major Version has been installed. Support and Maintenance Services do not include on-site support, consulting (including custom work on Customer's network) and system design, coding, project or facility management, or support for incompatible or third-party supplier products. If Dataiku agrees to remedy any errors or problems not covered as Support and Maintenance Services, Dataiku will perform such work after receiving Customer's instruction to proceed at Dataiku's then-current standard time and material rates.

6. **Customer Obligations.** Customer will appoint up to 2 individuals knowledgeable in the operation of the Software as primary contacts to initiate support calls with Dataiku (“Designated Support Contacts”). Dataiku shall only be responsible for providing Designated Support Contacts with Support and Maintenance Services. Customer may change Designated Support Contacts at any time with written notification to Dataiku or appoint additional primary contacts by paying additional fees. Customer may not share login credentials or other benefits of Support and Maintenance Services with any other persons unless Customer has purchased additional services. If necessary, Customer will provide Dataiku with administrative access to the Software components (including remote access to end points and console).

7. **Changes.** Dataiku may make changes at any time to this Exhibit with written notice to Customer; provided the changes do not materially degrade the support and maintenance services to which Customer is entitled.

<table>
<thead>
<tr>
<th>Classification of errors</th>
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<tbody>
<tr>
<td><strong>Error level</strong></td>
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<tr>
<td><strong>Description</strong></td>
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</table>

<table>
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<tr>
<th><strong>“Enterprise” and “Team” server module support service levels by error level</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial Response</strong></td>
</tr>
<tr>
<td><strong>Team:</strong> 8 Business Hours</td>
</tr>
<tr>
<td><strong>Update Frequency</strong></td>
</tr>
<tr>
<td><strong>Team:</strong> Every 4 hours</td>
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<tr>
<td><strong>Level of Effort</strong></td>
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<tr>
<td><strong>Team:</strong> Continuous Business Day effort; escalation in 72h to VP of Support</td>
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<tr>
<td><strong>Team:</strong> Best efforts</td>
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<tr>
<td><strong>Team:</strong> Best efforts</td>
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<tr>
<td><strong>Team:</strong> Reasonable efforts</td>
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**EC America Rider to Product Specific License Terms and Conditions(for U.S. Government End Users)**

**Scope.** This Rider and the attached DevonWay, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and/or of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2L, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer Order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR...
42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded. Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. §3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal,
regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the
confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
MASTER SOFTWARE AGREEMENT

IMPORTANT – PLEASE READ CAREFULLY: THIS MASTER SOFTWARE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT ("YOU" OR "CUSTOMER") AND DEVONWAY, INC. ("DEVONWAY") AND GOVERNS YOUR USE OF THE DEVONWAY PRODUCTS. BY ACCEPTING THIS AGREEMENT, BY BOTH PARTIES EXECUTING AN ORDER FORM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE DEVONWAY PRODUCTS.

This Agreement was last updated on January 9, 2019. It is effective between Customer and DevonWay as of the date Customer accepts this Agreement ("Effective Date") as set forth above.

You may not access the DevonWay Products if you are DevonWay’s direct competitor, except with DevonWay’ prior written consent. In addition, you may not access the DevonWay Products for purposes of monitoring its availability, performance or functionality, or for any other benchmarking purposes.

SCOPE OF SERVICES

Deployment and License Models. Subject to the terms and conditions of this Agreement and the applicable Order Form, DevonWay will make the DevonWay Product available to the Customer during the License Term. The DevonWay Product may be used under the following Deployment and License Models:

Deployment Models: The DevonWay Product may be deployed either as: (a) the online, Web-based platform and applications that are hosted by DevonWay, or a third party hosting facility designated by DevonWay ("On-Demand"), or (b) installed by or for Customer at Customer’s premises, or on a Customer-controlled server within a third party data center ("On-Site").

License Models: DevonWay grants Customer either (a) a perpetual, non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer’s own internal business purposes ("Perpetual License"), or (b) a non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer’s own internal business purposes during the applicable License Term ("Subscription License").

The Deployment and License Model selected by Customer is as indicated on the Order Form. Customer may elect to migrate from one Deployment Model to another at any time during the License Term. Such migration may be subject to the applicable DevonWay migration fees in effect at the time of the migration in addition to additional terms and conditions that apply to the new deployment model. The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use applicable to the Deployment and License Models selected by Customer, which are set forth in the applicable Order Form, will govern Customer’s use of the DevonWay Product, unless explicitly stated otherwise in a written agreement between the parties.

Professional Services and Support. The terms of the Professional Services Agreement ("PSA") detailed in Exhibit A shall apply to the configuration, implementation or installation services offered by DevonWay as set forth in the applicable Order Form ("Professional Services"). The PSA is hereby incorporated into the Agreement by this reference. During the License Term, and at no additional charge to Customer, DevonWay will provide Customer with the standard level of Support Services. DevonWay reserves the right, from time to time, to make modifications to the Support Services or particular components thereof and will use commercially reasonable efforts to notify Customer of any material modifications by posting a notice of the modification on DevonWay’s Technology Blog or by otherwise notifying Customer in accordance with Section 16. Upgraded Support Services may be purchased by Order Form.

EVALUATION

Evaluation Terms. If Customer receives a free or pilot evaluation of the DevonWay Product(s), DevonWay will make one or more DevonWay Products available to Customer on an evaluation basis until the earlier of (a) the end of the evaluation period for which Customer registers to use the applicable DevonWay Product(s), (b) the start date of any DevonWay Product(s) ordered by Customer, or (c) termination by DevonWay at DevonWay’s sole discretion. Additional evaluation terms and conditions may appear on the Order Form. Any such additional terms and conditions are incorporated into this Agreement by
2.2 Data and Customization. ANY DATA CUSTOMER ENTERS INTO THE DEVONWAY PRODUCT(S), AND ANY CUSTOMIZATIONS MADE TO THE DEVONWAY PRODUCT(S), BY OR FOR CUSTOMER, DURING CUSTOMER'S EVALUATION MAY BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A LICENSE TO THE SAME DEVONWAY PRODUCT(S) AS THOSE COVERED BY THE EVALUATION, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE EVALUATION PERIOD.

No Warranty. NOTWITHSTANDING SECTION 10 (WARRANTIES), THE DEVONWAY PRODUCT(S) ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTY DURING THE FREE EVALUATION.

Review. Customer shall review the applicable DevonWay Products' Documentation during the evaluation period in order to become familiar with the features and functions of the DevonWay Product(s) before making a purchase.

OUR RESPONSIBILITIES

Provision of Products. DevonWay will (a) make the DevonWay Products available to Customer pursuant to this Agreement and the applicable Order Forms, and (b) use commercially reasonable efforts to make the online DevonWay Products available 24 hours a day, 7 days a week, except for: (1) planned downtime (of which DevonWay shall give advance electronic notice as provided in the Documentation), and (2) any unavailability caused by circumstances beyond DevonWay's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving DevonWay employees), Internet service provider failure or delay, problems caused by Non-DevonWay Applications, or any denial of service attack. Additional Terms of Use and Service Level Agreements are as referenced in the Order Form.

Protection of Customer Content. DevonWay will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Content by DevonWay personnel except (a) to provide the DevonWay Products and prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permit in writing. By using the DevonWay Product Customer acknowledges that it meets Customer's requirements and processing instructions. DevonWay will provide Customer notice of any unauthorized third party access to Customer Content of which DevonWay becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Customer Content is lost or damaged, DevonWay will assist Customer in restoring it to the DevonWay Product from the last available backup copy in compatible format.

European Economic Area Customers. For Customers located in the European Economic Area (EEA) DevonWay may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the DevonWay Products. DevonWay may transfer such Customer's personal data across country borders including outside the EEA. A list of countries where content may be processed for a DevonWay Product is described in the Order Form. A list of subprocessors is available upon request. Upon request by either party, DevonWay, Customer or their affiliates will enter into additional agreements required by law for the protection of personal data included in Customer Content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

DevonWay Personnel. DevonWay will be responsible for the performance of its personnel (including DevonWay employees and contractors) and their compliance with DevonWay's obligations under this Agreement.

USE OF THE SERVICES

Customer Responsibilities. Customer will (a) be responsible for all Users’ compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Content and the means by which Customer acquired Customer Content,

(c) use commercially reasonable efforts to prevent unauthorized access to or use of DevonWay Products, and notify DevonWay promptly of any such unauthorized access or use, (d) use DevonWay Products only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-DevonWay Applications with which Customer uses the DevonWay Products.

Usage Restrictions. Customer will not, and will not permit any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover
the source code, object code or underlying structure, ideas or algorithms of the DevonWay Products (to the extent such restriction is permitted by law), (b) modify, translate, or create derivative works based on the DevonWay Products or use the DevonWay Products for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of Users; (c) sell, resell, license, sublicense, distribute, make available, rent or lease the DevonWay Products; (d) use the DevonWay Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use the DevonWay Product to store or transmit Malicious Code, (f) interfere with or disrupt the integrity or performance of the DevonWay Product or third-party data contained therein, (g) attempt to gain unauthorized access to any DevonWay Product or its related systems or networks, (h) permit direct or indirect access to or use of any DevonWay Product in a way that circumvents a contractual usage limit, or use any of the DevonWay Products to access or use any of DevonWay’s intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (i) copy a DevonWay Product or any part, feature, function or user interface thereof, (j) frame or mirror any part of any DevonWay Product, other than framing on Customer’s own intranets or otherwise for Customer’s own internal business purposes or as permitted in the Documentation, or (k) access any DevonWay Product in order to build a competitive product or service that operates outside of or independently from the DevonWay Product. Any use of the DevonWay Products in breach of this Agreement, Documentation, or Order Forms, by Customer or Users that in DevonWay’s judgment threatens the security, integrity or availability of the DevonWay Products, may result in immediate temporary suspension of Customer’s use of the DevonWay Products, however, DevonWay will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

NON-DEVONWAY PROVIDERS

Third-Party Services. DevonWay or third parties may make available third-party products or services, including, for example, Non-DevonWay Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any third party provider, product or service is solely between Customer and the applicable third party. DevonWay does not warrant or support Non-DevonWay Applications or other third party products or services, whether or not they are designated by DevonWay as “certified” or otherwise.

Non-DevonWay Applications and Customer Content. If Customer chooses to use a Non-DevonWay Application with a DevonWay Product, Customer grants DevonWay permission to allow the Non-DevonWay Application and its provider to access Customer Content as required for the interoperation of that Non-DevonWay Application with the DevonWay Product. DevonWay is not responsible for any disclosure, modification or deletion of Customer Content resulting from access by such Non-DevonWay Application or its provider.

Integration with Non-DevonWay Applications. The DevonWay Products may contain features designed to interoperate with Non-DevonWay Applications. To use such features, Customer may be required to obtain access to such Non-DevonWay Applications from their providers, and may be required to grant DevonWay access to Customer’s account(s) on such Non-DevonWay Applications. DevonWay cannot guarantee the continued availability of such DevonWay Product features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-DevonWay Application ceases to make the Non-DevonWay Application available for interoperation with the corresponding DevonWay Product features in a manner acceptable to DevonWay.

CONFIDENTIALITY

Confidential Information. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose Confidential Information.

Obligations.

Receiving Party. The Receiving Party agrees: (a) not to divulge to any third person any such Confidential Information, (b) to give access to such Confidential Information solely to those employees, contractors, service providers, and affiliates with a need to have access thereto for purposes of this Agreement, and (c) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own Confidential Information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information. Disclosing Party. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without fault of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to
any judicial or governmental order or as otherwise required by operation of law, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to allow Disclosing Party to contest such order.

DevonWay recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

Restrictions. Customer acknowledges that DevonWay does not wish to receive any Confidential Information from Customer that is not necessary for DevonWay to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, DevonWay may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information.

INTELLECTUAL PROPERTY RIGHTS

Reservation of Rights. Except as expressly set forth herein, DevonWay alone (and its licensors, where applicable) will retain all intellectual property rights in and to the DevonWay Products. No rights are granted to Customer hereunder other than as expressly set forth herein. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the DevonWay Products, or any intellectual property rights.

Suggestions. DevonWay shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the DevonWay Products any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the DevonWay Products.

Customer Content. Customer and its licensors shall retain all right, title and interest in and to the Customer Content.

PAYMENT OF FEES
Fees. Unless otherwise provided in the applicable Order Form or Documentation, (a) fees are based on tiers according to the number of new Operational Records created each year, plus any add-ons, and (b) pricing does not vary according to the number of Users. Customer will pay DevonWay, or the GSA Schedule Contract Holder as applicable, the fees as set forth in the applicable Order Form in accordance with the GSA Schedule Pricelist. Any applicable storage fees are based on actual current usage, are due at the beginning of the License Term and are charged on an annual basis. Fixed fees are due at the beginning of the applicable License Term and are charged on an annual basis. Customer is responsible for all wire transfer and bank fees related to payments made to DevonWay.

Purchase Orders. If not otherwise specified, payments will be due within thirty (30) days of receipt of an invoice. If an annual purchase order is required for multi-year contracts, Customer shall issue the new purchase order at least 30 days prior to the beginning of each subsequent License Term. Any pre-printed or additional contract terms included on any purchase order shall be inapplicable and of no force or effect.

Travel. Travel-related expenses are actual costs incurred to be invoiced a month in arrears. Travel requirements are determined by the DevonWay and Customer project managers. DevonWay makes every effort to minimize travel-related expenses and will adhere to any specific travel guidelines requested by Customer, including the Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable.

Late Payment. Unpaid, undisputed fees are subject to a finance charge as specified by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Future Functionality. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by DevonWay regarding future functionality or features.

TERMINATION

Term of Agreement. Subject to earlier termination as provided below, this Agreement commences on the Effective Date indicated on the Order Form and continues until all License Terms hereunder have expired or have been terminated.

License Term and Renewal. License Terms and corresponding payment obligations may be renewed for additional periods of one (1) year by both parties executing a new Agreement or purchase order incorporating this Agreement in writing.

Termination for Cause. When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, DevonWay shall proceed diligently with performance of this Agreement according to the Contract Disputes Act, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer according to applicable law.

Effects of Termination. Termination of this Agreement shall not limit the parties from pursuing any other remedies available to it, including injunctive relief.

Data Portability and Deletion. Customer retains all rights to Customer Content. At any time during the License Term, Customer may use DevonWay Product’s export facilities to download a copy of Customer Content. Upon termination or for any other reason whatsoever, Customer may request that DevonWay provide a full database backup of Customer Content, which DevonWay will work on providing as soon as the written request is received (additional fees may apply). In the event of termination or expiration of this Agreement or any applicable Order Form, and if requested by Customer within ninety (90) days of such termination or expiration, DevonWay will: (a) return to Customer Content to Customer; or (b) destroy or permanently erase such Customer Content. After such 90-day period, DevonWay will have no other further obligation to maintain or provide access to Customer Content.

Application Portability. If an Order Form specifies that Customer has purchased a Perpetual License for use of DevonWay Products, upon termination of the applicable License Term Customer has the right to receive the binaries and application metadata required to run the application in an On-Site configuration. DevonWay will make the application binaries available free of charge. If Customer requires assistance setting up the On-Site environment, DevonWay will provide that assistance at the Time & Materials rate according to the applicable Customer’s support level in effect prior to termination.

Surviving Provisions. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation,
restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability and specifically sections 6, 7, 8, 9, 10.2, 12, 15, 16 and 17.

WARRANTIES
DevonWay Warranties. DevonWay represents and warrants that (a) it will provide the DevonWay Products and Support Services in a professional manner consistent with industry standards and practices; (b) the DevonWay Products will conform in all material respects to the Documentation; (c) the functionality of the DevonWay Product will not be materially decreased during a License Term; and (d) the DevonWay Product will not contain or transmit to Customer any Malicious Code (except for Malicious Code that may be uploaded by Users). The Professional Services warranty is set forth in the PSA.

Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, THE DEVONWAY PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES, DOCUMENTATION, DEVONWAY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY OTHER WARRANTIES OF ANY KIND. DEVONWAY (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

INDEMNIFICATION

Indemnification by DevonWay. DevonWay shall hold Customer harmless from liability to an unaffiliated third party resulting from infringement by the DevonWay Product of any intellectual property right of such third party, provided DevonWay is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement. DevonWay will not be responsible for any settlement it does not approve. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. The foregoing obligations do not apply with respect to portions or components of the DevonWay Products (a) not created by DevonWay, (b) resulting in whole or in part from modifications according to Customer specifications, (c) that are modified after delivery, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer’s use of the DevonWay Products is not strictly in accordance with this Agreement and all Documentation, or (g) where Customer’s use of any version of the DevonWay Products is not the most recent version of the DevonWay Products provided by DevonWay to Customer. Customer will indemnify DevonWay from all damages, costs, settlements, attorneys’ fees and expenses related to any claim of infringement or misappropriation excluded from DevonWay’s indemnity obligation by the preceding sentence.

Reserve.

Exclusive Remedy. This Section 11 states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any kind of claim described in this Section.

LIMITATION OF LIABILITY. EXCEPT FOR (a) VIOLATIONS OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, (b) BREACHES OF CONFIDENTIALITY OBLIGATIONS HEREUNDER (OTHER THAN ANY BREACH AS TO THE SECURITY OR CONFIDENTIALITY OF CUSTOMER CONTENT IN CONNECTION WITH CUSTOMER’S USE OF THE PRODUCTS, FOR WHICH DEVONWAY’S LIABILITY SHALL BE LIMITED BY THIS SECTION), OR (c) INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF DEVONWAY, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID AND/OR PAYABLE TO DEVONWAY HEREUNDER FOR THE LENGTH OF THE TERM OF THE AGREEMENT. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ONLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

U.S. GOVERNMENT MATTERS. Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the DevonWay Products or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, any software and documentation provided by DevonWay are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with FAR section 2.121, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this
Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

PUBLICITY. Customer agrees that DevonWay may publish a brief description describing Customer’s deployment of the DevonWay Products and identify Customer as a DevonWay customer on any of DevonWay’s websites, client lists, press releases, and/or other marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

INSURANCE. DevonWay will procure at its sole cost and expense and maintain in effect during the term of this Agreement the following insurance coverages, which insurance shall be placed with insurance companies rated A minus VII or better by Best’s Key Rating Guide:

Commercial General Liability, including Bodily Injury, Property Damage, Personal Injury, Advertising Liability, Products-CompletedOperations, and Contractual Liability coverage with the following limits of liability:

- $1,000,000 per occurrence; and
- $2,000,000 General Aggregate

Worker’s Compensation with statutory limits, or the local equivalent, if applicable, as dictated by law, statute, or custom.

Employers Liability, with a minimum of $1,000,000 limit of liability per occurrence, or the local equivalent, if applicable, as dictated by law, statute, or custom.

Automobile Liability, with a minimum combined single limit of liability of $1,000,000 per accident covering all owned, non-owned, and hired vehicles.

Excess or Umbrella Liability Insurance, with a minimum $4,000,000 limit of liability.

Professional Liability Coverage (Errors and Omissions) Insurance, with a minimum limit of $1,000,000.

Cyber Liability Insurance, with minimum limits of $2,000,000 for each occurrence or claim and an annual aggregate of $5,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security.

MISCELLANEOUS. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with DevonWay’s prior written consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Excusable delays shall be governed by FAR 52.212-4(f). No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind DevonWay in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. DevonWay will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United States. DevonWay is permitted to disclose that Customer is one of its customers to any third-party unless Customer notifies DevonWay in writing in advance of such disclosure.

CHANGES. DevonWay may modify the non-material terms and conditions of its standard Agreements by posting revised versions at https://legal.devonway.com/legal/ and by otherwise notifying Customer in accordance with Section 16. Since this agreement may apply to many future orders, DevonWay may modify the non-material terms and conditions of this agreement by providing Customer at least three months’ written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing use of the DevonWay products that do not expire, and renewals. For transactions with a defined renewable License Term, Customer may request that DevonWay defer the change effective date until the end of the current License Term. Customer accepts non-material changes by placing new orders or continuing use after the change effective date or allowing License Terms to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties. If there is a conflict, an Order Form prevails over the terms of this agreement.

DEFINED

“Confidential Information” means all confidential and proprietary information of a Disclosing Party disclosed to the Receiving Party, whether orally or in
writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, Customer Content, the DevonWay Product, DevonWay's environmental and operational details including associated security information, business and marketing plans, technology, financial and technical information, product designs, and business processes. Confidential Information (except for Customer Content) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

“Customer Content” means the electronic information submitted to the DevonWay Product by Customer or on Customer’s behalf.
“DevonWay Product” means the software application listed on an Order Form and made generally available by DevonWay.

“Deployment Model” means the On-Demand or On-Site deployment of the DevonWay Product as set forth in the applicable Order Form.

“Documentation” means DevonWay’s then-current guides and manuals it makes generally available for the DevonWay Product.

“License Model” means the Perpetual License or Subscription License set forth in the applicable Order Form according to which the DevonWay Product is licensed to Customer.

“License Term” means the period of time set forth on the Order Form in which Customer shall have access to the DevonWay Product, commencing on the Effective Date.

“Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“Non-DevonWay Application” means any software application not provided by DevonWay.

“Operational Records” are defined as those belonging to non-reference modules that are workflow-enabled or that contain a “Status” field. An operational record may contain child data, attachments, field history, and task information.

“Order Form” means an ordering document signed by an authorized representative of each party setting forth the DevonWay Products and Professional Services Customer has ordered, the License Term, and the Service Capacity.

“Professional Services” has the meaning ascribed to it in Section 1.2.

“Service Capacity” means any limitations set forth in an Order Form.

“Support Services” means the support services currently set forth at the following URL, corresponding to the DevonWay Product purchased by Customer: https://docs.devonway.com/docs/common/resources/policies-and-procedures/.


“User” means individuals who are authorized by Customer to use the DevonWay Product, and who have been supplied user identifications and passwords by Customer (or by DevonWay at Customer’s request). Users may include but are not limited to Customer’s employees, consultants, contractors and agents, or third parties with whom Customer transacts business.
EXHIBIT A – PROFESSIONAL SERVICES AGREEMENT

Professional Services Provisions

Description of Professional Services. DevonWay will provide the Professional Services and deliverables ("Deliverables") to Customer as described in one or more “Statements of Work” executed by an authorized representative of each party. Each Statement of Work is hereby deemed incorporated into this Agreement, and shall be governed by the terms herein.

Customer’s Obligations. Customer shall provide assistance, cooperation, information, equipment, data, a suitable work environment and resources reasonably necessary to enable DevonWay to perform the Professional Services. Customer acknowledges that DevonWay’s ability to provide Professional Services as set forth herein may be affected if Customer does not provide reasonable assistance as set forth above. Customer-caused delays may be subject to additional fees as specified in Section B.1.

Project Management. Each party shall designate a project manager who shall work together with the other party’s project manager to facilitate an efficient delivery of Professional Services.

Change Order. In order to change the scope of Professional Services set forth in a Statement of Work, Customer will submit a written request to DevonWay specifying the proposed changes in detail and DevonWay will provide an estimate of the charges and anticipated changes in the delivery schedule that will result from the proposed change in Professional Services. DevonWay will continue performing the Professional Services in accordance with the applicable Statement of Work until the parties agree in writing on the change in scope of work, scheduling, and fees.

Proprietary Rights. DevonWay shall retain all title, copyrights, patents, patent rights, trade secrets, trademarks and other proprietary or intellectual property rights in the Deliverables.

Warranty. DevonWay warrants for ninety (90) calendar days from the performance of any Professional Services by DevonWay pursuant to this Professional Services Agreement, that such Professional Services shall be performed in a manner consistent with generally accepted industry standards. Customer must report in writing any breach of this warranty to DevonWay during the relevant warranty period, and Customer’s exclusive remedy and DevonWay’s entire liability for any breach of such warranty shall be the re-performance of the Professional Services, or if DevonWay is unable to perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to DevonWay for the nonconforming Professional Services.

Acceptance. Upon completion of any Deliverable, DevonWay shall submit the Deliverable to Customer. At Customer’s request, DevonWay will demonstrate to Customer the functionality of the Deliverable. Customer shall be responsible for any additional review and testing of such Deliverable in accordance with any applicable acceptance criteria and test suites. If Customer, in its reasonable discretion, determines that any submitted Deliverable does not perform the functional requirements specified for such Deliverable in the applicable Statement of Work, Customer shall have five (5) calendar days after DevonWay’s submission of the Deliverable ("Acceptance Period") to give written notice thereof to DevonWay specifying the deficiencies in detail. DevonWay shall use reasonable efforts to promptly cure any such deficiencies. After completing any such cure, DevonWay shall resubmit the Deliverable for review and testing as set forth above. Upon accepting any Deliverable submitted by DevonWay, Customer shall provide to DevonWay a written acceptance of such Deliverable. Notwithstanding the foregoing, if Customer fails to reject any Deliverable within the Acceptance Period in the manner described above, such Deliverable shall be deemed accepted at the end of the Acceptance Period. In the event any Deliverable is not accepted by Customer as specified above after the third submission and Acceptance Period, either party may terminate the applicable Statement of Work without further liability to either party, provided however, that Customer shall not be relieved of its payment obligations with respect to the accepted Professional Services delivered prior to any such termination.

DevonWay Service and Products. The Professional Services provided under this Agreement are provided in support of Customer’s license, under the Agreement, to use the DevonWay Product and the Agreement shall govern such use. Neither this Agreement nor any Statement of Work hereunder grants Customer any license or rights to use such DevonWay Product. In addition, Customer agrees that Customer’s purchase of Professional Services under this Agreement is not contingent upon the delivery of any future functionality or features in the DevonWay Product, nor is it dependent upon any oral or written public comments made by DevonWay with respect to future functionality or features.

Third Party Sub-contractors. DevonWay reserves the right to use third-parties (who are under a strict covenant of confidentiality with DevonWay), including, but not limited to, offshore sub-contractors to assist with the data migration, configuration, implementation and custom code development processes. DevonWay will remain responsible for the acts and omissions of its third party contractors as if it were performing the services itself.

Payment Provisions

Fees. Professional Services shall be provided under this Professional Services Agreement at the rates and terms set forth in the applicable Order Form in accordance with the GSA Schedule Contract.

Expenses. Customer will also be responsible for reimbursing DevonWay for all of its customary travel expenses (“Expenses”) incurred in each services engagement in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. All Expenses will be pre-authorized by Customer, invoiced promptly and due upon receipt.

Cancellation. Customer will be responsible for payment of any unpaid, uncontested fees for Professional Services rendered prior to the cancellation date if Customer cancels the project and the cancellation is not due to breach of Warranty as specified in Section A.6.

Miscellaneous
Product Mix. Customer acknowledges that the Professional Services acquired hereunder were ordered separately from the DevonWay Product described on DevonWay’s Order Form and Customer may acquire either the DevonWay Product or Professional Services without acquiring the other.

Independent Contractor. With respect to one another, the parties are independent contractors and, as such, neither DevonWay nor its personnel shall be considered Customer’s employee(s). As a consequence, Customer is not responsible for withholding or deducting any sums for federal or state income taxes, social security, health, workers’ compensation, and disability insurance coverage, pension or retirement plan, or the like.

Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit for hire, on behalf of itself or any other organization, any employee or sub-contractor of DevonWay’s, unless Customer has first obtained DevonWay’s written consent. The foregoing shall not apply to general solicitations for employment.
**No-downtime Maintenance.** DevonWay seeks to reduce the number and amount of scheduled downtime for maintenance (for example, OS patching, software upgrades, server maintenance, etc.) by using its redundant production hardware to transparently perform most maintenance activities. DevonWay communicates these no-downtime maintenances through the DevonWay Technology Blog at least five calendar days in advance, although DevonWay reserves the right to perform no-downtime maintenances of an urgent nature with less notice than that.

**Scheduled Downtimes.** When downtime is unavoidable for maintenance, DevonWay will communicate the planned downtime to Customer at least seven calendar days in advance. DevonWay never schedules maintenance or downtime during business hours, defined to be 5am CST/CDT to 8pm CST/CDT, Monday through Friday without Customer request or explicit approval. DevonWay seeks to schedule most system maintenance requiring a downtime on Friday or Saturday nights after 8pm CST/CDT. DevonWay seeks to have one or less scheduled downtime lasting one hour or less in duration per month. At
no time will DevonWay schedule more than three downtimes per month lasting more than four hours in total duration without Customer explicit approval.

**Unscheduled Downtimes.** DevonWay maintains fully redundant, highly available production hardware, software, and network architecture. However, from time to time, individual components can fail. Depending on the exact component and nature of the failure, end-users may experience
unscheduled application downtime. When a failed component leads to unscheduled application downtime, DevonWay brings the application back up through a combination of automated and manual processes. DevonWay provides 99.9% availability with no more than 2 unscheduled downtimes per month, excluding an event that would trigger a disaster recovery to the secondary datacenter or a database restore, both of which are described in more detail below. Unscheduled application downtime excludes failures within Customer datacenters or the Customer’s connection to the internet since DevonWay’s level of control ends at the perimeter of its datacenters. It is worth noting that DevonWay’s datacenters have several connections to the internet from different vendors, and internet connectivity at DevonWay’s datacenter is included in the unscheduled application downtime.

Data Backup and Recovery. DevonWay backs up Customer production application data on a regular basis using a variety of strategies, including on-site disk and tape backups, as well as copies stored off-site in the secondary datacenter on both disk and tape. DevonWay backs up Customer end-user generated data at least hourly and static files and underlying systems at least daily. DevonWay keeps backups for two weeks and can restore data from backup within a timeframe appropriate to the severity and circumstances of the situation. For Customer-caused data loss, the restoration of data may require the use of support requests. DevonWay does not automatically delete any Customer end-user generated data, although DevonWay does rotate log files on a periodic basis.

Disaster Recovery. DevonWay located its primary datacenter in Dallas, TX due to its generally low risk to disasters common to other parts of the country, including low risk to earthquakes, hurricanes, snowstorms, etc. However, in order to mitigate a disaster in the primary datacenter, DevonWay maintains a geographically separate, secondary datacenter in Ashburn, VA. In the unlikely event of a natural disaster, extended power outage that exhausts the UPS and generator systems, or other calamitous event, DevonWay will recover the Customer application in its secondary datacenter with a maximum one hour of lost data. The datacenter space is provisioned and dedicated to DevonWay and its Customers, so there is not a “first-come, first-served” policy to worry about. In the unlikely event of a failover to the secondary datacenter, DevonWay will recover the Customer application in 6 hours or less.

Performance. DevonWay applications will perform as well as or better than reasonably expected, with the majority of actions taking 1-3 seconds to complete. Due to the wide variety in which DevonWay applications can be configured, DevonWay does not offer a Service Level Agreement related to specific response times, but instead makes performance testing a required step in the final acceptance cycle of an implementation. If after go-live performance degrades beyond acceptable levels because of software, hardware, or network problems within DevonWay’s control, DevonWay will treat these conditions as either Severity One or Severity Two incidents, depending on the scope and degree of the problem.

Data Security Services. DevonWay provides these data security services with the applications that Customer licenses:

- **Security**: DevonWay primary and secondary datacenters are SSAE 16 Type II certified and its servers are Cisco-firewalled, virus-protected, and safeguarded from unauthorized access by biometric sensors and a full security detail. In addition, low-level network-based Intrusion Detection Systems protect against cracking. DevonWay and/or authorized datacenter personnel (at DevonWay’s direction) apply critical operating system and software security patches within 30 days or sooner, depending on criticality, applicability to the DevonWay operating environments, and subject to testing and scheduling any appropriate downtimes.

- **Encryption**: DevonWay allows only secure https access to the Customer application, backed by a 256bit SSL/TLS certificate. All backups are transferred to on-site tape backups and the secondary off-site datacenter through encrypted tunnels and are stored with 256bit encryption.

- **End-User Passwords**: DevonWay encrypts all end-user passwords during logon. However, DevonWay cannot be responsible for unauthorized access to the Customer application caused by the Customer’s users sharing or misusing their logon information.

Capacity Planning Policy. DevonWay manages growth by maintaining a 2x capacity in its datacenters as measured against peak load. DevonWay tracks percentage utilization on a daily, weekly, and monthly basis and uses a predictive formula to requisition any additional hardware necessary for new Customers well in advance of hosting them. DevonWay does not publish this formula.

Notifications of Notable Events. DevonWay communicates Notable Events through its Technology Blog, by targeted emails, or both. Notable Events include, but are not limited to:

- Changes to the operating environment, such as planned maintenance
- Descriptions and effects of unplanned downtimes
- End-of-life announcements for deprecated software, such as old browser versions
- Security warnings or breaches

The communication may be to the entire DevonWay community or to affected Customers when the event only applies to them. In the case of a security breach, DevonWay will communicate directly with the affected Customer(s) to develop a plan for mitigating its effects. The communication will occur as soon as possible, but in no case later than 72 hours of DevonWay becoming aware of the breach. Note that to date, no such breach has occurred.
Miscellaneous Statement of Responsibilities. DevonWay is not responsible for the following:

- Network issues originating from within the Customer’s intranet.
- General Internet outages, defined as the Customer’s inability to connect to both the Dallas, TX and Ashburn, VA datacenters.
- Customer computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at https://docs.DevonWay.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/.
- Customer browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.
Handling of Customer Content Post Termination. Upon any expiration or termination of this Agreement, and upon expiration of the License Term, the rights and licenses granted hereunder will automatically terminate, and Customer may not continue to use the DevonWay Product. If Customer is using the On-Demand DevonWay Product as of the effective date of termination, upon written request by Customer made within ninety (90) days of the effective date of expiration or termination of the Agreement (the “Post-Term Period”), DevonWay agrees to make available to Customer, a copy of Customer’s production data. Further, during the Post-Term Period and upon the Customer’s request, DevonWay shall grant the Customer limited access to the DevonWay Product for the sole purpose of permitting the Customer to retrieve Customer Content, provided that the Customer has paid in full all good faith undisputed amounts owed to DevonWay. Upon expiration of the Post-Term Period, DevonWay will have no further obligation to maintain for or provide to Customer any of the Customer Content and may thereafter, unless legally prohibited, delete all Customer Content in its systems or otherwise in its possession or under its control.
This Service Level Agreement (“SLA”) describes the availability of the DevonWay Product and is made a part of any DevonWay Master Software Agreement (the “Agreement”) which references its terms and applies when the Order Form specifies a support plan that covers credits for missing SLAs in the DevonWay On-Demand environment. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

**Availability.** DevonWay shall make the DevonWay Product available 99.9% of the time, except as provided below. Availability will be calculated per calendar quarter, as follows:

\[
\frac{\text{total} - \text{downtime}}{\text{total}} \geq .999
\]

Where:

- **total** means the total number of minutes in the calendar quarter;
- **downtime** means any period of unavailability of the DevonWay Product, where the majority of users cannot log on and view data;

Exclusions to total and downtime calculations:

- Any planned or scheduled unavailability of the DevonWay Product, including for the purposes of maintenance or upgrades. DevonWay will use commercially reasonable efforts to schedule all planned downtime during the hours from 8:00 p.m. Friday to 5:00 a.m. Monday, U.S. Central Time.
- Non-environmental errors, such as those caused by application configuration changes or data updates.
- Any period of unavailability lasting less than 15 minutes.
- Any unavailability caused by circumstances beyond DevonWay’s reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving DevonWay employees), or third-party internet service provider failures or delays, including denial of service attacks.

For any partial calendar quarter during which Customer subscribes to the DevonWay Product, availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

**Remedies.** If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above, Customer may receive a credit for 1% of the then-current quarter’s subscription fee for the affected DevonWay Product for each full or partial hour of unavailability in violation of Section 1. In no case shall the total credit for any quarter exceed the lesser of $100,000 or 80% of the subscription fees paid by Customer for the then-current quarter. If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above in two consecutive calendar quarters, Customer may, in lieu of receiving the above-described credit for the second quarter, terminate the Agreement by providing notice of termination in accordance with Section 3 below, in which case DevonWay will refund to Customer any prepaid fees for the remainder of the License Term following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.

**Reporting, Claims and Notices.** To claim a remedy under this SLA, Customer shall send DevonWay a written notice, via email addressed to notices@devonway.com, containing the following details:

- Billing information, including company name, billing address, billing contact and billing contact phone number
- Downtime information with dates and time periods for each instance of downtime during the relevant period
- An explanation of the claim, including any relevant calculations.

Claims may be made on a calendar-quarter basis only and must be submitted within 10 business days after the end of the applicable quarter, except where a License Term ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the License Term ends.

All claims will be verified against DevonWay’s system records. If DevonWay disputes any period of unavailability alleged by Customer, DevonWay will provide to Customer a record of availability for the applicable period. DevonWay will provide such records only in response to claims made by Customer in good faith.
**General:** Services designated as beta, limited release, developer preview, development or test bed environments, or by descriptions of similar import are excluded from this SLA.
License Grant. Subject to the terms of this Agreement, DevonWay will make the DevonWay Product available to Customer and its Users for use at the Customer’s premises or on a Customer-controlled server within a third party datacenter, and grants Customer a license to use the DevonWay Product according to the License Model set forth on the applicable Order Form.

Delivery. DevonWay shall electronically deliver or make available the DevonWay Product and the information necessary for Customer's use and installation of the DevonWay Product.

DevonWay Product Releases. During the License Term, DevonWay will provide updates to the DevonWay Product. Customer understands and agrees that Customer may not have immediate access to new or improved features or newer versions of the DevonWay Product until the update is issued to On-Site customers by DevonWay.

Termination. Upon termination of the Agreement, if Customer has purchased a Perpetual License for use of the DevonWay Products, Customer may continue (i) to use DevonWay Products subject to its compliance with the terms of the Agreement; and (ii) may continue to receive maintenance and support from DevonWay, provided that Customer pays DevonWay the then-current fees for such maintenance and support.

Production and Testing Environments. The DevonWay Product must be installed in “appliance mode,” meaning on a single web server/app server configuration, with the database server optionally segregated. Multi-server configurations are possible but carry an additional cost. Customer is allowed to create one Production instance and one Testing instance per licensed configuration.

Incident Management. DevonWay is responsible for rigorously testing all software releases and incident patches in a multi-step quality assurance process before making them available to customers. As a final pre-production test, Customer is responsible for testing DevonWay releases and incident patches in a User Acceptance Testing (UAT) environment configured with Customer data and interfaces. In addition to adhering to pre-production testing processes, DevonWay provides on-line incident reporting for all other issues and responds to incidents that Customer reports under the following terms.
DevonWay accepts support pages and on-line incidents from people whom Customer names as DevonWay support contacts. Customer may identify up to five support contacts. The people whom Customer names as DevonWay support contacts provide first-line support and accept incident reports from other members of Customer organization.
Regardless of the root cause, off-hours phone support is still subject to the fee defined by Customer support plan. Beyond that initial fee, the effort expended by DevonWay to address incidents due to platform defects is covered under maintenance, unless the defect leads to a Severity One or Two incident that is uncovered in Production due to insufficient testing or poor change management on Customer’s part (for example, if Customer made an environmental change in Production without first validating it in a UAT area). In that case, the effort expended by DevonWay to resolve or address the issue in Customer’s Production area is not covered by maintenance.
DevonWay responds to incidents differently depending on severity. Details and definitions regarding Severity One through Four incidents are documented at https://docs.devonway.com/docs/common/resources/policies-and-procedures/#maintenance-policy.
DevonWay takes changes to Production environments seriously, and strives to minimize such changes outside normal upgrade cycles. For this reason, the acceptable resolution of an incident may not always be a patch to the application, but could also be a workaround deemed viable by DevonWay and the Customer business users.
Customer is responsible for maintaining all application-configuration and end-user data. For example, if an end-user forgets his password, Customer application administrators are responsible for resetting it.
DevonWay will provide Customer support contacts a triage document to help them resolve common issues and to explain what constitutes a Severity One incident. The improper filing of Severity One incidents may incur time & materials or support request charges.
If Customer files an incident but is not on the latest DevonWay Product or platform release, DevonWay may request that Customer update a Testing environment to the latest release and reproduce the incident before DevonWay investigates, so as to ensure the incident has not already been resolved.

Server Specifications and Third-party Licenses. Customer is responsible for providing a Windows Server 2016 operating system license, a MicrosoftOffice license, a SQL Server 2016 database license, including SQL Server Reporting Services (SSRS), and licenses for supporting software such as anti-virus and backup tools. DevonWay is responsible for all third-party licenses required by the DevonWay platform, such as Jasper reporting and scheduling software. Customer is also responsible for configuring physical or virtual servers that meet the hardware specifications in the DevonWay On-premise Preparation document, which is provided during the procurement process.
Administration. Customer is responsible for:

- Monitoring and administration of the application environment. DevonWay can train Customer to use DevonWay’s suite of monitors, or Customer may use its own central monitoring technology.
- Data backup and recovery.
- Database server maintenance and administration, such as index maintenance, statistics updates, integrity checks, and database server health monitoring.
- Disaster recovery.
- Data security.
- Scheduled and unscheduled downtimes.
- Capacity planning.
- Hardware and Operating System upgrades and patches, including security updates. Note that this does not include upgrades to components required by the DevonWay platform, such as the Java Virtual Machine, Java Servlet Container (Tomcat), etc. Those must be coordinated with and performed at the same time as upgrades of the DevonWay platform or if needed to be installed ahead of a scheduled upgrade for security reasons, DevonWay must certify that the patch is compatible with the platform version prior to being installed.
- DevonWay platform and application upgrades.
- Providing and maintaining VPN access to named DevonWay personnel for remote troubleshooting purposes. Implementations that do not allow VPN connections due to internal security policies are encouraged to enable a screen sharing solution or support may require additional fees.

Support. Purchase of a Gold or Platinum plan is required so DevonWay may provide support when needed.

Miscellaneous Statement of Responsibilities. DevonWay is not responsible for the following:

- Client computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at https://docs.devonway.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/.
- Client browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.
DELTA BRAVO LICENSE, WARRANTY AND SUPPORT TERMS

DELTA BRAVO MASTER AGREEMENT

This Master Agreement (the “Agreement”) is by and between the undersigned Ordering Activity under GSA Schedule contracts customer identifying information (the “Customer” or “You” or “Ordering Activity”) and Delta Bravo (Dynamic Data Management dba Delta Bravo (“Dynamic Data Management” or “Delta Bravo” or “We” or “Us”). This Agreement governs your use of our service offering and its related documentation (collectively, the “Service”) and any related software and/or other technology that we provide you for use in conjunction with the Service, including any updates, modifications or enhancements thereto (collectively, the “Software”). Certain Software is required to access the Service.

LICENSE

Grant of License. Subject to the terms of this Agreement, including any usage restrictions set forth in the applicable Order and the restrictions in your service tier, Delta Bravo grants you a limited, revocable, non-exclusive and non-transferable right and license during the Term to do the following, in each case solely in accordance with documentation or instructions that may be provided by Delta Bravo for such purposes: (a) install, integrate, perform and use the Software on the number of instances set forth in your Order solely to access and use the Service; and (b) access the features and functions of the Service. To the extent Delta Bravo provides you with any updates or upgrades to the Software or Service, such updates and upgrades shall be deemed to constitute part of the Software or Service and shall be subject to all terms and provisions set forth in this Agreement, including, without limitation, terms and provisions related to licenses, use restrictions and ownership of the Software or Service. By both parties executing this Agreement in writing, any download or use of the Software will be governed by this Agreement. 1.2. Access. We will provide or make available to you the Software and any necessary passwords, protocols, or other relevant procedures, as may be necessary to allow: (a) administrative users authorized by you to create accounts for server instances and users; and (b) your users to access the Service. User accounts may only be created for individuals (e.g., team or departmental accounts are prohibited). Use of the Service will be subject to the service limitations based on the service tier set forth in your Order. You must ensure that all information associated with each user account remains complete and accurate. You shall ensure your users keep these passwords and protocols to themselves and do not share them with anyone else, and you shall let us know if there is any breach of the confidentiality of these passwords and protocols. You are solely responsible for any and all use of your user accounts and all activities that occur under or in connection with your passwords and protocols. Each user must provide his or her full legal name, a valid email address, and any other information requested during the account signup process in order to obtain an account. Availability. We will use commercially reasonable efforts to make the Service available during any calendar month (excluding planned maintenance and force majeure events). If such availability drops below 85% in two (2) consecutive calendar months (excluding planned maintenance or force majeure events), you may, as your sole and exclusive remedy for such unavailability, terminate the Service upon 10 days prior written notice with no penalty. If you choose to terminate the Service due to unavailability, you will receive a prorated refund for any unused portion of the Term for which you have prepaid. We consider our Service to be available if you can log into our Service and access Usage Data (as defined in Section 2.1 below).

Restrictions. Unless otherwise agreed in writing by us, you will not: (a) assign, sublicense, market, sell, lease, rent, distribute, convey or otherwise transfer the Software to any third party; (b) use the Software for any purposes other than accessing and using the Service; (c) adapt, alter, modify, translate or create derivative works of the Software; (d) use the Software or Service in any manner not in compliance with applicable laws; (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which the Software or any software component of the Service are compiled or interpreted, and you acknowledge that nothing in this Agreement will be construed to grant you any right to obtain or use such code; (f) allow third parties other than users you authorize to gain access to the Service to use the Service as a service bureau; (g) access or attempt the access the Software or Service by any means other than what Delta Bravo provides or expressly allows; or (h) interfere with or disrupt the integrity or performance of the Service or the data contained therein. You shall only use the Software and Service for your internal purposes, and you agree that you will not use the Software or Service in the provision of services to any third party without the express written permission by Delta Bravo. Open Source Software. The Software may contain certain components that are subject to “open source” or “free software” licenses (“Open Source Software”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Section 1.1. Nothing herein shall bind the Ordering Activity to any Third Party Open Source Software terms unless the terms are provided for review and agreed to in writing by all parties. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Delta Bravo makes such Open Source Software, and its modifications to that Open Source Software, available by submitting a request to support@deltabravo.ai.

Retained Rights. Except for the rights granted you in this Agreement, Delta Bravo retains all right, title and interest in and to the Software and Service, and you acknowledge that you neither own nor acquire any additional rights in and to the Software or the Service not expressly granted by this Agreement. You further acknowledge that Delta Bravo retains the right to use the Software and Service for any purpose in Delta Bravo’s sole discretion. Delta Bravo may choose to modify the Service to enhance a previously purchased capability, add capabilities to, or otherwise improve the functions of the Software, including any portions of the Service as we update our offerings and add more features.

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Data. To provide the Service, Delta Bravo will collect data about your databases, infrastructure, networks and applications ("Usage Data") and you hereby authorize such collection. You own such Usage Data, but grant Delta Bravo the right to make use of such Usage Data in order to provide the Service. You also grant us the perpetual right to use, reproduce, adapt, aggregate and otherwise exploit the Usage Data in an anonymized, aggregated, de-identified and/or aggregated manner and use such anonymized, aggregated, de-identified and/or aggregated data alone or in combination with other anonymized, aggregated, de-identified and/or aggregated data to improve the licensed Delta Bravo products and services. No Usage Data may be disclosed to or utilized for the benefit of any third party if such disclosure or use would allow a third party to identify Customer from the Usage Data.

Feedback. We may send you questionnaires or surveys on a periodic basis in written or electronic form. You acknowledge and agree that any comments, ideas and/or reports you provide to Delta Bravo regarding installation, product experience, functionality, performance, accuracy, consistence and ease of use of the Software or Service ("Feedback") will be considered Delta Bravo proprietary and confidential information, and you hereby irrevocably transfer and assign to Delta Bravo all intellectual property rights embodied in or arising in connection with such Feedback, and any other rights or claims that you may have with respect to any such Feedback. Delta Bravo, in its sole discretion, may freely utilize all Feedback, whether written or oral, furnished by you to by Delta Bravo. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

Excluded Countries. You may not use, export, import or transfer the Software or Service except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Software or Service and any other applicable laws. In particular, but without limitation, the o Software or Service may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone of the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the Software or Service, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country and (ii) you are not listed on any U.S. Government list of prohibited or restricted persons. You also will not use the Software or Service for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Delta Bravo are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer the Software or Service, or any portion thereof, either directly or indirectly, to any country in violation of such laws and regulations. If you are found using the product from these countries, your account will be subject to immediate termination.

LIMITED WARRANTY; LIMITATION OF LIABILITIES

General Disclaimer. Delta Bravo warrants that the SOFTWARE AND SERVICE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE AND SERVICE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, YOU AGREE THAT THE SOFTWARE AND SERVICE ARE PROVIDED "AS IS" AND "WITH ALL DEFECTS." DELTA BRAVO DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT. THE SOFTWARE AND SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DELTA BRAVO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL DELTA BRAVO BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF DELAY, AN FAULT OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF DELTA BRAVO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL DELTA BRAVO BE LIABLE FOR THE LOSS OF DATA OR THE PROCUREMENT OF SUBSTITUTE SERVICES. EXCEPT FOR LIABILITY ARISING FROM SECTION 7 (INDEMNIFICATION), THE CUMULATIVE LIABILITY OF DELTA BRAVO FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE CONTRACT PRICE PAID TO DELTA BRAVO BY YOU UNDER THIS AGREEMENT. 3.3 No Professional Advice. All information, materials, content and/or advice in the Service is for informational purposes only and is not intended to replace or substitute for any professional advice. Delta Bravo expressly disclaims, and you expressly release Delta Bravo from, any and all liability concerning any diagnosis, treatment, or action arising from such information or content or advice.

TERM; SUSPENSION; TERMINATION.

Term. The term of this Agreement ("Term") will commence on the date an Order between you and Delta Bravo is executed and continue as long as such Order remains in effect. Suspension. We reserve the right to temporarily suspend Service at any time at our discretion and without notice if you use the Service in a manner that would cause legal liability to Delta Bravo or otherwise disrupt the Service. Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Delta Bravo shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. 4.4. Effect of Termination. Upon the expiration or any termination of this Agreement, the license and all rights granted to you under this Agreement will immediately terminate, and you will promptly purge and destroy all copies of the Software in your possession. Termination of your account includes: (a) removal of access to all offerings within the Service; (b) deletion of your password and all related information; and (c) barring of further use of the Service. The provisions of Sections 1.6, 2.1, 2.2, 3, 5, 7 and 9 will survive termination or expiration of this Agreement. Any Usage Data generated through the Service will be permanently lost upon termination of this Agreement. Delta Bravo will not have any liability whatsoever to you for any temporary suspension or termination pursuant to the Contract Disputes Act, including for deletion of your Usage Data. All provisions of these Terms, which by their nature should survive, shall survive termination of Services, including without limitation ownership provisions, warranty disclaimers and limitations of liability.

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CONFIDENTIALITY. You and we acknowledge that, in the course of performance of this Agreement, either may obtain information from the other party which it knows or has reason to know is of a confidential and/or proprietary nature ("Confidential Information"). Without limiting the above, the Software, Service, the documentation, the Feedback and any product roadmap is our Confidential Information and Usage Data is your Confidential Information. Except as expressly stated in this Agreement, during the Term and at all times thereafter, neither party may disclose any such Confidential Information to any third party, nor may either party use such Confidential Information of the other party for any purpose, other than as permitted herein. Confidential Information will not include any information which: (i) are or become readily available to the trade or public through no fault of the recipient of the Confidential Information; (ii) is subsequently lawfully in and in good faith obtained by a party from an independent third party without breach of this Agreement; (iii) the recipient can establish that the information was in its possession prior to the date of disclosure of such Confidential Information; or (iv) is developed independently by the recipient without reference to any Confidential Information of the other party. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent such disclosure is required by applicable law, a court of competent jurisdiction or a governmental agency; provided that such party promptly notifies the other party to the extent legally permissible of such required disclosure to provide the other party an opportunity to object to such disclosure and seek a protective order or other appropriate relief. Delta Bravo recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

FEES; TAXES. In consideration for the Service and license to the Software, Customer will pay Delta Bravo the fees ("Fees") set forth in the Order in accordance with the GSA Schedule Contract. All Fees will be billed at the frequency specified in the Order and are due within thirty (30) days of receipt of invoice by Customer. Any unpaid and uncontested balance due and owing will incur late interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Delta Bravo shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

INDEMNIFICATION. Reserved. By Delta Bravo. Delta Bravo will defend Customer from any claim brought by a third party that any use of, or access to, the Service or Software by Customer violates, infringes or misappropriates, as applicable, any third-party intellectual property right. Notwithstanding the foregoing, Delta Bravo shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from Customer's use of the Services other than in accordance with this Agreement. Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that Delta Bravo believes that such a claim is likely, Delta Bravo may, at its option (i) modify the Service or Software so that it becomes non-infringing but functionally similar, or substitute a functionally similar alternative; (ii) obtain a license to the applicable third-party intellectual property at no cost to Customer; or (iii) terminate the applicable Order on written notice to Customer and refund any unused, pre-paid fees. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. 7.3. Procedures. The indemnifying party shall pay all damages finally awarded or paid in settlement of any such Claims. The indemnified party must notify the indemnifying party promptly in writing of any claim for indemnification hereunder, and provide, at the indemnifying party's expense (to the extent of out-of-pocket expenses only), all reasonably necessary assistance, information and authority to allow the indemnifying party to control the defense and settlement of such Claim; provided that the failure of the indemnifying party to promptly inform the indemnifying party of any Claim shall not excuse the indemnifying party of its obligations hereunder except to the extent such failure materially prejudices the indemnifying party. Notwithstanding the foregoing, the indemnifying party shall not enter into any settlement of the defense of such action, other than with respect to the payment of monies, without the Indemnified party's prior written consent, which consent shall not be unreasonably withheld or delayed. The indemnified party may participate at its expense in the defense and/or settlement of any such action with counsel of its choosing and at its sole expense.

FORCE MAJERE. Excusable delays shall be governed by FAR 52.212-4(f).

GENERAL. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and each Order constitute the complete and exclusive agreement between you and Delta Bravo. The terms and conditions of this Agreement will not be modified unless both you and a Delta Bravo authorized representative execute a separate written instrument. Any notice required to be given under this Agreement will be sent to the address indicated in the Order, or such other address provided by the party in writing. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and such decision will not affect the enforceability of such provision under other circumstances and in other jurisdictions, or of the remaining provisions under all circumstances. Any delay or failure by either party to this Agreement to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. Neither party will assign this Agreement, whether voluntarily or by operation of law, nor will either party delegate its duties hereunder without consent from the other party and any attempt to do so will be null and void. This Agreement will be construed and enforced in accordance with the Federal laws of the United States. The Software and any software components of the Service are a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, all U.S. Government end users acquire the Software and Service with only those rights set forth therein. For contractual purposes, you (i) consent to receive communications from us in an electronic form; and (ii) agree that all terms and conditions, agreements, notices, documents, disclosures, and other communications ("Communications") that we provide to you electronically satisfy any legal requirement that such Communications would satisfy if it were in writing. Your consent to receive Communications and do business electronically, and our agreement to do so, applies to all of your interactions and transactions with us.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Docker, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)).

3. **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

4. **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

5. **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

6. **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

7. **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

8. **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

9. **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

10. **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when
the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
This U.S. Government Supplement ("Supplement") and the Docker Software End User Subscription Agreement (https://www.docker.com/docker-software-end-user-subscription-agreement) ("Enterprise Agreement"), establish the terms and conditions enabling Docker, Inc. ("Docker") to provide Docker’s products and services to U.S. Government agencies, including any Ordering Activity, defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2H ADM (the "Customer"). Unless otherwise indicated herein, any capitalized terms which are defined in the Enterprise Agreement shall the same meaning where used in this Supplement.

The Enterprise Agreement and this Supplement cover the use of Supported Software or Subscription Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Docker by an Ordering Activity does not constitute that Ordering Activity’s assent or acceptance of the Enterprise Agreement. Docker agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

1.0 Enterprise Agreement – Preamble

The following is modified from Enterprise Agreement Preamble “BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("DOCKER") AND THE INDIVIDUAL OR LEGAL ENTITY” and is replaced with the following: “BETWEEN DOCKER, INC., LOCATED AT 475 BRANNAN STREET, SUITE 330, SAN FRANCISCO, CA 94107 ("DOCKER") AND THE LEGAL ENTITY”.

The following is deleted from Enterprise Agreement Preamble “OR IS USING THE APPLICABLE SOFTWARE MADE AVAILABLE BY DOCKER”.

2.0 Enterprise Agreement Section 1.0 Definition:

The following is modified from Enterprise Agreement Section 1.11 “Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: https://www.docker.com/legal/subscription-services/” and is replaced with Enterprise Agreement Section 1.11 “Subscription Services means standard support and maintenance services and software updates provided by Docker for the Supported Software, as set forth at: https://www.docker.com/support/”.

3.0 Enterprise Agreement Section 2.0, License:

The following is deleted from Section 2.3, License Keys: “Customer acknowledges and agrees that any attempt to exceed the use of the Licensed Software beyond the limits configured into the Key will automatically and immediately terminate the licenses granted under this Agreement”.

4.0 Enterprise Agreement Section 6.0 Records and Audit:

The following is modified from Enterprise Agreement Section 6.0 Records and Audit “Upon prior notice, Docker or its representative may inspect such records to confirm Customer’s compliance with the terms of this Agreement” and is replaced with Enterprise Agreement Section 6.0 Records and Audit “Upon prior notice and in accordance with Customer’s security requirements, Docker or its representative may inspect such records to confirm Customer’s compliance with the terms of this Agreement”.

The following is deleted from Enterprise Agreement Section 6.0 Records and Audit “Prompt adjustments shall be made by Customer as directed by Docker to compensate for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee, with the applicable late payment interest. Additionally, if Customer has underpaid Docker or its authorized reseller by more than 5% of the total amount owed hereunder, the cost of the audit shall be borne by Customer. " and is replaced with Enterprise Agreement Section 6.0 Records and Audit “During the term of this Agreement and for one (1) year thereafter: (a) If Customer’s security requirements are met, Docker or its designated agent may inspect Customer’s facilities and records to verify Customer’s compliance with this Agreement. Any such inspection will take place only during Customer’s normal business hours and upon no less than ten (10) days prior written notice from Docker. Docker will give Customer written notice of any non-compliance, including without limitation the number of underreported units of Supported Software or Subscription Services ("Notice"); or (b) If Customer security requirements are not met and upon Docker’s request, Customer will run a self assessment with tools provided by and at the direction of Docker ("Self Assessment") to verify Customer’s compliance with this Agreement. Within thirty (30) days from Docker’s request, Customer will finalize the Self Assessment and provide Docker with the results in the form of a written report certified by Customer’s authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Customer will make payment to Docker or its authorized channel partner for any errors or breach discovered by such audit, such as underpayment of the Subscription Fee. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

5.0 Enterprise Agreement Section 7.0 Term:

The following is deleted from Enterprise Agreement Section 7.0 Term “Either party may terminate this Agreement and any Order Form incorporating the terms of this Agreement (if Docker is a party to such Order Form) if the other party materially breaches this Agreement and fails to cure such breach within 30 days of receiving written notice thereof.” and is replaced with Enterprise Agreement Section 7.0 Term “Recourse against the Customer for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. Docker shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer”.

6.0 Enterprise Agreement Section 9.0 Confidentiality:

The following is deleted from Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Injunctive Relief is deleted in its entirety.
The following section heading is deleted from Enterprise Agreement Section 9.0 Confidentiality sub-section 9.6 Return of Confidential Information. It is replaced with Enterprise Agreement Section 9.0 Confidentiality sub-section 9.5 Return of Confidential Information.

7.0 Enterprise Agreement Section 10. Warranties:
The following section heading is modified from Enterprise Agreement Section 10.0 No Warranties to Enterprise Agreement Section 10. Limited Warranties.

The following is deleted from Enterprise Agreement Section 10.0 Limited Warranties: “CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT ALL USE OF THE SUPPORTED SOFTWARE IS AT CUSTOMER’S SOLE RISK AND THAT THE SUPPORTED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE.” It is replaced with Enterprise Agreement Section 10. Limited Warranties: “DOCKER WARRANTS THAT (a) THE SUPPORTED SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF CUSTOMER’S RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH DOCKER’S WRITTEN MATERIALS ACCOMPANYING IT, AND (b) ANY SUPPORT SERVICES PROVIDED BY DOCKER SHALL BE SUBSTANTIALLY AS DESCRIBED IN APPLICABLE WRITTEN MATERIALS PROVIDED TO CUSTOMER BY DOCKER. EXCLUDING THE FOREGOING…”

8.0 Enterprise Agreement Section 11. Indemnification:
The following section is modified from Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker “(b) tenders to Docker sole control of the defense and settlement of the claim, and” is replaced with Enterprise Agreement Section 11. Indemnification sub-section 11.1 By Docker “(b) tenders to Docker control of the defense and settlement of the claim to the extent permitted by 28 USC 516, and”.

The following is deleted from Enterprise Agreement Section 11. sub-section 11.3 By Customer is deleted in its entirety.

9.0 Enterprise Agreement Section 12. Limitation of Liability:
The following section is deleted from Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap. “THE GREATER OF USD $100 OR”.

The following section is amended from Enterprise Agreement Section 12. Limitation of Liability sub-section 12.2 Liability Cap. “The foregoing exclusion/limitation shall not apply to (1) personal injury or death resulting from Docker’s negligence; (2) for fraud committed by Docker; or (3) for any other matter for which liability cannot be excluded by law.”.

10.0 Enterprise Agreement Section 13. Export Restrictions:
The following section is deleted from Enterprise Agreement Section 13. Export Restrictions. “Customer will defend, indemnify, and hold harmless Docker and its suppliers and licensors from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors or employees.”.

11.0 Enterprise Agreement Section 14. Miscellaneous:
The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Agreement will be governed by the laws of the State of California without reference to conflict of law principles.” is replaced with Enterprise Agreement Section 14. Miscellaneous “Agreement will be governed by the Federal laws of the United States without reference to conflict of law principles.”.

The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Each party agrees to submit to the exclusive jurisdiction of the courts located within the county of San Francisco, California to resolve any legal matter arising from this Agreement. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Docker may assign the entirety of its rights and obligations under this Agreement, without consent of the Customer, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.”.

The following section is deleted from Enterprise Agreement Section 14. Miscellaneous “Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof.” is replaced with Enterprise Agreement Section 14. Miscellaneous “Together with any Order Forms, this is the entire Agreement between the parties relating to the subject matter hereof, namely the licensing of the Supported Software.”.

The following section is modified from Enterprise Agreement Section 14. Miscellaneous after “…signed by both parties and clearly understood by both parties to be an amendment or waiver.” is replaced with Enterprise Agreement Section 14. Miscellaneous “…signed by both parties and clearly understood by both parties to be an amendment or waiver. The terms of this Agreement shall not supersede the terms of the underlying GSA Schedule Contract.”
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

DUO SECURITY, INC.

DUO SECURITY, INC. TERMS AND CONDITIONS

AGREEMENT

(Government Customers – GSAMultiple Award Schedule Contract) This agreement ("Agreement") is entered into effective as of ___________ 20__, (the “Effective Date”) between Cisco Systems, Inc., on behalf of itself and for the benefit of its affiliates, including, without limitation, Duo Security, Inc., a Delaware corporation with a registered address at 123 N. Ashley Street, Ann Arbor, MI 48104 ("Duo Security"), and the Federal Customer purchasing from the GSA Multiple Award Schedule (MSA) contract ("Customer"). This Agreement, including the Terms and Conditions containing, among other things, warranty disclaimers, liability limitations and use limitations, includes and is effective for the Order Form(s) and any subsequent renewals, purchase orders or Order Forms (submitted in written or electronic form) related to Customer’s subscribing to the Services unless different or additional terms are expressly agreed to in writing and signed by both parties. There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in this Agreement to the exclusion of all other terms. Capitalized terms shall have the meanings ascribed to them in the Terms and Conditions.

TERMS AND CONDITIONS

DEFINITIONS

“Customer” means the U.S. Government customer that has placed an order with for the Services and thereby signed up for the Services and agreed to the terms of this Agreement under the GSA MAS contract. The Department of Veterans Affairs shall not be a Customer and cannot purchase from Duo Security under the GSA MAS contract.

“Customer Data” means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable), that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (but without limitation) information about Customer’s and Users’ respective devices, computers and use of the Services.

“Customer Personal Data” means any personal data that is personal data (as defined under the DPA).

“Data Protection Laws” means the DPA, EC Directive 95/46/EEC, EC Directive 2002/58/EC, the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable data protection laws, regulations and legally binding codes of practice from time to time in force applicable to the performance of a party’s obligations under this Agreement.

“Documentation” means guides, instructions, policies and reference materials provided to Customer by Duo Security in connection with the Services, including the documentation located at https://www.duosecurity.com/docs, which may be amended from time to time.

“DPA” means the UK Data Protection Act of 1998.

“Duo Mobile Software” means all Duo Security proprietary mobile applications (available on iPhone, Android, Palm, Blackberry, Windows Mobile and other supported mobile devices) used in providing the Services, and any updates, fixes and/or patches developed from time to time.

“Fees” means the applicable fees as set forth on the Order Form.

“Hardware Tokens” mean hardware security tokens purchased by Customer under an Order Form.

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“Integration Software” means (a) Duo Security proprietary software and (b) open source software used in providing the Services which integrates with Customer’s network or application, including SSL or other VPN, Unix operating system, Microsoft application, and/or web application, as provided in the Documentation and any updates, fixes and/or patches developed from time to time.

“Intelectual Property Rights” means all patents, registered designs, unregistered designs, design rights, utility models, semiconductor topography rights, database rights, copyright and other similar statutory rights, trade mark, service mark and any know how relating to algorithms, drawings, tests, reports and procedures, models, manuals, formulae, methods, processes and the like (including applications for any of the preceding rights) or any other intellectual or industrial property rights of whatever nature in each case in any part of the world and whether or not registered or registrable, for the full period and all extensions and renewals where applicable.

“Order Form(s)” means the order forms through which the Government customer purchases the Duo Security Services from Duo Security under the GSA MAS contract for the initial order for the Service, and any subsequent order forms issued to Duo Security, specifying, among other things, the maximum number of Users, the initial Term, the purchase of any Hardware Tokens, the Fees, telephony credits (if any), and such other charges and terms as agreed between the parties.

“Performance Data” means data with respect to usage and other aggregate measures of the Services’ performance that Duo Security may collect from time to time.

“Services” means the products and services that are ordered by and/or made available to Customer under a free trial or an Order Form (including, where applicable, the Software, Hardware Tokens and services using only the Duo Mobile Software) and made available online by Duo Security, including associated offline components, as described in the Documentation.

“Service Level Agreement” or “SLA” means the description of support provided to Customers and its Users and of the availability of the Services attached to this document as Appendix A.

“Software” means the Integration Software and Duo Mobile Software.

“Telephony Credits” mean credits for Customer’s Users to provide authentication by telephone or SMS.

“Term” means the subscription term indicated on the Order Form and any subsequent renewal terms.

“User” means any user of the Services who Customer may authorize to enroll to use the Services under the terms of this Agreement.
Subject to and conditioned on the GSA MAS Contractor’s receipt of payment of the Fees and in any event, subject to full compliance with all other terms and conditions of this Agreement, Duo Security grants Customer and Users a non-exclusive, non-sublicensable, non-transferable license to access and use the Services, along with such Documentation as Duo Security may make available during the Term. The Services and SLA are subject to modification from time to time at Duo Security’s sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Duo Security and the Services continue to perform according to the description of the Services specified in Section 2.3 in all material aspects. Customer shall have the right to terminate the Agreement pursuant to Section 10.2 without any penalty if (i) a material modification to the Services or the SLA is made which materially diminishes the functionality of the Services or materially diminishes the SLA, (ii) Duo Security has not obtained Customer’s consent for such modifications and (iii) Duo Security does not provide a remedy in the cure period stated in Section 10.2.

Duo Security will make the Services available and the Services will perform substantially in accordance with the description of the services found at http://www.duosecurity.com/editions. Notwithstanding the foregoing, Duo Security reserves the right to suspend Customer’s (or any of its Users’) access to the Services: (i) for scheduled or emergency maintenance, or (ii) as it deems reasonably necessary to respond to any actual or potential security concerns.

Subject to full compliance with the terms and conditions of this Agreement, Duo Security will use commercially reasonable efforts to provide support to Customer as described in the Service Level Agreement. In the event that Customer earns 15 days of service credits, determined in accordance with the terms of the Service Level Agreement, in each of three consecutive months, Customer may notify Duo Security of its intention to terminate the SLA and customer may terminate its Agreement with Duo Security for the provision of the Services to Customer and, as the sole and exclusive remedy, Customer will receive a refund of any pre-paid subscription Fees paid for Services not rendered as of the termination date. Duo Security collects certain information about Customer and its Users as well as their respective devices, computers and use of the Services. Duo Security uses, discloses and protects this information as described in this Agreement and Duo Security’s Privacy Policy (the “Privacy Policy”) dated March 24, 2016, attached to this document as Appendix B.

CUSTOMER RESPONSIBILITIES

Customer may only use the Services in accordance with the Documentation and as explicitly set forth in this Agreement. Customer will cooperate with Duo Security in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including but not limited to, whether the Services satisfy Customer’s legal and/or regulatory requirements. Use of the Services may require Users to install Duo Mobile Software on their mobile devices. In addition, third party terms may apply with respect to third party products and software accessible via the Services and with respect to devices using third party operating systems or software or in the event that Duo Mobile Software is downloaded from third party sites (collectively, “Third Party Services”). Customer’s access and use of Third Party Services is governed solely by the terms and conditions of such Third Party Services. Duo Security does not endorse, is not responsible or liable for, makes no representations or warranties and provides no indemnification with respect to any aspect of the Third Party Services, notwithstanding anything in this Agreement to the contrary. Duo Security is not liable for any damage or loss caused or alleged to be caused by or in connection with enables, access or use of any such Third Party Services, or Customer’s reliance on the privacy practices, data security processes or other policies of such Third Party Services. Duo Security does not provide customer support or assistance with respect to the Third Party Services. Users may be required to register for or log into such Third Party Services on their respective websites or apps.

Customer acknowledges that the Services will require the Users to share with Duo Security certain information for the purposes of providing the Services, such as names, password and other login information. This information may include personal information (such as email address, and/or phone number) regarding the Users, and Duo Security will use such information for the purposes of providing the Services to Customer and Users. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with all applicable laws, to the use of his/her information by Duo Security for purposes of providing the Services, which use shall be governed by the terms of the Privacy Policy. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User.

Customer will be fully responsible for Users’ compliance with this Agreement. Any breach of this Agreement or such other terms by a User shall be deemed to be a breach by Customer. Customer is solely responsible for determining whether the Services are sufficient for Customer’s purposes. There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties after the date hereof unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in the Agreement to the exclusion of all other terms.

RESTRICTIONS

Customer will not, and will not permit any of its Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, Software, Hardware Tokens or any data related to the Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws and intellectual property laws).

PAYMENT OF FEES

Customer will pay the GSA MAS Contractor and the GSA MAS Contractor will pay Duo Security the Fees plus all applicable sales, use and other purchase related taxes (or provide Duo Security with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes) in accordance with the Prompt Payment Act and the Order Form. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars. Duo Security will not charge users any fees for their use of the Services or Duo Mobile Software without Customer’s authorization. Users’ carriers or service providers may charge fees for data usage, messaging, phone calls or other services that are required for them to use the Services.

Customer’s Order Form will indicate an initial allotment of Telephony Credits, if applicable. Customer may purchase additional Telephony Credits separately via the billing section of Customer’s administrative interface or by contacting a sales representative. U.S. and international rates for telephony can be found at https://www.duosecurity.com/docs/telephony_credits. At any time during the Term, and unless otherwise agreed to in writing by the parties, any increase or overage in the maximum number of Users specified in the Order Form will be treated in accordance with this Section 5.3 (a “Subscription Upgrade”). The maximum number of Users shall be increased as follows:

Product

License Agreement 08 20

GSA Approved 4-Feb-22
For Subscription Upgrades (i) for Customers where the maximum number of Users on the Order Form is fewer than 500 Users, the maximum number of Users will be increased automatically in increments equal to 50 Users, (ii) for Customers where the maximum number of Users on the Order Form is 500 - 1000 Users, the maximum number of Users will be increased automatically in increments equal to 100 Users, and (ii) for Customers where the maximum number of Users on the Order Form is 1001 or greater, the maximum number of Users will be increased automatically in increments equal to 250 Users.

Duo Security shall invoice Customer for the increase in the maximum number of Users at the subscription rate and payment terms specified in the most recent Order Form, which will be prorated for the remainder of the then applicable subscription Term. For any future subscription Term, the number of Users and applicable Fees will reflect any Subscription Upgrades.

CONFIDENTIALITY

Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology, Users or business (hereinafter referred to as “Confidential Information” of the Disclosing Party).

The Receiving Party agrees: (i) not to disclose the Confidential Information to any third person other than those of its employees, investors and potential acquirers with a need to have access thereto and who have entered into non-disclosure and non-use agreements applicable to the Disclosing Party’s Confidential Information or are subject to the Federal Trade Secrets Act (18 USC §1905), and (ii) to use such Confidential Information solely as reasonably required in connection with the Services and/or this Agreement. The Receiving Party further agrees to take the same security precautions to protect against unauthorized disclosure or unauthorized use of such Confidential Information of the Disclosing Party that the party takes with its own confidential or proprietary information, but in no event will a party apply less than commercially reasonable precautions to protect such Confidential Information. Each party acknowledges that the use of such precautions is not a guarantee against unauthorized disclosure or use. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession without a duty of non-disclosure or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order, provided that, to the extent permitted by law, the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For the avoidance of doubt, Customer agrees that third parties to whom Customer discloses or discloses information in connection with the provision of the Services (such as data hosting and telephony service providers) and the provision of the Third Party Services and such third parties will have access to Customer’s Confidential Information, subject to compliance with this Section 6. The parties agree that Performance Data and any other de-identified information in any form or format is not Confidential Information and will not be subject to any confidentiality restrictions or obligations. Customer acknowledges that Duo Security does not wish to receive any Confidential Information from Customer that is not necessary for Duo Security to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Duo Security may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information, unless such information is marked as “Confidential”.

INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Except as expressly set forth herein, Duo Security alone (and its licensors, where applicable) will retain all Intellectual Property Rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Duo Security. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. As between the parties, Duo Security will own all Performance Data, all other forms of aggregated information, and all de-identified data relating to any User and/or the Services. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any Intellectual Property Rights.

US Government Rights

The Services and Software are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Duo Security provides the Services and Software, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Duo Security to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Services and return the Software, unused, to Duo Security. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

DATA PROTECTION

In this Section 8, the terms “personal data”, “data processor”, “data subject”, “process and processing” and “data controller” shall be as defined in the GDPR.

For the purposes of the Data Protection Laws, as between Customer and Duo Security, the parties agree that Customer shall at all times be the data controller and Duo Security shall be the data processor with respect to the processing of Customer Personal Data in connection with this Agreement.

By entering into this Agreement, Customer agrees that Duo Security may collect, retain and use certain Customer Personal Data (which may include, without limitation, names, mobile telephone numbers, IP addresses and email addresses of Users) in connection with the Services. As the data controller of such Customer Personal Data, Customer shall be responsible for ensuring that, and warrants and represents to Duo Security that it shall ensure that any processing of Customer Personal Data in connection with the Services complies with the Data Protection Laws. This shall include (without limitation) ensuring that Customer: (a) has given adequate notice and made all appropriate disclosures to the data subjects regarding Customer's and/or Duo Security's use and disclosure of Customer Personal Data, including (but without limitation) for the provision of the Services; and (b) has and/or obtains all necessary rights, and where applicable, all appropriate and valid consents from the data subjects to share such personal data with Duo Security and to permit use of Customer Personal Data by Duo Security for the purposes of the provision of the Services and Product

License Agreement 08 20

GSA Approved 4-Feb-22
For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include,

or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect,

or alleged infringement or misappropriation claim that would be subject to indemnification rights set forth in this Section 9, Duo Security shall have the option, at its expense, to (i) modify the Software to be non-infringing; or (ii) obtain for Customer a license to continue using the Software. If Duo Security determines it is not commercially reasonable to perform either of the above options, then Duo Security may at its option elect to terminate the license for the Services and refund the unearned portion of any pre-paid subscription Fees, pro-rated on a monthly basis. THIS SECTION STATES DUO’S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION.

TERM, TERMINATION
Subject to earlier termination as expressly provided for in this Agreement, the initial Term of this Agreement shall be for the Term specified in the Order Form, or in the event of multiple Order Forms, until the Term of all Order Forms has expired. Each Order Form and this Agreement shall terminate upon expiration or termination in accordance with this Section 10 unless Customer provides at least forty-five (45) days prior written notice to Duo Security that it wishes to renew by placing an order directly with Duo Security or renews the Services through GSA MAS contract. The Fees per User for the immediately prior Term will be in accordance with the GSA MAS contract or, if renewed directly with Duo Security, equal to the Fees per User for the immediately prior Term plus a price increase to be agreed upon by Duo Security and Customer. Any pricing increase will not exceed seven percent (7%) per year, unless the pricing was designated in the applicable Order Form as promotional or one-time; provided, however, the Fees for each renewal Term shall not exceed the list price as of the start date of such renewal Term.

In the event of any material breach of this Agreement, the GSA MAS Contractor, on behalf of Duo Security, shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in GSAR 52.212-4(d).

The Sections of this Agreement which by their nature should survive termination or expiration of this Agreement, including but not limited to Sections 3.1 and 4 through 14 (inclusive), will survive termination or expiration of this Agreement. No refund of Fees shall be due in any amount on account of termination by Duo Security pursuant to this Section 10. In the event of termination by Customer pursuant to this Section 10, Customer shall be entitled as its sole and exclusive remedy, to receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. When this Agreement expires or terminates, Duo Security shall cease providing the Service to Customer.

WARRANTIES AND DISCLAIMER OF ADDITIONAL WARRANTIES
For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include, in any Duo Security software released to Users and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data. If, at any time, Duo Security fails to comply with the warranty in this Section 11.1, Customer may promptly notify Duo Security in writing of any such noncompliance. Duo Security will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement and receive a refund of any pre-paid but unearned subscription Fees, pro-rated on a monthly basis, as its sole and exclusive remedy for such noncompliance.

For Customers that have purchased Hardware Tokens as part of the Services, Duo Security warrants to Customer only that Hardware Tokens will be free of defects in material and workmanship at the time of sale and for a period of six (6) months thereafter. This limited warranty is limited to replacement of defective Hardware Tokens. This limited Hardware Token warranty is Customer’s exclusive remedy for defective Hardware Tokens.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 11, THE SERVICES AND DUO SECURITY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTIES OF ANY KIND. DUO SECURITY HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PURPOSE OR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

LIMITATION OF LIABILITY
NOTHING IN THIS AGREEMENT (OR ANY ORDER FORM) SHALL LIMIT OR EXCLUDE EITHER PARTY’S LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

SUBJECT TO SECTION 12.1, IN NO EVENT WILL DUO SECURITY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER (OR ANY PERSON CLAIMING UNDER OR THROUGH CUSTOMER) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR
OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF DUO SECURITY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

SUBJECT TO SECTION 12.1, THE TOTAL LIABILITY OF DUO SECURITY FOR ANY CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID OR TO BE PAID TO DUO SECURITY HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM IS FIRST ASSERTED, PROVIDED, HOWEVER THAT THE MAXIMUM LIABILITY OF DUO SECURITY FOR ALL CLAIMS SHALL BE THE THEN CURRENT ANNUALIZED VALUE OF THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

U.S. GOVERNMENT MATTERS
Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

MISCELLANEOUS

Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

Assignment. This Agreement is not assignable, transferable or sublicensable by either party except with the other party’s prior written consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Entire Agreement; Amendment. Both parties agree that this Agreement and the GSA MAS Contract into which the Agreement is incorporated is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers, amendments and modifications must be in a writing signed by both parties and specifically reference the provision of this Agreement being waived, amended or modified, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Duo Security in any respect whatsoever.

Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Duo Security may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on duosecurity.com.

Force Majeure. Any delay or failure in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay or failure is due to a labor dispute, fire, earthquake, flood or any other event beyond the reasonable control of a party, provided that such party promptly notifies the other party thereof and uses reasonable efforts to resume performance as soon as possible.

Governing Law; Arbitration. This Agreement will be governed by the Federal law.

Publicity. Upon the Customer’s prior written consent, Duo Security may mention Customer’s name in press announcements, case studies, trade shows, or other marketing or advertising materials.
Appendix A

Service Level Agreement

Duo Security SLA During the term of your Duo Security license (the “Agreement”, the Duo web admin interface and web services will be operational and available to Customer at least 99.9% of the time in any calendar month (the “Duo Security SLA”). If Duo Security does not meet the Duo Security SLA, and if Customer meets its obligations under this Duo Security SLA, Customer will be eligible to receive the Service Credits described below. This Duo Security SLA states Customer’s sole and exclusive remedy for any failure by Duo Security to meet the Duo Security SLA.

Definitions The following definitions shall apply to the Duo Security SLA.

“Downtime” means when there is more than a five percent user error rate across all of a Customer’s users. Downtime is measured based on server side error rate.

“Service” means the Duo Security multifactor authentication service.

“Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“Service Credit” means the number of days of Service to be added to the end of the Service term, at no charge to Customer calculated as follows:

<table>
<thead>
<tr>
<th>Uptime</th>
<th>Days Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.9% - ≤ 99.0%</td>
<td>3</td>
</tr>
<tr>
<td>&lt; 99.0% - ≤ 95.0%</td>
<td>7</td>
</tr>
<tr>
<td>&lt; 95.0%</td>
<td>15</td>
</tr>
</tbody>
</table>

Customer Must Request Service Credit In order to receive any of the Service Credits described above, Customer must notify Duo Security within thirty days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit. Customer may check whether Duo Security’s systems are operational by visiting https://status.duo.com.

Maximum Service Credit The aggregate maximum number of Service Credits to be issued by Duo Security to Customer for all Downtime that occurs in a single calendar month shall not exceed fifteen days of Service (or the value of 15 days of Service in the form of a monetary credit to a monthly-billing Customer’s account). Service Credits may not be exchanged for, or converted to, monetary amounts.

Duo Security SLA Exclusions The Duo Security SLA does not apply to any services that expressly exclude this Duo Security SLA (as stated in the documentation for such services) or any performance issues: (i) caused by “Force Majeure” or (ii) that resulted from one or more of Customer’s equipment or third party equipment not within the primary control of Duo Security.

Duo Security reserves the right to modify this Service Level Agreement at any time by updating the terms on https://www.duo.com/legal/sla.
PRIVACY POLICY
Last updated: March 24, 2016

Who We Are
Duo Security, Inc. is a company incorporated under the laws of the State of Delaware, USA and whose principal office is located at 123 North Ashley Street, Suite #200, Ann Arbor, Michigan 48104, USA.
In this Privacy Policy when we refer to “Duo Security” or “we”, “us” or “our”, we mean either Duo Security Inc. or the relevant Duo Security group company which provides you with our services and mobile and web-based applications, (including Duo Security UK Limited) as more completely described on our Website (collectively, the “Services”). Duo Security is committed to protecting the privacy of individuals who visit our websites, including, but not limited to https://www.duo.com (collectively, the “Website”) and the customers and users of our services and mobile and web-based applications.
Terms not otherwise defined in this Privacy Policy have the meanings assigned to them in Duo Security’s Service Terms and Conditions. When you access and use the Services, the Service Terms and Conditions and this Privacy Policy apply.
If you have any questions about how we collect, store and use personal information, or if you have any other privacy-related questions, please contact us by any of the following means:
By post: Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA
By facsimile: 1-866-760-4247
By email: security@duosecurity.com

Introduction
This Privacy Policy describes how we collect, use, share and transfer Personal Information (as defined below) created, inputted, submitted, posted, transmitted, stored or displayed by individuals who interact with and use the Duo Security Website and Services. This Privacy Policy does not apply to Personal Information (as defined below) we obtain in our capacity as an employer; employment related data is covered under separate policies and/or notices.
This Privacy Policy covers information we collect online, not offline.
Any Personal Information we collect through the Services will be used only in a manner consistent with this Privacy Policy. When you sign up for or access the Services, including blog updates or newsletters, or when you email us for information, you expressly agree to the use of your information for the purposes described in this Privacy Policy.
If you do not agree with the use of personal information as described in this Privacy Policy or any changes to it, you should not sign up for, use or access the Services or any features of the Services.

Changes to Our Privacy Policy
We may revise this Privacy Policy from time to time. The most current version of this Privacy Policy will govern your use of your Personal Information. If we decide to change our Privacy Policy, we will post the updated Privacy Policy on the Website and update the Privacy Policy modification date. Please check back regularly to review any changes to this Privacy Policy. By continuing to use the Service after those changes become effective, you agree to be bound by the revised Privacy Policy.

Personal Information
“Personal Information” is defined slightly differently across the world, but we define “Personal Information” as any information that could be used to identify you or another individual, such as (but not limited to) an individual’s name, email address, or telephone number, and that is not otherwise publicly available. Personal Information may include other types of information as well, such as some of the information referred to under the subheadings “Device-Specific Information” and “Service Log Information.”
We also collect non-personal information that does not, on its own, identify any individual person. When non-personal information is combined with other information so that it does identify an individual person, we treat that information as Personal Information.

What Information do we collect?
When you use the Services we may collect, store and process certain information about you, including:

Contact Information.
Duo Security may collect, store and process the following contact information in order to provide the Services:
For Organization Users: If your user profile is created by or at the request of an organization (an “Organization”) of which you are an employee, contractor, member, agent or other participant (each such user referred to as an “Organization User”) your “Organization’s Administrator” may provide us with certain Personal Information, such as your name, email address, and telephone number. We also collect your Organization name and assign you an account name based on your Organization name. Prior to authorizing you to become a user of the Services, your Organization is responsible for notifying you and/or obtaining your consent to the collection of such information, in accordance with applicable laws. Even though your Organization has notified you and/or received your consent to provide us with your Personal Information, when you begin using the Services, you are also providing your consent to the terms in this Privacy Policy and our Service Terms and Conditions.
For Personal Edition Users: If you establish a “Personal Edition” account (as compared to an Organization account), and/or if you sign up for our newsletters and email updates we may collect your name, email address, and telephone number.
For Organization Administrators: for each Organization account we may collect the name, email address, and telephone number of any Organization Administrators, or similar points of contact, within the Organization in order to be able to provide you and the Organization with the Services and to manage your account.

We also collect your email address when you email us for information or sign up for our newsletters and email updates. You can unsubscribe from our newsletters and updates by clicking “Unsubscribe” at the bottom of the newsletter or email update or by emailing mops@duosecurity.com.
Public Forums: We collect other information, including Personal Information that you submit to our Website or as you participate in certain interactive features of our Services (such as the publicly accessible blogs or community forums). You should be aware that any information (including Personal Information) you provide in these areas may be read, collected, and used by others who access them. To request removal of
your Personal Information from our blog or community forum, contact us at security@duosecurity.com. In some cases, we may not be able to remove your Personal Information, in which case we will let you know if we are unable to do so and why.

**Testimonials/Reviews/Feedback:** We may post customer testimonials on our Website, which may contain Personal Information. We do obtain the customer’s consent via email prior to posting the testimonial to post their name along with their testimonial. If you want your testimonial removed, please contact us at security@duosecurity.com.

**Surveys:** We may provide you the opportunity to participate in contests or surveys. If you participate, we will request and collect certain Personal Information from you at the time of the survey. Participation in these surveys or contests is completely voluntary and you have a choice whether or not to disclose this information. The requested information typically includes contact information, such as email or phone number.

When you use the Service we may collect, store and process certain information collected by us from your web browser or from interactions with the Services, including:

**Device-Specific Information.** We also collect device-specific information (e.g. mobile and desktop) from you in order to provide the Services. Device-specific information includes:

- attributes (e.g. hardware model, operating system, web browser version, as well as unique device identifiers and characteristics (such as, whether your device is “jailbroken,” whether you have a screen lock in place and whether your device has full disk encryption enabled));
- connection information (e.g. name of your mobile operator or ISP, browser type, language and time zone, and mobile phone number); and
- device locations (e.g. internet protocol addresses and Wi-Fi).

We may need to associate your device-specific information with your Personal Information on a periodic basis in order to confirm you as a user and to check the security on your device.

**Service Log Information.** When you use the Services, we may automatically collect and store certain information in server logs. This may include which users (by reference to certain Personal Information such as the user’s: username; email address; name; and other information that may be included in open textual fields) are accessing the Services, how users are accessing the Services (including the device-specific information referenced above and type of integration (i.e. application) being protected), the dates and times you are accessing the Services, from where you are accessing the Services (by internet protocol address) and device event information such as crashes, system activity, and hardware settings. We may need to associate this information with other information we collect about you on a periodic basis in order to confirm you as a user and to check the security on your device. We may also do this to improve the Services that we offer you.

**Social Media Widgets:** Our website includes plugins of social media platforms, such as facebook.com of Facebook Inc., 1601 S. California Ave. Palo Alto, CA 94304, USA; Twitter.com of Twitter Inc., 795 Folsom St., Suite 600, San Francisco CA 94107, USA; and google+ of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA. Social Media Features and Widgets are either hosted by a third party or hosted directly on our websites.

You can generally identify the plugins by the respective network’s logo, for instance in combination with a pictogram of a clenched hand with a raised thumb or the addition of a “recommendation”, “like” or “comment.”

Details about purpose and extent of data collection as well as processing and usage of the data by the social media networks can be obtained by reading the privacy policies of Facebook [http://www.facebook.com/policy.php], Twitter [http://twitter.com/privacy] and Google https://www.google.com/policies/privacy/.

**How do we use the Information We Collect?**

Information we collect may be used for the following purposes:

- to provide the Services;
- for billing purposes;
- to personalize the Services and improve your experience;
- for analytical purposes, including use of “Performance Data”. Performance Data includes aggregate, de-identified usage information and other aggregate measures of the Services’ performance. We may share aggregated, de-identified Performance Data with third parties to help us better understand our customers’ needs and improve the Services;
- for marketing and advertising purposes, including sending you promotional email messages about our products and services and registering you for our events. If you do not want us to use your data in this way, please opt out here: https://go.duosecurity.com/UnsubscribePage.html or send an email to mops@duosecurity.com. For more information about how to change your preferences and to unsubscribe from promotional materials, then please see the section headed “Choice and Consent”. Duo Security does not market or advertise to Organization Users;
- to prevent, detect, identify, investigate, respond and protect against potential or actual claims, liabilities, prohibited behavior, and criminal activity;
- to comply with and enforce applicable legal requirements, agreements and policies;
- to perform other activities consistent with this Privacy Policy;
- to improve the Services and where you have agreed, to provide you updates on how we are improving the Services based on any feedback you might have given; and
- with respect to Organization Users, to provide you and the Organization with the Services and to manage your account.

**Data Retention**

The time periods for which we retain your Personal Information depend on the purposes for which we use it. We will retain your information for as long as your account is active or as needed to provide you the Services, unless we are required by law to dispose of it earlier or to keep it longer. We will also retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements. Please contact us as provided in the Notice section below if you have any questions about the information we collect and/or how we use the information we collect.

**Sharing of Personal Information Collected**

Duo Security does not sell, rent, or trade and, except as described in this Privacy Policy, does not share any Personal Information with third parties for their promotional purposes.

Duo Security may transmit or share Personal Information as follows:

**License Agreement 08.20**

GSA Approved 4-Feb-22
We may share Personal Information, with our authorized third party vendors, consultants, service providers and hosting partners (currently Amazon Web Services) who perform services for Duo Security (including hardware, software, networking, storage, and other technology and services required to operate, maintain and provide support related to the Services) based on Duo Security’s instructions. These third parties may only use or disclose such Personal Information obtained from Duo Security to perform the Services on Duo Security’s behalf or comply with legal obligations.

If you have an Organization account, we may also share Personal Information and/or Device-Specific Information with your Organization and/or your Organization’s third party vendors (with your employer’s consent) in order to operate and maintain the Services. Your device may be subject to your Organization’s policies and practices, which are separate from this Privacy Policy. We have no control over your Organization and your Organization’s third party vendors’ privacy practices, so please read their applicable privacy policies. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

We may share your Personal Information with third parties to send emails on our behalf, and/or for co-branded and/or co-sponsored marketing and promotional events (such as conference events) offered in conjunction with another company or companies. If you register for or participate in such marketing and promotional events, both Duo Security and such other companies may receive information collected in conjunction with the co-branded and/or co-sponsored marketing and promotional events. Our Privacy Policy will apply to you with respect to our use of your Personal Information. We have no control over any other companies’ privacy practices, so please read their applicable privacy policies before providing any Personal Information. Our Privacy Policy does not apply to, and Duo Security is not responsible for, use of your Personal Information by these other companies.

Duo Security may share information internally with other members of the Duo Security family of companies, including Duo Security UK Limited (a company registered in England and Wales) for the purposes described in this Privacy Policy. We may also disclose Personal Information; (i) if we are required to do so by law or legal process; (ii) to respond to subpoenas, court orders, or legal process, or to establish or exercise our legal rights or defend against legal claims; (iii) as may be required for the purposes of national security; (iv) when we believe disclosure is necessary and appropriate to prevent physical, mental, financial or other harm, injury or loss; or (v) in connection with an investigation of suspect or actual illegal or inappropriate activity or exposure to liability. We may also share such information if we believe it is necessary in order to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, violations of our Service Terms and Conditions and any other agreements, or as otherwise required by law or to comply with any legal obligation.

When we share Personal Information with a third party, they must contractually agree to comply with privacy and security standards at least as stringent as Duo Security’s when it is handling similar data. When you provide data directly to the third party, the processing is based on their standards (which may or may not be the same as Duo Security’s) and your own independent relationship with that provider.

By accessing, signing up for or using the Services, sending us email, or by signing up for email updates, you provide your express consent to our disclosure of your Personal Information to our third party service providers (such as credit card processors, managed hosting service providers, sub-processors of service data, and technology partners) in order to supply our Services. We do not permit our service providers to use your Personal Information for their own marketing purposes or for any other purpose than in connection with the services they provide to us.

Credit Card Information
Some of our customers use credit cards, debit cards or other means to pay for our Services. We do not collect credit card, debit card or personal financial account information through our Website. We use a third party vendor, currently Recurly, Inc., to process our subscription billing. When you provide payment information to pay for the Services, you provide it directly to Recurly, and not to Duo Security. You will automatically be routed to the Recurly website to provide the information Recurly requires to process your transaction. Recurly is a third party vendor and has its own privacy policy, which may be different from this Privacy Policy. This Privacy Policy does not cover information collected by Recurly and Duo Security is not covered by, or responsible for, Recurly’s privacy practices or policy. To learn about Recurly’s privacy practices, please read their privacy policy at http://recurly.com/legal/privacy.

Accessing and Updating Your Personal Information
You can modify your account information at any time by using the Service administrative interface available at https://admin.duosecurity.com or by emailing our customer support at support@duosecurity.com. We will respond to your request to access promptly and within no more than 30 days.

Cookies and other Tracking Technologies
When you visit our Website or use our Services, we use “cookies” and other tracking technologies like “web beacons” to allow us to remember your user preferences, to maximize the performance of our Website and Services, enhance and personalize your experience and provide marketing communications. They also help ensure that advertisements you see while you are on our Website are more relevant to your interests. For further information about cookies and the other tracking technologies we use, along with information about how to disable or block cookies, please see our Cookie Policy at https://www.duo.com/legal/cookies.

Security of Information
Duo Security maintains and uses reasonable administrative, organizational, technical and physical safeguards to protect your information from loss, destruction, misuse, unauthorized access or disclosure as required by applicable law. These technologies help ensure that your data is safe, secure, and only available to you and to those you provided authorized access (e.g., your users). For example, when you enter confidential information (such as login credentials or information submitted from within the Service), we encrypt the transmission of that information using secure socket layer technology (SSL). SSL technology is designed to prevent you from inadvertently revealing personal information using an insecure connection. However, no electronic transmission over the Internet or information storage technology can be guaranteed to be 100% secure, so you should take care in deciding what information you send us in this way. If you have any questions about security on our Website, you can contact us at security@duosecurity.com.

Links to Other Sites
Our Website may contain links to other sites that are not owned or controlled by Duo Security. Please be aware that Duo Security is not responsible for the privacy practices of these other sites. We encourage you to review the privacy policies and statements of other sites to understand their information practices. Our Privacy Policy applies only to information collected by our Website and Services.

Choice and Consent
We offer certain choices about how we communicate with our users and what Personal Information we obtain from them. You can opt out of receiving promotional emails or text messages from us by clicking the “unsubscribe” link in the email or by emailing mops@duosecurity.com;

Many Duo Security products contain settings that allow users or
administrators to control how the products collect information. Please refer to the relevant product documentation or contact us through the appropriate technical support channel for assistance.

To remove your Personal Information from a Duo Security website testimonial, please contact us at security@duosecurity.com.

If you choose to no longer receive marketing information, Duo Security may still communicate with you regarding such things as your security updates, product functionality, responses to service requests, or other transactional, non-marketing/administrative related purposes.

Cross-Border Transfer of Your Personal Information
Please be aware that Duo Security may host and process your data and information (including Personal Information), in the United States and other countries through the Duo Security group of companies and third parties that we use to operate and manage the Website and Services, including Amazon Web Services ("AWS"). You may view the AWS privacy policy at http://aws.amazon.com/privacy. By signing up for or using the Services, and/or by communicating with us by email, you acknowledge and expressly consent to the transfer and processing of your Personal Information in this way. Any such transfer or processing of your Personal Information will be in accordance with all applicable laws.

Your controls and choices
You may request and obtain from us once a year, free of charge, certain information about the Personal Information (if any) we disclosed to third parties for direct marketing purposes in the preceding calendar year. If applicable, this information would include a list of the categories of Personal Information that was shared and the names and addresses of all third parties with which we shared information in the immediately preceding calendar year. If you would like to make such a request, please submit your request in writing as follows:

By post: Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA

By email: security@duosecurity.com

In addition, we currently do not honor Do Not Track signals.

Children’s Online Privacy Protection Act Compliance
We are in compliance with the requirements of COPPA (Children’s Online Privacy Protection Act), as we do not collect any information from anyone under 13 years of age. The Website and its content are directed to people who are at least 18 years of age or older.

Children
We do not collect any information from anyone under 18 years of age. The Website and its content are directed to people who are at least 18 years of age or older. If you are under the age of 18, you may not use this Website unless you have the consent of, and are supervised by, a parent or guardian.

Access to Your Information
You have a right to access, review, change, update or delete your Personal Information at any time by contacting us at security@duosecurity.com or by postal mail at Duo Security, Inc., 123 North Ashley Street, Suite #200, Ann Arbor, MI 48104, USA. Please note that we may impose a small fee for access and disclosure of your Personal Information where permitted under applicable law, which will be communicated to you. We do not charge you to update or remove your Personal Information.

Contact Us
Duo Security commits to resolving complaints about your privacy and our collection or use of your Personal Information. If you need to provide a Notice to us under this Privacy Policy or if you have complaints about our compliance with this Privacy Policy, you should first contact us as follows:

Ann Arbor, MI 48104, USA

By facsimile: 1-866-760-4247

By email: security@duosecurity.com

Business Transactions
Duo Security may assign or transfer this Privacy Policy, and your user account and related information and data, to any person or entity that acquires or is merged with Duo Security.

COOKIE POLICY
Last updated: March 24, 2016
The Website and/or Services use cookies to distinguish you from other users of our Website. This helps us provide you with a good experience when you browse the Website and also allows us to improve our Website.

This cookie policy provides you with information about the cookies we use and the purposes for using them. To review the privacy policies that apply to users of duo.com, please read our Privacy Policy at https://www.duo.com/legal/privacy. For further information about this policy, please contact privacy@duosecurity.com.

What Is A Cookie?
A cookie is a small file of letters and numbers that we store on your browser or the hard drive of your computer or other device. Cookies send data back to the originating website on each subsequent visit, or share data with another website that recognizes that cookie. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as soon as you visit our Website or use the Services. Cookies are useful because they allow a website to recognize a user’s device. They do lots of different jobs, like letting you navigate between pages efficiently, remembering your preferences, and generally improving the user experience. They can also help to ensure that the advertisements you see online are more relevant to you and your interests.

Cookies do not typically identify you as an individual, just the device you are using. For further information on cookies, including how to see what cookies have been set on your device and how to manage and delete them see the section below headed “Information About Cookies”.

What Cookies Do We Use And Why?
When you visit our Website or use our Services, we use cookies, web beacons and other technologies for a variety of purposes, such as, to allow us to remember your user preferences; to maximize and analyze the performance of our Website and Services; and to analyze our performance.

We also use cookies to provide, enhance and personalize certain aspects of the Services. Cookies are also used for targeting purposes as described below.

There are four different types of cookies we use:

Essential cookies. These are cookies that are required for the operation of our Services. For example, when you download certain online technologies, a cookie is set that identifies the software, version, and when it expires. We may use this information to alert you that a newer
version of such software is available and/or if your subscription is going to expire. We want you to understand these essential cookies, and why we use them, but we don’t need to get your consent to use them on our Services as we use these cookies only to provide you with services that you have requested.

Functionality cookies. These cookies allow our Services to remember choices you make, such as: remembering your username, preferences and settings; remembering if you’ve filled in a survey or taken part in a poll or contest or otherwise reacted to something on or through the Services, so you’re not asked to do it again; remembering if you’ve used any of our Services before; restricting the number of time you are shown a particular advertisement; remembering your location; and enabling social media components like Facebook or Twitter. The aim of these cookies is to provide you with a more personal experience so that you don’t have to reset your preferences each time you use our Services. We also use functionality cookies to enable you to comment on an article or provide enhanced services such as enabling you to view a video through the Services. As described below, you may disable any of these functional cookies; but if you do so, then various functions of our Services may be unavailable to you or may not work the way you want them to.

Analytical/Customization cookies. These cookies collect information about how visitors use and interact with our Services, for instance which pages they go to most often. These cookies also enable us to personalize content, greet you by name, and remember your preferences (e.g., your choice of language, country, or region). These cookies help us improve the way our websites work and provide a better, personalized user experience. Some of our analytical/customization cookies are managed for us by third parties. However, we don’t allow the third party to use the cookies for any purpose other than those listed above.

Advertising/ targeting cookies. These cookies record your visit to our websites, the pages you have visited, and the links you have clicked. They gather information about your browsing habits and remember that you have visited a website. We (and third-party advertising platforms or networks) may use this information to make our websites, content, and advertisements displayed on them more relevant to your interests (this is sometimes called “behavioral” or “targeted” advertising). These types of cookies are also used to limit the number of times you see an advertisement as well as to help measure the effectiveness of advertising campaigns. To find out more about interest-based ads and your choices, visit these sites: Digital Advertising Alliance, the Network Advertising Initiative, and the Interactive Advertising Bureau (IAB) Europe and these links: http://www.allaboutcookies.org or http://www.youronlinechoices.com.

What Specific Cookies Do We Use In the Website and the Services?

Some of the cookies we commonly use are listed in our cookies chart below. This list is not exhaustive, but it is intended to illustrate primary reasons for certain types of cookies set by Duo Security and third parties on our Website and Services. Third parties may also set certain cookies on your device when you use our Services. In some cases, the third party has been hired to provide certain services on Duo Security’s behalf (e.g., website analytics).

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<td>Access</td>
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<tr>
<td>Google Analytics</td>
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### Google Analytics

We use Google Analytics, a web analysis-tool of Google Inc., 1600 Amphitheatre Parkway Mountain View, California, 94043, USA, (“Google”). Google Analytics uses “cookies” to track visitor interactions, which are textfiles being saved to your computer to help us analyze visits of our Website and how our Services are used. For example, by using cookies, Google can tell us which pages our users view, which are most popular, what time of day our websites are visited, whether visitors have been to our websites before, what website referred the visitor to our websites, and other similar information.

For more information about Google analytic cookies, please see Google’s help pages and privacy policy:
- Google Privacy Policy: https://www.google.com/policies/privacy/
- Google Analytics Help: https://developers.google.com/analytics/devguides/collection/analyticsjs/cookieusage

If you do not want your usage of our Website and Services to be analyzed by Google, you can disable Google Analytics by using an add-on in your Internet browser. You can download and install the add-on at: https://tools.google.com/dlpage/gaoptout?hl=fr.

### Google AdWords

We use Google AdWords Remarketing to advertise Duo Security. AdWords Remarketing will display relevant ads tailored to you based on what parts of the Duo Security website you have viewed by placing a cookie on your machine. This cookie does not identify you or give access to your computer. The cookie is used to identify you as a visitor to certain of our web pages and enables use to show you ads relating to that page.

<table>
<thead>
<tr>
<th>Product</th>
<th>License Agreement 08 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duo</td>
<td></td>
</tr>
</tbody>
</table>

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**Content sharing**

- **loc**: 2 years
- **uid**: 2 years
- **uit**: 1 day

**Wistia** Video hosting

- **__distillery**: 1 year

**Marketo** Marketing automation

- **__mkto_trk**: 2 years
- **__cdrop**: 1 year

**Duo** Trusted device feature

- **duo**: 1 day
- **capability**: trc|xxxx|yyyy forever
- **feature**: fdc|xxxx|yyyy Depends on admin config

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GSA Approved 4-Feb-22
Remarketing allows us to tailor our marketing to better suit your needs and only display ads that are relevant to you. If you do not wish to participate in our Google AdWords Remarketing, you can opt out by visiting Google’s Ads Preferences Manager.

You can also opt out of any third-party vendor’s use of cookies by visiting http://www.networkadvertising.org/choices/ or http://www.youronlinechoices.com. Another way to opt out is to use a Google browser plugin: https://tools.google.com/dlpage/gaoptout/

If you wish to opt-out of Google Advertising, you may visit https://www.google.com/settings/ads and under “Ads on Google” and/or under “Google Ads Across the Web,” and click the “Opt out” link.

Targeting
We give users the option to share our stories on social networks such as Facebook and Twitter. To deliver this service we link to the third party websites AddThis and Shareaholic. If you use our share buttons, you will be directed to a website controlled by AddThis and Shareaholic. We have no control over the cookies that AddThis and Shareaholic set when you use its services. You can opt out of AddThis cookies at http://www.addthis.com/privacy/opt-out and Shareaholic cookies at https://shareaholic.com/privacy/choices.

Additional Third Party Cookies
We occasionally link to external websites or other third party content. If you click on external links, you will be directed to a website controlled by a third-party. We have no control over the cookies that the third-party sets when you use its service.

How to Delete And Block Our Cookies
You can disable and/or delete cookies by activating the setting on your browser that allows you to refuse the setting of all or some cookies. However, if you use your browser settings to block all cookies (including essential cookies), you may not be able to access all or parts of our Website. Unless you have adjusted your browser setting so that it will refuse cookies, our system will issue cookies as soon as you visit our Website.

These settings are usually found in the “options” or “preferences” menu of your internet browser. In order to understand these settings, the following links may be helpful. Otherwise you should use the “Help” option in your Internet browser for more details.

The following links provide information on how to modify the cookie settings on some popular browsers:

- Firefox: https://support.mozilla.org/en-US/kb/cookies-information-websites-store-on-your-computer
- Chrome: https://www.google.com/policies/technologies/managing/
- Safari: http://support.apple.com/kb/HT1677

Can I Withdraw My Consent?
If you wish to withdraw your consent at any time, you will need to delete your cookies using your Internet browser settings. For further information about deleting or blocking cookies, please visit: http://www.aboutcookies.org and http://www.youronlinechoices.com. While many companies involved in using advertising cookies and serving online behavioral advertising appear at the above links, not all do. Therefore, even if you choose to turn off cookies used by all of the companies listed, you may still receive some advertising cookies and some tailored advertisements from other companies.

You can also manage this type of cookie in the privacy settings on the web browser you are using. Please see above for more information.

Your Consent
By continuing to use the Website or the Services, you are agreeing to our placing cookies on your computer or other device in order to analyze the way you use the Website and in order for us to provide the Services. Please read this cookie policy carefully for more details about the information we collect when you use this Website and the Services.

If you do not wish to accept cookies in connection with your use of this Website or Services, you must stop using our Website and Services.

Information About Cookies
All About Cookies: Useful information about cookies can be found at: http://www.allaboutcookies.org

Internet Advertising Bureau: A guide to behavioral advertising and online privacy has been produced by the Internet advertising industry, which can be found at: http://www.youronlinechoices.com

Our use of Web Beacons
We may also use electronic images known as web beacons on our Services - sometimes called “clear GIFs,” “single-pixel GIFs,” or “web bugs.” Web beacons are used to deliver cookies on our Services, count clicks/users/visitors, and deliver co-branded content or services. We may include web beacons in our promotional email messages or newsletters to determine whether messages have been opened and acted upon. The Services may also contain web beacons from third parties to help us compile aggregated statistics regarding the effectiveness of our promotional campaigns or other website operations. These web beacons may allow the third parties to set or read cookies on your device.

Other Similar Technologies
In addition to the aforementioned cookies and web beacons, our Website also uses other technologies to store and retrieve data from your device. This may be done to maintain your preferences or to improve speed and performance by storing certain files locally.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Eccentex ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If this Contract terminates with the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when
EC America, Inc.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ECCENTEX

ECCENTEX LICENSE, WARRANTY AND SUPPORT TERMS

GSA Approved 4-Feb-22
This Agreement describes the terms and conditions that will apply to (i) subscription of Eccentex’s proprietary platform, applications templates, or software products that Ordering Activity purchases from time to time as set forth in an applicable order (the “Subscription Schedule”), (ii) maintenance or support services relating to such products (the “Services”)), and (iii) all users of Eccentex’s products and services of important announcements regarding the operation of the products and services.

License Grant & Restrictions

a. Eccentex hereby grants Ordering Activity a non-exclusive, non-transferable (except as permitted under Section 23), worldwide right for the number of Users paid for by Ordering Activity to use Eccentex’s proprietary platform, applications templates, or software identified on the applicable Subscription Schedule (the “Licensed IP”), solely for Ordering Activity’s own internal business purposes set forth on the applicable Subscription Schedule, and subject to the terms and conditions of this Agreement, including those provided in the applicable Subscription Schedule. As used herein, “User” means a designated employee or contractor of Ordering Activity who is authorized by Ordering Activity to use the Licensed IP. Access to the Licensed IP will be via a website operated and hosted by Eccentex and provided under a “Platform as a Service” or “Software as a Service” model (“Software Service”).
b. The license granted herein does not include the right to sublicense without the prior written consent of Eccentex, except Ordering Activity may sublicense to an affiliate of Ordering Activity and to one or more independent contractors retained by Ordering Activity, but solely for the benefits of Ordering Activity.
c. The license granted above is based on a per User, per case, and per environment subscription basis. Therefore, if Ordering Activity desires for additional employees or contractors beyond the number of authorized Users, cases, and/or environments stated in the Subscription Schedule, Ordering Activity must purchase additional subscriptions for such individuals, cases and environments.
d. Ordering Activity acknowledges that the Licensed IP contains valuable trade secrets of Eccentex and its suppliers. Accordingly, except as expressly permitted under this Agreement, Ordering Activity shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, timeshare, outsource, lease, rent, or otherwise commercially exploit or make available to any third party the Licensed IP or any data, information, graphic data, or other content other than use of the Licensed IP solely for Ordering Activity’s own internal business purposes set forth on the applicable Subscription Schedule; and (c) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.
e. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Licensed IP. Ordering Activity will ensure that each username and password issued to a User will be used only by that individual. Ordering Activity is responsible for maintaining the confidentiality of all Users’ usernames and passwords and is solely responsible for all activities that occur under these usernames.
f. Ordering Activity may use the Licensed IP only for Ordering Activity’s internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) use, send, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violate third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Licensed IP or the data contained therein; (v) attempt to gain unauthorized access to the Licensed IP or its related networks or systems; and (vi) otherwise use the Licensed IP to carry out any infringing or unlawful activities.

Maintenance and Support. Eccentex will provide the maintenance and support services for the Licensed IP to Ordering Activity as set forth in Schedule B.

Ordering Activity Responsibilities

a. Ordering Activity is responsible for all activities occurring under Ordering Activity’s User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Ordering Activity’s use of the Licensed IP, including those related to data privacy, international communications and the transmission of technical or personal data. Ordering Activity shall: (i) notify Eccentex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Eccentex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Ordering Activity or Ordering Activity’s Users; and (iii) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.
b. To the extent Ordering Activity is licensed to use Eccentex’s proprietary platform and/or applications templates to develop or configure a customized application (“Ordering Activity Application”), Ordering Activity acknowledges that it shall be responsible for the accuracy, quality, integrity and legality of the Ordering Activity Application, content and data and for the quality and configuration of the Ordering Activity Application and the performance of the Ordering Activity Application.

Account Information and Data

a. Eccentex does not own any data, information or material that Ordering Activity submits to Eccentex in the course of using the Software Service (“Ordering Activity Data”). Eccentex will not modify the Ordering Activity Data or disclose the Ordering Activity Data; provided however, Eccentex may retain, use, and disclose to any third parties Ordering Activity Data if Ordering Activity Data is aggregated with similar data collected from other Ordering Activities and does not disclose Ordering Activity as the source of the Ordering Activity Data.
b. Ordering Activity, not Eccentex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Ordering Activity Data, and Eccentex shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Ordering Activity Data.
c. During the term of this Agreement and upon termination, Eccentex will make available to Ordering Activity a file of the Ordering Activity Data within 30 days of Ordering Activity’s written request. Ordering Activity agrees and acknowledges that Eccentex has no obligation to retain the Ordering Activity Data, and may delete such Ordering Activity Data, if this Agreement is terminated, unless Ordering Activity requests to receive a copy of the Ordering Activity Data at the time of termination and pays for all outstanding fees owed to Eccentex.
d. Upon request and issuance of an order, Eccentex will work with Ordering Activity to design custom reports designed to give access to all Ordering Activity Data. The design and estimated cost of the custom reports will be covered in a time and materials professional services statement of work.

Intellectual Property Ownership. Eccentex alone (and its licensors, where applicable) shall own all right, title and interest, including all related patent rights, copyright rights, trademark rights, trade secret rights, moral rights, and any other intellectual property or proprietary rights of any kind or nature (collectively, “Intellectual Property Rights”), in and to all Licensed IP and any other software, applications templates, websites, and intellectual property. Product
systems, and related technology used to provide the Software Services (the “Eccentex Technology”), the Content, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Ordering Activity or any other party to Eccentex relating to the Licensed IP or the Software Services (collectively, “Suggestions”), and Ordering Activity hereby assigns all right, title, and interest in and to all Suggestions, and all Intellectual Property Rights therein, to Eccentex. This Agreement is not a sale and does not convey to Ordering Activity any rights of ownership in or related to the Eccentex Technology or the Intellectual Property Rights therein owned by Eccentex. There are no implied licenses granted under this Agreement. The Eccentex name, the Eccentex logo, and the product names associated with the Licensed IP and Software Services are trademarks of Eccentex or third parties, and no right or license is granted to use them. For the avoidance of doubt, and subject to the ownership rights of Eccentex in its Licensed IP, including proprietary platform applications templates, software, and any other Eccentex Technology, any Ordering Activity Application shall be owned by Ordering Activity.

Excess Data Storage Fees. The maximum disk storage space provided to Ordering Activity at no additional charge is 1 (One) GB per User and disk storage space between Users may be shared to the extent that total storage space required for Ordering Activity does not exceed maximum space for all Users combined. Eccentex will use reasonable efforts to notify Ordering Activity when the average storage used per license reaches approximately 90% of the maximum.

Representations & Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Eccentex represents and warrants that: (a) it has the right to grant to Customer the rights to the Licensed IP granted herein; (b) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (c) the Software Services will perform substantially in accordance with the online Eccentex help documentation under normal use and circumstances. As Customer's exclusive remedy, and Eccentex’s sole and exclusive liability for any breach of the foregoing representations and warranties by Eccentex, Eccentex will promptly repair or replace the non-conforming Licensed IP or Services at no additional charge.

Disclaimer of Warranties. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE LICENSED IP, THE SERVICES INCLUDING THE SOFTWARE SERVICES, OR ANY CONTENT PROVIDED HEREUNDER. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE LICENSED IP OR THE SERVICES INCLUDING THE SOFTWARE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE LICENSED IP OR THE SERVICES, INCLUDING THE SOFTWARE SERVICES WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE LICENSED IP, THE SOFTWARE SERVICES OR THE SERVER(S) THAT MAKE THE SOFTWARE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN SECTION 14, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND IMPLIED INDEMNIFICATION ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ECCENTEX AND ITS LICENSORS.

Internet Delays. THE SOFTWARE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ECCENTEX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

Government Use. The Licensed IP is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such Licensed IP is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the Licensed IP with only those rights set forth herein.

Reserved.
Ordering Activity desires to receive a subscription to certain proprietary platform known as AppBase or application developed by or for Eccentex using such platform. All capitalized terms used herein that are not defined herein have the meanings given to them in the Agreement.

Usage Rights: Ordering Activity may use the Licensed IP only on the following terms:

- **License to Platform and/or Applications Templates:**
  - **PaaS Service.** If Ordering Activity desires to access the Platform and/or Applications Templates through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term (defined below), a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to (i) access and use the Platform and/or Applications Templates solely for purposes of configuring and customizing a Ordering Activity Application (described below) based on the Platform and/or Applications Templates according to the user guide provided by Eccentex, and (ii) access and use the Ordering Activity Application for internal business purposes only. Ordering Activity authorizes Eccentex (directly or through a contractor) to host, copy, transmit, display and otherwise use the Ordering Activity Application solely as necessary for Eccentex to provide the Software Services in accordance with the Agreement.

- **Ordering Activity Application:**
  - License to Application: If Ordering Activity desires to access an Application through the Software Services, subject to the terms and conditions of the Agreement, Eccentex hereby grants Ordering Activity during the Term a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to access the Application and use the Application for internal business purposes only.

**Service Level Agreement.** Eccentex will host the Licensed IP and use commercially reasonable efforts to provide the Software Services in accordance with the Service Level Agreement provided on Attachment 1.

### Schedule 1
**Service Level Agreement**

1. **Definitions.** As used in this Service Level Agreement, the following capitalized terms shall have the meanings ascribed thereto:

   - **“Eligible Credit Period”** is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event for a particular Subscription included in the SLA claim occurred.

   - **“Monthly Uptime Percentage”** is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the “Scheduled Availability Number”) and dividing that number by the Scheduled Availability Number. If Ordering Activity has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.

   - **“Subscription”** means the provision of the Instance to Ordering Activity on the terms described in the applicable order.

   - **“Subscription Month”** means each applicable calendar month in which the Subscription is contracted to be provided.

   - **“Subscription Suspension”** means the unavailability of a Subscription: (a) during weekends or on weekdays between 11:00 p.m. and 5:00 a.m. EST with at least 3 days’ notice (provided via email or on Eccentex’ web site) for scheduled downtime to permit Eccentex to conduct maintenance or make modifications to the Subscription; (c) at any time in the event of a denial of service attack or other event that Eccentex reasonably determines may create a risk to the applicable Subscription; or (d) at any time in the event that Eccentex reasonably determines that suspension is necessary for legal or regulatory reasons.

   - **“Unavailable”** or **“Unavailability”** means that all of the running Instances are unresponsive during a five minute period and Ordering Activity is unable to launch replacement Instances.

2. **Software Service Levels.** Eccentex will use commercially reasonable efforts to make each Subscription available within the SLA. If the Monthly Uptime Percentage is less than 90% in more than three (3) months during any twelve (12) months period, Ordering Activity may terminate this Agreement for material breach.

3. **Suspension of Subscription**

   Ordering Activity acknowledges that Ordering Activity’s access to and use of a Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Eccentex’s reasonable control.

   Eccentex will have no liability for any damage, liabilities, or other losses that Ordering Activity may incur as a result of any Subscription Suspension. Eccentex will use reasonable efforts to provide Ordering Activity email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.

4. **Security**

   Eccentex agrees that it will use commercially reasonable efforts to adhere to the security protocols described on Attachment 2.

   Other than the Eccentex security protocols described on Attachment 2, Ordering Activity acknowledges that it is responsible for security, protection and backup of its content, data and Ordering Activity Applications. Eccentex strongly encourages Ordering Activity, where available and appropriate, to (a) use encryption technology to protect Ordering Activity’s content and data from unauthorized access, and (b) routinely archive Ordering Activity’s content and data. Ordering Activity is fully responsible for all Ordering Activity Applications running on, and traffic originating from, each Instance. Ordering Activity should protect its authentication keys and security credentials. Actions taken using Ordering Activity’s credentials will be deemed to be actions taken by Ordering Activity and will be the responsibility of Ordering Activity.

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License Agreement 08 20
Access Control: Implement access control measures restricting access to applications, data, and software to only those entities that have a documented, current business need. These measures shall meet the requirements of the security policies required by the Ordering Activity (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.

Audit Controls: Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.

Authorization Control: Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Ordering Activity’s existing identity management solution where one exists to enable single sign-on and centralized identity management. Ensure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.

Data Authentication: Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner.

Entity Authentication: Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:

- No dictionary words
- No dates
- Lockouts after five unsuccessful authentication attempts
- Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)

Encryption at Rest: Sensitive data shall be encrypted whenever stored in the database or in persisted memory using the highest possible encryption in compliance by the specific country.

Encryption in Flight: Communications over a network containing sensitive data shall be encrypted through SSL.

Business: Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for three weeks trailing, and full data backups taken weekly and stored for three years trailing.

Audits and Policy Compliance: Documentation and implementation of security policy shall be prepared and supplied to the Ordering Activity on demand for ALL of the following policy components:

- A data backup plan
- A disaster recovery plan
- An emergency mode operation plan
- Testing and revision procedures
- Security testing
- Virus checking
- Security incident response procedures
- Personnel clearance procedures

Assigned Security Responsibility: Assign and document the assignment of security responsibility to a specific individual or role within the Software Service provider organization. This responsibility would include the management and supervision of the use of security measures and the conduct of personnel.

Physical Security: Implement and document physical access controls (limited access) governing the Software Service provider's location(s) that are used to access Ordering Activity's applications, data, and software.

Schedule B
Maintenance and Support Terms

1. General. Eccentex includes support and maintenance services with the Software Services. Support and maintenance services are as described below.

2. Maintenance and Support Services. Maintenance and Support Services include:

- Maintenance Releases and Upgrades: During the term, Eccentex agrees to deliver to Ordering Activity without charge any upgrades containing error corrections or enhancements to the Licensed IP (“Upgrades”).
- Standard Telephone Support: Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity with live telephone and email support during normal business hours of Eccentex (Monday – Friday, 8:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Eccentex holidays), or at such other hours as the parties may mutually agree to, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, and (d) provision of work-arounds where feasible.
- Critical Telephone Support: Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Ordering Activity with live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected.
- Support Liaisons: Eccentex will coordinate with up to four Ordering Activity employees designated as support liaisons to manage support calls to Eccentex.

3. Technical Support. Eccentex offers the Ordering Activity a single point of contact for all product support questions. Ordering Activity will call the technical support number and the call coordinator will work to address Ordering Activity issues, with response and escalation based on the severity of the problem.

Eccentex shall use commercially reasonable efforts to respond to problems in accordance with the “Priority Codes” set forth below. The Priority Codes below depict the priority level to be assigned by Eccentex to each issue or problem phoned in by Ordering Activity.

“A Priority” – Licensed IP is completely inoperable. Resources assigned within two (2) hours after notice.

“B Priority” – Licensed IP error is detected for a system module, which seriously impairs system operations, but does not render it inoperable. Resources assigned within four (4) hours after notice during standard support hours.

“C Priority” – Ordering Activity has a problem with Licensed IP but there is a known workaround which does not seriously impair the operation of Licensed IP. Resources assigned within eight (8) hours after notice during standard support hours.

“D Priority” – Minor problems which Eccentex plans, or will plan to incorporate into a future release of the Licensed IP, to be resolved in connection with the general commercial availability of such future release.

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4. **Data Backup.** Eccentex provides ongoing data backup of configuration data as well as overall user generated data. Eccentex will keep a rolling backup of a full data snapshot per day for a timeframe minimum of 2 days.

5. **Conditions.** Maintenance and support apply to the standard Licensed IP made generally available by Eccentex to Ordering Activity, and not to modifications delivered as part of any professional services. Eccentex reserves the right to address defects in the next release of the Licensed. Eccentex will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Eccentex did not provide or (ii) Eccentex has not contracted with Ordering Activity to support under this Agreement. Maintenance services are not on-site services.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Elasticsearch Federal, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensor”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 12.212(a), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. The Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
This SHIELD SOFTWARE LICENSE AGREEMENT (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch’s Shield software to which a Federal Ordering Activity has issued an applicable ordering document to acquire the Shield Software subject to this Agreement. This Agreement is effective as of the earlier of the date You downloaded the Shield Software or the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You (the “Effective Date”).

1. SOFTWARE LICENSE AND RESTRICTIONS

1.1 LICENSE GRANTS.

30 Day Free Trial License. Subject to the terms and conditions of this Agreement, Elasticsearch agrees to grant, and does hereby grant to You for a period of thirty (30) days from the Effective Date (the “Trial Term”), solely for Your internal business operations, a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Shield Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software. For the avoidance of doubt, You understand and agree that upon the expiration of the Trial Term, Your license to use the Shield Software will terminate, unless you purchase Elasticsearch support services that entitle you to use the Shield Software.

Fee-Bearing Production License. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees, Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Shield Software in connection with the number of nodes for which You have purchased support services from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the Documentation, if any, provided with the Shield Software; provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Shield Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Shield Software.

Reservation of Rights; Restrictions. The Shield Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Shield Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Shield Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Shield Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Shield Software in whole or in part to any third party; (iii) use the Shield Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Shield Software; or (v) make available to any third party any analysis of the results of operation of the Shield Software, including benchmarking results, without the prior written consent of Elasticsearch.

Open Source. The Shield Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source"), which Open Source may have applicable license terms as identified on a website designated by Elasticsearch or otherwise provided with the applicable Software or Documentation. A hard copy of the Open Source licenses is provided to U.S. Federal Government Licensees and End-Users. RESERVED.

DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SHIELD SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SHIELD SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SHIELD SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE SHIELD SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SHIELD SOFTWARE WILL BE UNINTERRUPTED. RESERVED.

GOVERNMENT RIGHTS.

The Shield Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Shield Software, associated commercial computer software documentation and commercial technical data, in any contract or Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

EXPORT CONTROL.
You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Shield Software may in certain circumstances be considered a re-export of Shield Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

RESERVED.

RESERVED.

MARVEL SOFTWARE LICENSE AGREEMENT

This MARVEL SOFTWARE LICENSE AGREEMENT (this "Agreement") is entered into by and between Elasticsearch Federal, Inc. ("Elasticsearch") and the Federal Ordering Activity ("You") that has downloaded Elasticsearch’s Marvel software to which this Agreement is attached ("Marvel Software"), or in the case of a Federal Ordering Activity, has issued a Purchase Order or similar contractual document to acquire the Marvel Software subject to this Agreement. This Agreement is effective as of the date an applicable ordering document ("Order Form") is entered into by Elasticsearch and You, or, if no Order Form applies, the date you download the Marvel Software (the "Effective Date").

SOFTWARE LICENSE AND RESTRICTIONS

1.1 License Grants. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees (provided that no fee shall be required for use of the Marvel Software for other than production purposes), Elasticsearch agrees to grant, and does hereby grant to You during the term and for the restricted scope of this Agreement, solely for Your internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Marvel Software with the number of nodes for which You have purchased a license for support services, as applicable, from Elasticsearch; (ii) use, and distribute internally a reasonable number of copies of the documentation, if any, provided with the Marvel Software ("Documentation"), provided that You must include on such copies all Elasticsearch trademarks, trade names, logos and notices present on the Documentation as originally provided to You by Elasticsearch; (iii) permit third party contractors performing services on Your behalf to use the Marvel Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Your benefit, and You shall be responsible for all acts and omissions of such contractors in connection with their use of the Marvel Software.

1.2 Reservation of Rights; Restrictions. Marvel Software is a Commercial Item as that term is defined in the Federal Acquisition Regulation ("FAR"), Subpart 2.101 (48 C.F.R. 2.101), and specifically is commercial computer software and commercial computer software documentation. As between Elasticsearch and You, Elasticsearch owns all right title and interest in and to the Marvel Software and any derivative work thereof, and except as expressly set forth in Section 1.1 above, no other license to the Marvel Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) prepare derivative works from, modify, copy or use the Marvel Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) transfer, sell, rent, lease, distribute, sub-license, loan or otherwise transfer the Marvel Software in whole or in part to any third party; (iii) use the Marvel Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering; (iv) alter or remove any proprietary notices in the Marvel Software; or (v) make available to any third party any analysis of the results of operation of the Marvel Software, including benchmarking results, without the prior written consent of Elasticsearch. The Marvel Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "Open Source Software"), which Open Source Software may have applicable license terms. The full license terms and conditions of Open Source Software contained in or provided with the Marvel Software are set forth on a website designated by Elasticsearch or otherwise provided with the Marvel Software or Documentation. A hard copy of the Open Source Software licenses is provided to U.S. Federal Government Licensees and End-Users.

1.3 Cluster Metadata. You understand and agree that once deployed, and on a daily basis, the Marvel Software provides metadata to Elasticsearch about Your cluster statistics and associates that metadata with Your IP address. However, no other information is provided to Elasticsearch by the Marvel Software, including any information about the data You process or store in connection with your use of the Marvel Software. At no time does this feature provide access to the data You process or store, or to your network. Instructions for disabling this feature are contained in the Marvel Software, however leaving this feature active enables Elasticsearch to gather cluster statistics and provide an improved level of support to You.

RESERVED.

DISCLAIMER OF WARRANTIES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE MARVEL SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTICSEARCH AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE MARVEL SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTICSEARCH AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO THE MARVEL SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTICSEARCH DOES NOT WARRANT RESULTS OF USE OR THAT THE MARVEL SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE MARVEL SOFTWARE WILL BE UNINTERRUPTED.

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48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in the Marvel Software, associated commercial computer software documentation and commercial technical data, subject to this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

EXPORT CONTROL.
You acknowledge that the goods, software and technology acquired from Elasticsearch are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. You are now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elasticsearch goods, software or technology or disclose any Elasticsearch software or technology to any person contrary to such laws or regulations. You acknowledge that remote access to the Marvel Software may in certain circumstances be considered a re-export of Marvel Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

RESERVED.

RESERVED.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Elemental Technologies (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract: Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes that the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

ELEMENTAL TECHNOLOGIES
End User License Agreement

1. DEFINITIONS:

1.1 "Product" means the Elemental software program, in object code only, provided to Ordering Activity under this Agreement; all related images, animations, video, audio, and other content incorporated in such software program; all accompanying manuals and other documentation (the "Documentation"); and all enhancements, upgrades, and extensions thereto that may be provided by Elemental to Ordering Activity from time to time.

1.2 "Licensed Configuration" means, to the extent applicable, the choice of features or any other hardware or software specifications, as selected or ordered by Ordering Activity in an Order Form, and upon which the licensing fee was based.

1.3 "License Key" means either (a) the software key code or (b) the physical USB key provided to you by Elemental (or its reseller) (a "USB License Key"), which enables the Product to operate on the Licensed Hardware for the specified Licensed Configuration, if applicable to the Product(s).

1.4 "Licensed Hardware" means the single unit of hardware (workstation, encoder, or otherwise) designated by Ordering Activity for use of the Product.

1.5 "Order Form" means a purchase order or other written or electronic document in which you specify the Licensed Hardware, specific modules and/or choice of features, and any other applicable hardware or software requirements and restrictions.

2. LICENSE AND RESTRICTIONS:

2.1 License. Subject to the terms and conditions of this Agreement, Elemental grants Ordering Activity a non-exclusive, non-transferable, limited license to use the Product, solely in machine-readable form, only on the Licensed Hardware, only for the Licensed Configuration, and only if all related license fees have been paid. Your use is further subject to any limitations set forth in the Order Form. You may use the Product for your own internal benefit and for providing goods or services to your customers; provided that such customers have no access to the Product.

2.2 General Restrictions. You may not copy the Product, in whole or in part, except that you may make and retain a reasonable number of copies solely for back-up purposes in order to re-install the Product. You also shall not use or allow the use of the Product for any of the following purposes:
   a) by persons not employed by or under an independent contractor relationship with you that will bind such persons to the terms of this Agreement; or
   b) as essential equipment in the operation of any nuclear facility, aircraft navigation, medical or communications systems or air traffic control machines, or any other use in which the failure of the Product could lead to death, personal injury or severe physical or environmental damage.

2.3 Intellectual Property. Ordering Activity acknowledges that the Product, and the underlying source code, algorithms, data structures, methods, processes, screen formats, report formats, ideas and concepts are valuable intellectual property owned by Elemental and its licensors, including all associated patent, copyright, trade secret, trademark, and other intellectual property rights. You agree not to, except as expressly authorized and only to the extent established by applicable statutory law, attempt to (or permit others to) decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms or file formats of the Product by any means. You will not develop methods to enable unauthorized parties to use the Product or any copy thereof, or to develop any other product containing any of the concepts and ideas contained in the Product. You will not modify the Product or incorporate any portion of the Product into any other software or create a derivative work of any portion of the Product. You will not remove any copyright or other proprietary notices from the Product or any copies thereof. Elemental reserves all rights not expressly granted hereunder. The license granted herein does not constitute a sale of the Product or any portion or copy of it.

2.4 Upgrades. This Agreement entitles you to receive any future maintenance releases, which includes any bug fixes but does not include any updates or upgrades, releases offered as a separate product or releases subject to a separate license agreement. Your rights to the previously-installed release terminate once you install the new release, except that you may remove the new release and reinstate your rights to the previously-installed release at any time during the term of this Agreement for the remaining term. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (1) YOU HAVE NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS YOU, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLD A VALID LICENSE TO THE ORIGINAL PRODUCT AND HAVE PAID THE APPLICABLE FEE FOR THE UPGRADE, IF ANY; (2) IF INSTALLED IN ELEMENTAL EQUIPMENT, USE OF UPGRADES IS LIMITED TO ELEMENTAL EQUIPMENT FOR WHICH YOU ARE THE ORIGINAL END USER PURCHASER OR LESSEE OR YOU OTHERWISE HOLD A VALID LICENSE TO USE THE PRODUCT WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

3. MAINTENANCE AND SUPPORT. Elemental shall have no obligation to provide maintenance and support for the Product under this Agreement. Any such maintenance and support shall be provided in accordance with a separate maintenance agreement between the parties.

6. NOTICE TO U.S. GOVERNMENT END USERS: The Product is a "Commercial Item," as that term is defined at 48 C.F.R. §2.101., consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202-7014, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to this Agreement. Should the foregoing clauses be amended after December, 2007, then their comparable replacements or revisions shall be incorporated herein and automatically apply.
7. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY:

7.1 Limited Warranty. Elemental warrants that the media on which the Product is furnished will be free from defects in material and workmanship, and that the Product shall substantially conform to its Documentation, as it exists at the date of delivery, for a period of sixty (60) days from the date you receive the original License Key. Elemental’s entire liability and your exclusive remedy shall be, at Elemental’s option, either: (i) return of the license fee paid to Elemental for the Product, resulting in the termination of this Agreement, or (ii) repair or replacement of the Product or media that does not meet this limited warranty. This offer is void if the media defect results from negligence, accident, abuse, or misapplication.

7.2 Disclaimer. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.1, THE PRODUCT AND ANY SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, BOTH EXPRESSED AND IMPLIED. ELEMENTAL, ITS SUPPLIERS AND LICENSORS DISCLAIM AND EXCLUDE ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

8. GOVERNMENT REGULATION: Ordering Activity agree that the Product and any related technical data will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export law. Ordering Activity will comply with all laws, regulations, permits, orders and other restrictions to the extent that they are applicable to the import or export of the Product and related technical data.

9. HIGH RISK APPLICATIONS: THE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS REQUIRING FAULT TOLERANCE OR FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPON SYSTEMS, IN WHICH THE FAILURE OF THE PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK APPLICATIONS"). Elemental and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Applications.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

**Scope.** This Rider and the attached Expert Choice, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions applicable to all manufacturers and items represented on the Schedule Contract, and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.); the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15); DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded,

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract, and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.); the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15); DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER OGP 4800.21 (July 2016), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY Product}

License Agreement 08 20

GSA Approved 4-Feb-22
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
EXPERT CHOICE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Definitions.

1.1 "Active Decision Project" means a Decision Project (a) that is published or otherwise made available to users for the purpose of entering measurable data and/or judgments into such Decision Project; and (b) into which measurable data and/or a judgment into such Decision Project; provided, however, that a Decision Project will not be considered an "Active Decision Project" during any time period where such Decision Project is inactivated through the archiving feature of the Product.

1.2 "Confidential Information" means all non-public information, whether in oral, written or other tangible or intangible form, that a Party designates as being confidential or which, under the circumstances surrounding disclosure, the receiving Party knows or has reason to know should be treated as confidential, including, without limitation, the Software, and any Ordering Activity data. Notwithstanding the foregoing, Confidential Information does not include information that the receiving Party can establish: (i) is or becomes generally available to the public other than (a) as a result of a disclosure by the receiving Party or its employees or any other person who directly or indirectly receives such information from the receiving Party or its employees or (b) in violation of a confidentiality obligation to the disclosing Party; (ii) is otherwise available to the receiving Party on a non-confidential basis from a Third Party which is entitled to disclose it to the receiving Party; or (iii) was developed by employees or agents of the receiving Party independently of, and without reference to, any information communicated to the receiving Party by the disclosing Party.

1.3 "Decision Project" means the Web-based decision-making analytic tool generated by Ordering Activity using the Software and/or the Hosted Services that is designed to elicit data and judgments from users with respect to the business objectives and/or alternatives for which the Decision Project is created.

1.4 "Delivery" means the sooner of the date that Expert Choice: (i) delivers the Software on a CD to Ordering Activity; (ii) delivers the Software over a common carrier for shipment to Ordering Activity; or (iii) makes the Hosted Services available to Ordering Activity for its access and use, as the case may be.

1.5 "Documentation" means the then-current, generally available, written instructions, user guides, and user manuals for the Products, if applicable, whether in electronic, paper or other equivalent form, provided by Expert Choice and in connection with any updates, modifications and improvements to the Software, regardless of form or media.

1.6 "Hosted Services" means the provision of access over the Internet to the functionality of the Software.

1.7 "Intellectual Property Rights" means, collectively, all rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including moral rights and similar rights.

1.8 "Named User" means the employees, agents or authorized representatives of Ordering Activity that may be specifically named in an Order Form who are authorized to use the Products. Named Users may include Ordering Activity contractors performing work on Ordering Activity's behalf.

1.9 "Order Form" means the ordering documents, including a Government Purchase Order, representing the initial purchase of the Product as well as any subsequent purchases agreed to between the Parties submitted by Ordering Activity and agreed to by Expert Choice that specify, among other things, the Products purchased, the license type and license grant, the number of Named Users and the number of Active Decision Projects, as applicable, and the Term (as hereinafter defined) and the fees.

1.10 "Product" means one or more of the following products purchased by Ordering Activity as set forth in an Order Form: the Hosted Services, the enterprise version of the Software and/or the desktop version of the Software.

1.11 "Software" means the means the machine-readable, object-code version of Expert Choice's proprietary software, including all related Documentation.

1.12 "Third Party" means any department or division of Ordering Activity not specifically identified herein, or any person, entity or Party other than the Parties, regardless of relation or affiliation with either Party.

Reserved.

Reserved.

Audit Rights. The terms of this Section 4 only apply if Ordering Activity has purchased the desktop and/or enterprise version of the Software.

4.1 Audit. During the Term and subject to Government security requirements, Expert Choice may periodically conduct onsite audits of Ordering Activity's usage of the desktop and/or enterprise version of the Software licensed by Ordering Activity under each applicable Order Form. These audits will be conducted during regular business hours, and Ordering Activity agrees to permit Expert Choice and its representatives, subject to Government security requirements, reasonable access to the premises, facilities, data, and networks necessary to conduct such audits. Expert Choice will use reasonable efforts not to interfere unduly with Ordering Activity's regular business activities. At Expert Choice's option, Ordering Activity shall complete a self-audit questionnaire in a form Expert Choice may provide.

4.2 Additional Licenses. Expert Choice will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

5. Ownership and Proprietary Rights Notices.

5.1 Title. Ordering Activity acknowledges and agrees that title to and ownership of the Products, including all corrections, enhancements, or other modifications to the Software, whether made by Expert Choice or any Third Party, and all Intellectual Property Rights therein, are and shall at all times be deemed the sole and exclusive property of Expert Choice.

5.2 Proprietary Rights Notices. Ordering Activity shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by Expert Choice on or in the Products, and shall ensure that all such notices are reproduced on all copies thereof.


6.1 Assumption of Responsibility. Ordering Activity assumes all responsibility for the selection of, use of, and results obtained from the Products. All warranties, express or implied, extend solely to Ordering Activity and not to any Third Parties.

6.2 DISCLAIMER. Expert Choice warrants that the software will, for a period of sixty (60) days from the date of your receipt ("Warranty Period"), perform substantially in accordance with the software documentation accompanying it. If the software fails to perform substantially in accordance with the documentation during the Warranty Period, Expert Choice shall use
commercially reasonable efforts to repair or replace the nonconforming software to make it perform in accordance with the 
documentation. EXCEPT AS EXPRESSLY 
SET FORTH IN THE FOREGOING, THE PRODUCTS ARE PROVIDED "AS IS," WITHOUT ANY 
WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT 
LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR 
PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL 
PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT 
OR RESULTS, OR SYSTEM INTEGRATION, OR ANY WARRANTIES 
ARISING UNDER ANY OTHER LEGAL REQUIREMENT. EXPERT CHOICE makes no warranty THAT THE 
SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE, that the SOFTWARE OR THE HOSTED 
SERVICES WILL MEET the REQUIREMENTS OF THE ORDERING ACTIVITY OR USERS, WILL 
OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY THE ORDERING ACTIVITY OR USERS, 
OR THAT THE HOSTED SERVICES OR OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR 
FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

Reserved. 
Reserved. 
Term and Termination. 
Term. This Agreement shall commence upon the Effective Date and shall continue for the period set forth in the applicable Order Form 
("Term"), unless earlier terminated. 
Obligations Upon Termination. Upon the termination or expiration of this Agreement: (i) Ordering Activity shall promptly pay in full all 
outstanding payments to Expert Choice; (ii) all licenses granted hereunder (if any) will immediately terminate and Ordering Activity 
shall immediately cease all use of the Products; (iii) Ordering Activity shall remove all copies of the Software from its computer systems 
and shall return or destroy (at Expert Choice's option) all such copies to Expert Choice; and (iv) the receiving Party shall promptly 
return all Confidential Information of the disclosing Party in its the possession or control. With respect to (iii) and (iv) of the preceding 
sentence, Ordering Activity shall certify to Expert Choice in writing within ten (10) days of the date on which termination or expiration is 
effective that it has made no other copies, or has completely destroyed all copies, including backup or archive copies, of the Software 
or any portion thereof, and that no copies of any portion of the Software are in existence on any network, system, or equipment ever 
owned or used by Ordering Activity. The expiration or termination of this Agreement does not relieve either Party of any obligations that 
have accrued on or before the effective date of the termination or expiration. 

General. 
Export Restrictions. Ordering Activity acknowledges and agrees that the Software is subject to the export control laws and regulations 
of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. 
Department of the Treasury, Office of Foreign Asset Controls. Ordering Activity will comply with these laws and regulations. Ordering 
Activity shall not without prior U.S. Government authorization, export, re-export, or transfer any goods, software, or technology subject 
to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, North Korea, 
Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied 
Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" 
maintained by the U.S. Department of the Treasury. 

SERVICE LEVEL AGREEMENT 
Expert Choice bases its service level agreement on 'issues.' An 'issue' is defined as an unplanned interruption to Expert Choice 
Comparison® or Expert Choice Riskion® that causes an interruption or disruption in the Ordering Activity’s ability to use either product 
for its intended purpose. Problems with customer internet service, connections, firewalls, networks, hardware, operating system 
software, browser software, or other foundational software are not covered under this SLA.
## Issue Triage

<table>
<thead>
<tr>
<th>Priority</th>
<th>Criteria</th>
<th>Initial Response Time *</th>
<th>Target Resolution Time *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent</td>
<td>Users are continually unable to use the software and a workaround is not available.</td>
<td>1 hour</td>
<td>4 hours</td>
</tr>
<tr>
<td>High</td>
<td>Some functions of the software are impaired and no workaround is available.</td>
<td>2 hours</td>
<td>8 hours</td>
</tr>
<tr>
<td>Medium</td>
<td>The normal priority where some functions of the software are impaired, with a workaround available.</td>
<td>4 hours</td>
<td>Release Schedule – typically quarterly</td>
</tr>
<tr>
<td>Low</td>
<td>An information request or clarification that has no immediate operational impact.</td>
<td>4 hours</td>
<td>Release Schedule – typically quarterly</td>
</tr>
</tbody>
</table>

* Working hours are Monday – Friday 8:30 am to 5:00 pm Eastern U.S. time. Holidays are excluded from working hours. The clock for Response and Resolution Time does not run during non-working hours.

### Hours of Operation and Contact Methods

Expert Choice's support is available as follows:

<table>
<thead>
<tr>
<th>Contact Method</th>
<th>Email</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Methods</td>
<td><a href="mailto:support@expertchoice.com">support@expertchoice.com</a></td>
<td>(703) 243-5595 ext. 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Or (321) 229-2959</td>
</tr>
<tr>
<td>Hours of Support</td>
<td>Actively Monitored</td>
<td></td>
</tr>
<tr>
<td>Operation</td>
<td>Monday – Friday</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8:30 am to 5:00 pm Eastern U.S. time</td>
<td></td>
</tr>
<tr>
<td>After Hours</td>
<td>Triaged Next Business Day</td>
<td>Triaged by an On-Call Person</td>
</tr>
</tbody>
</table>

1. Expert Choice considers all email-submitted issues as **Medium**.
2. Expert Choice requires five business day notice to support any issues that may result from client-initiated business practice changes, e.g., using the software in a different way.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Extreme Networks, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)).

   To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the
incorporate third party terms by reference are hereby superseded.

EXTREME NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract. Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

EXTREME NETWORKS, INC.

EXTREME NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

GSA Approved 4-Feb-22
1. DEFINITIONS. “Affiliates” means any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the party specified. “Server Application” shall refer to the License Key for software installed on one or more of Your servers. “Client Application” shall refer to the application to access the Server Application. “Licensed Materials” shall collectively refer to the licensed software (including the Server Application and Client Application), Firmware, media embodying the software, and the documentation. “Concurrent User” shall refer to any of Your individual employees who You provide access to the Server Application at any one time. “Firmware” refers to any software program or code imbedded in chips or other media. “Licensed Software” refers to the Software and Firmware collectively.

2. RESERVED.

3. GRANT OF SOFTWARE LICENSE. Extreme will grant You a non-transferable, non-exclusive license to use the machine-readable form of the Licensed Software and the accompanying documentation if You agree to the terms and conditions of this Agreement. You may install and use the Licensed Software as permitted by the license type purchased as described below in License Types. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

4. LICENSE TYPES.

Single User, Single Computer. Under the terms of the Single User, Single Computer license, the license granted to You by Extreme when You install the License Key authorizes You to use the Licensed Software on an individual single computer or any replacement for that computer, for internal use only. A separate license, under a separate Software License Agreement, is required for any other computer on which You or another individual or employee intend to use the Licensed Software. A separate license under a separate Software License Agreement is also required if You wish to use a Client license (as described below). Client. Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Software on your server and allow the specific number of Concurrent Users shown on the relevant invoice issued to You for each Concurrent User that You order from Extreme or Your dealer, if any, to access the Server Application. A separate license is required for each additional Concurrent User.

5. RESERVED. RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS. Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompose, disassemble, electronically transfer, or reverse engineer the Licensed Software, or to translate the Licensed Software into another computer language. The media embodying the Licensed Software may be copied by You, in whole or in part, into printed or machine readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including the original media, in your possession for said purposes without Extreme’ prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. You may not copy or reproduce the documentation. You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You may modify the machine-readable form of the Licensed Software for (1) your own internal use or (2) to merge the Licensed Software into other program material to form a modular work for your own use, provided that such work remains modular, but on termination of this Agreement, You are required to completely remove the Licensed Software from any such modular work. Any portion of the Licensed Software included in any such modular work shall be used only on a single computer for internal purposes and shall remain subject to all the terms and conditions of this Agreement. You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

6. TITLE AND PROPRIETARY RIGHTS

(a) The Licensed Materials are copyrighted works and are the sole and exclusive property of Extreme, any company or a division thereof which Extreme controls or is controlled by, or which may result from the merger or consolidation with Extreme (its “Affiliates”), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

7. PROTECTION AND SECURITY.

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized personnel shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Extreme of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme or its Affiliates and/or its/their software suppliers.

8. MAINTENANCE AND UPDATES.

Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of an Extreme Service and Maintenance Agreement (Exhibit A). Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

9. RESERVED.

10. EXPORT REQUIREMENTS.

You are advised that the Software is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government); or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.
1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Authorized Users" means those individuals authorized by Ordering Activity to use the Services on behalf of Ordering Activity.

1.2 "Authorized Resellers" means those companies (a) authorized by Extreme to resell, promote or deliver the ExtremeWorks Support Program to the marketplace, and (b) through which Ordering Activity has purchased the ExtremeWorks Support Program.

1.3 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.4 "End User" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "End User Documentation" means Product documentation, Product specifications and other related materials.

1.6 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights, (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.7 Reserved.

1.8 "Products" mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to you in a commercial package.

1.9 "Releases" mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.10 "Services" mean the services provided by Extreme under the ExtremeWorks Support Program, Premier Services Program (PSP) Foundation Services or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide.
1.11 “Software” or “Software Products” mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products.

1.12 “Trademarks” mean “Extreme Networks” and the applicable Product trademarks as listed in Extreme’s usage guidelines, subject to revision from time to time in Extreme’s sole discretion.

1.13 “Update” means a new version of a Software Product that includes defect corrections, bug fixes and/or minor enhancements that operate within the framework of the specifications for the current Upgrade of the Software Product, but does not include substantive features or functions not performed by the prior Release of the Software Product.

1.14 “Upgrade” means a new version of a Software Product that includes substantive features or functions not performed by the prior Release of the Software Product.

2. Services. The scope of the Services provided to Ordering Activity hereunder is based on the support plan purchased by Ordering Activity for each unit of the Product purchased. Certain on-site Services may not be available in some geographic regions or may require a “phase-in” period before they can be made available to Ordering Activity. Extreme shall have the right to use subcontractors to perform all or part of the Service(s), as it deems appropriate. To be eligible for the PSP Foundation Service, Ordering Activity must have Extreme equipment with current maintenance support entitlements. Future Services are deemed added to this Agreement at such time as they are added to the Schedule Contract. Extreme has the right to discontinue the distribution or availability of any Service at any time upon sixty (60) days’ prior notice. In accordance with the Support Plan purchased for the applicable Product, the Services may include the following:

2.1 Releases. Extreme or its authorized representatives will make available to Ordering Activity all Releases made generally available by Extreme only for Products for which Ordering Activity has an active contract for Services. The content of all Releases shall be decided upon by Extreme in its sole discretion. Updates for Products for which Ordering Activity has an active contract for Services shall be provided to Ordering Activity at no additional charge during the term of this Agreement. Extreme shall impose additional charges for Upgrades. Ordering Activity shall install only one (1) copy of a Release for each Product under an active contract for Services, and Ordering Activity is prohibited from installing Releases on any Product which is not covered under an active contract for Services.

2.2 Corrections. Extreme shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in any Product for which Services have been purchased with a level of effort commensurate with the severity level; provided that Extreme shall have no obligation to correct all Defects in the Products. Ordering Activity shall notify Extreme TAC of the nature and severity of such Defect and the specific serial number of the applicable Product, and provide Extreme with enough information to locate and reproduce the Defect. Extreme shall not be responsible for correcting any Defect not attributable to Products or any Defect listed under Section 3 (“Exclusions”).

3. Exclusions. The Services provided by Extreme hereunder will not include support and maintenance of any third party software or hardware not provided by Extreme. Extreme is not required to provide any services for problems arising out of: (i) Ordering Activity’s failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas, GBICs and miniGBICs. Extreme shall only be obligated to support the then-current revision of the Products and the immediately prior revision.

4. Ordering Activity Obligations.

4.1 Ordering Activity Assistance. Ordering Activity agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Ordering Activity information services, technical personnel, facilities, and premises as required in connection with the performance of the Services as long as Extreme complies with all of Ordering Activity’s security requirements. To efficiently resolve problems and perform local hardware diagnostics, Ordering Activity shall provide modem level access for all Ordering Activity sites. Ordering Activity may provide passwords and/or activate the modem when needed. Ordering Activity shall be responsible for any and all cables, hardware or software not provided by Extreme. Ordering Activity’s failure to provide such access or information may delay the Services and/or result in Extreme’s inability to perform the Services; in such cases, Extreme shall not be liable for any consequences relating to or resulting from such delay or failure to perform.

4.2 Contact People. Ordering Activity shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Ordering Activity’s organization to serve as the primary contacts between Ordering Activity and Extreme and to receive support as provided herein. Ordering Activity shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Ordering Activity’s support inquiries shall be initiated through these primary contacts.

4.3 Restrictions on Copying and Reverse Engineering. As a material consideration for this Agreement, Ordering Activity expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Ordering Activity will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme’s sole discretion.

4.4 No Removal of Markings. Ordering Activity agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

5. Reserved.

6.1 Product End of Life. In the event Extreme discontinues or otherwise ceases to make available to its customers a particular Product model number, Extreme will continue to offer Services for such Product in accordance with its then-current End of Life Policy available at www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf. The Services shall remain in effect with respect to other Products, if any, then covered.

6.2 Support Plan End Of Life. Extreme reserves the right to discontinue any Support Plan in its sole discretion upon sixty (60) days’ notice, by email, notification on Extreme’s website, or any other method permitted under this Agreement, to Ordering Activity; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period.

7. RESERVED. 8. Return Process. If Ordering Activity is returning a Product to Extreme, Ordering Activity must first obtain a Return Material Authorization (“RMA”) number from Extreme. Ordering Activity must return the entire contents of the defective Product and dated End User proof of purchase for the defective Product, if requested by Extreme, marked with the RMA number, to a receiving point designated by Extreme. Shipping cartons that are not marked with RMA numbers will be rejected by Extreme and returned to Ordering Activity. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Ordering Activity retains sole responsibility for risk of loss or damage to Products during shipment to and from Extreme. Products returned to Extreme may be repaired or replaced by Extreme at Extreme’s sole discretion. Replacement Products may be new or refurbished Products.


9.1 Intellectual Property Rights. Ordering Activity acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. Ordering Activity will take all reasonable measures to protect Extreme’s Intellectual Property Rights in any Product. Except as expressly provided herein, Ordering Activity is not granted any right to any Intellectual Property Rights with respect to any Product.

9.2 License. All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

10. Warranty. All Updates provided hereunder are warranted for the remaining warranty period of the original Software Product, if any, as specified in the warranty card which shipped with the original Software Product. All Upgrades are warranted as set forth in the warranty card for such Upgrade. Replacement Products provided under the Services are warranted for the remaining warranty period of the original Product, if any, as specified in the warranty card which shipped with the original Product. Nothing in the Services shall be construed as expanding or adding to the warranty set forth on the warranty card. Extreme will use all reasonable commercial efforts to provide the support requested by Ordering Activity under this Agreement in a professional and workmanlike manner. In the event that Extreme fails to meet this warranty, Extreme may reperform the Services, but Extreme cannot guarantee that every question or problem raised by Ordering Activity will be resolved. EXTREME WARRANTS THE SERVICES ONLY TO ORDERING ACTIVITY AS THE END USER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND. EXTREME EXPRESSLY DISCLAIMS ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED (in fact or by operation of law), STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, TERM OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY, TERM OR CONDITION THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR COURSE OF PERFORMANCE.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Forcepoint LLC. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

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**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing otherwise. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

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Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN (“AGREEMENT”) BETWEEN LICENSEE AND FORCEPOINT. BY ACCEPTING THIS AGREEMENT BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE CONTRACT, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS Occurring UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO (“ADDENDUM”).

1. Definitions.
“Application” or “App” means a third-party cloud-based computing application identified at the time of Product implementation.
“Bulk Mail” means a large number of email messages with similar content sent or received in a single operation or a series of related operations.
“Cloud Services” means one or more of Forcepoint’s cloud-based service offerings that have been included in an Order, including their associated components, content, updates, and upgrades thereto (but excludes products for which Forcepoint generally charges a separate fee), if any, and any reports generated as a result of use that are made available to Licensee. “Databases” means proprietary database(s) of URL addresses, email addresses, Malware, applications, analytical models, and other valuable information.
“Database Updates” means changes to the content of the Databases.
“Device” or “Seat” means each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly.
“Documentation” means the Product installation instructions, user manuals, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.
“Error” means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.
“Fees” means collectively the License Fees and the Maintenance Fees.
“Forcepoint” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.
“License” means the limited, personal, non-sublicensable, non-transferable right to use the Software (including the Database, if any) for the term set forth in the Order, and use the output of the Services Offerings, in accordance with this Agreement and the Order.
“License Fees” means the agreed upon license fees for the Software included in an Order.
“Licensee” means the Ordering Activity under GSA Schedule Contracts that has placed an Order, is the ultimate end user of the Products, and if enrolling in Cloud Services, has registered its details on the Forcepoint portal.
“Maintenance” means a limited-term, non-exclusive, non-sublicensable, non-transferable right to: (a) receive Technical Support, and (b) access Cloud Services (when set forth in the Order), in accordance with this Agreement and the Order.
“Maintenance Fees” means the agreed upon fees for the Maintenance in an Order.
“Maintenance Term” means the agreed upon time period for the provision of Maintenance in an Order.
“Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.
“Node” means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is a Node.
“Open Relay” means an email server configured to receive email from an unauthorized third-party and that forwards the email to other recipients who are not part of the server’s email network.
“Order” means a purchase commitment mutually agreed upon between (i) Forcepoint and Licensee, or (ii) a Forcepoint authorized reseller and Licensee.
“Permitted Capacity” means the number of Devices, Nodes, Seats, Users, or other license metrics as set forth in the Order. “Products” means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Technical Support, Cloud Services, and Services Offerings.
“Services Fees” means the agreed upon fees in an Order for the Services Offerings.
“Services Offerings” means Forcepoint’s professional services offerings described in a Forcepoint published services datasheet or services proposal.
“Software” means Forcepoint’s proprietary software applications, in object code only.
“Software Upgrades” means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance, but excludes products for which Forcepoint generally charges a separate fee.
“Spam” means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.
“Technical Support” means the support level purchased pursuant to an Order as further described in Section 5, including if and when available: (i) Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades.
“User” means (i) any person utilizing Licensee’s network with access to the Products directly or indirectly, who is an employee, temporary employee, customer, contractor, or guest of Licensee; or (ii) for Cloud Services a separate email address or account that receives electronic
Forcepoint makes no service level commitments for the Cloud Services’ functionality to the extent it is used to monitor access to third-party
Level Agreement.

Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance
(including any output of the Services Offerings), identified in the Order solely for Licensee’s internal business purposes up to the Permitted
Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to
compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its
location. Licensee will not and may not permit any third party to copy the on-premise Products, other than copies made solely for data backup
and internal testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may
make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes
functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used.
Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum
amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase
additional Permitted Capacity sufficient for the excess use.

Software License. Subject to the provisions contained in this Agreement, and timely payment of the
applicable Fees, Forcepoint hereby grants Licensee a License to use the Software, and Software Upgrades provided pursuant to Maintenance
(including any output of the Services Offerings), identified in the Order solely for Licensee’s internal business purposes up to the Permitted
Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Subject to
compliance with the terms of this Agreement, Licensee may relocate or transfer the on-premise Product for use on a different server within its
location. Licensee will not and may not permit any third party to copy the on-premise Products, other than copies made solely for data backup
and internal testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may
make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes
functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used.
Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum
amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase
additional Permitted Capacity sufficient for the excess use.

[Image 66x736 to 195x770]

Provision of Cloud Services. Licensee Obligations. If in any one calendar month the total throughput including data sent and received through Cloud
Traffic Flowing through the Cloud Services.

Cloud Services.

Provide Cloud Services for the Maintenance Term. The then-current Cloud Services service levels are incorporated by reference into this Agreement and are attached
hereto in the Cloud Services Service Level Agreement. Forcepoint makes no service level commitments when Cloud Services are used in connection with Bulk Mail.

Licensee Obligations. If in any one calendar month the total number of emails processed in performance of Cloud Services for inbound and outbound scanning of email traffic divided by the Permitted Capacity is greater than either:

(i) 10,000 emails per User, then Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which Cloud Services scan inbound or outbound email; or
(ii) 30,000 emails per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total bandwidth used in the performance of Cloud Services for web access filtering divided by the Permitted Capacity is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total bandwidth used in the performance of Cloud Services for security access policy enforcement solution divided by the number of Devices or Users is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total throughput including data sent and received through Cloud Services for internet and internal application access policy enforcement divided by the number of Users is greater than 10 Gigabytes per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days prior written notice unless Licensee purchases additional Permitted Capacity.

Licensee Obligations.

Licensee’s email system is acting as an Open Relay. If Forcepoint finds the system is an Open Relay, Forcepoint will inform Licensee and may
suspend the applicable Cloud Services until the problem is resolved.

If in any one calendar month the total number of emails processed in performance of Cloud Services for inbound and outbound scanning of email traffic divided by the Permitted Capacity is greater than either:

(i) 10,000 emails per User, then Licensee will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Licensee for which Cloud Services scan inbound or outbound email; or
(ii) 30,000 emails per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total bandwidth used in the performance of Cloud Services for web access filtering divided by the Permitted Capacity is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total bandwidth used in the performance of Cloud Services for security access policy enforcement solution divided by the number of Devices or Users is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days’ written notice unless Licensee purchases Licenses to increase the Permitted Capacity.

If in any one calendar month the total throughput including data sent and received through Cloud Services for internet and internal application access policy enforcement divided by the number of Users is greater than 10 Gigabytes per User, then Forcepoint may terminate the applicable Cloud Services License and Maintenance upon 30 days prior written notice unless Licensee purchases additional Permitted Capacity.
4. **License Agreement**

4.1 Licensee will (i) comply with all applicable laws, statutes, regulations and ordinances, (ii) only use the Products for legitimate business purposes that may include sending and receiving business and personal email or Web Content by its employees, and (iii) not use the Products to construct or transmit Spam, Malware, or excessive email.

4.2 Licensee acknowledges that certain Products may be configured by Licensee to capture files for submission to other Products for Malware analysis. The Product analyzing files may archive Malware code extracted from such files. If Licensee downloads such extracted Malware code, Licensee recognizes the risk associated with Malware code, and any use by Licensee of Malware code is at Licensee’s sole risk and liability.

4.3 Licensee acknowledges that the scoring and content by some Products is based on available information at the time it is gathered and may be incomplete, misinterpreted, and is subject to change at any time. As such it is provided for informational purposes only, and Licensee is solely responsible for decisions Licensee makes regarding its use of Applications or services based on such information.

4.4 Licensee is responsible for (i) having the authority, rights, or permissions to use all domains registered to the Products, (ii) obtaining any necessary consents from its employees, (iii) maintaining all necessary rights to access Application(s), and (iv) maintaining all permissions, authorizations, licenses, and approvals to access and use the data and information inputted, displayed, or processed (including all output and data developed or derived) as a result of Licensee’s use of the Products to access and use data sources and systems.

4.5 **Reserved.**

4.6 Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, login IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.

5. **Technical Support**

5.1 Technical Support is provided under the then-current Forcepoint technical support policies, as described at: Technical Support Description. Technical Support, Database Updates and Software Upgrades will be provided to Licensee only if Licensee has paid the applicable Maintenance Fees. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release.

5.2 Forcepoint’s obligation to provide Technical Support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Licensee’s use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via Technical Support but will not have any obligation to correct such Error in prior versions.

5.3 Technical Support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days’ notice should Licensee not stay current with a supported release in accordance with this Section.

6. **Intellectual Property Rights.** All right, title, and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third-party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

7. **Protection and Restrictions.**

7.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation prototypes, technical data, trade secrets and know-how, product plans, Products, customer lists and customer information, prices and costs, databases, inventions, processes, hardware configuration information, finances, budgets and other business information), which is designated as
Offerings), as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Licensee, will operate in substantial conformance with the Documentation under normal use ("Warranty Period"). Forcepoint warrants that Services Offerings

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Licensee must promptly notify Forcepoint during the Warranty Period in writing of a claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint will, within 30 days of its receipt of Licensee’s written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty or other duty related to the Products.

This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) breach of this Agreement by Licensee or its users.

9. THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE’S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD-PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE LICENSEE’S APPLICABLE LICENSE TO THE PRODUCTS FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSEE’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. Intellectual Property Indemnification. In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then-current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

12. Term and Termination.

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. Upon termination or expiration of the Maintenance Term, Licensee’s right to receive Maintenance to the Products terminates.

12.2 Product evaluation subscriptions are available for a period of up to 30 days, and limited availability Software licenses may be available for the time period determined by Forcepoint. Software evaluation subscriptions and limited availability Software licenses are each subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions and limited availability Software licenses may only be used to evaluate and facilitate Licensee’s decision to purchase a license to the products; and (ii) evaluation subscriptions and limited availability Software
Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought given in accordance with this paragraph. Either party may change its contact person for notices and/or address for notice by means of notice to the other party received at the time of actual delivery in person, two business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Notices sent to Licensee will be sent to Licensee's address in Forcepoint's system of record. Notices are considered to have been received at the time of actual delivery in person, two business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.

For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g. Licensee's reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its preferences to receive/stop receiving messages of an informational or advertising nature via email. Forcepoint may use non-identifying and aggregate usage and statistical information collected in relation to Licensees’ and its users' use of the Products for purposes outside of the Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable, or otherwise undermine such license manager’s operation.

Licensee may not transfer any of Licensee's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.

Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel using the contact information provided in the then-current agreement attached to the Agreement. The verification will be performed during regular business hours and will not interfere unreasonably with Licensee’s business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee’s system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee additionally acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable, or otherwise undermine such license manager’s operation.

Excusable delays shall be governed by FAR 52.212-4(f),
This Agreement is the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Licensee agrees that this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at: Legal Information. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Forcepoint. All pre-printed or standard terms of any Licensee's purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail.

If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will be interpreted so as reasonably to affect the intention of the parties.

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT SUBSCRIBER OR LICENSEE ("CUSTOMER") AGREES TO THE TERMS AND CONDITIONS IN THE APPLICABLE FORCEPOINT END USER AGREEMENT, AND THE MATERIALS REFERENCED THEREIN ("AGREEMENT"), BETWEEN CUSTOMER AND FORCEPOINT FEDERAL LLC ("FORCEPOINT"). TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THIS PUBLIC SECTOR ADDENDUM ("ADDENDUM"). ANY CAPITALIZED TERMS USED BUT UNDEFINED IN THIS ADDENDUM WILL HAVE THE MEANINGS PROVIDED IN THE AGREEMENT. TO THE EXTENT APPLICABLE, THE TERMS OF THIS ADDENDUM WILL TAKE PRECEDENCE AND CONTROL OVER ANY CONFLICTING TERMS IN THE AGREEMENT. EXCEPT AS EXPRESSLY MODIFIED IN THIS ADDENDUM, ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT REMAIN IN EFFECT AND UNCHANGED.

IF A SUBSCRIPTION OR LICENSE TO USE THE PRODUCTS IS OBTAINED THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT, THEN THE AGREEMENT AND THIS ADDENDUM MUST BE INCORPORATED INTO THE CONTRACT EXECUTED BY CUSTOMER'S CONTRACTING OFFICER OR OTHER REPRESENTATIVE AND MUST AUTHORIZE CUSTOMER ACCEPTANCE OF THE AGREEMENT AND THIS ADDENDUM.

NOTICE TO RESELLERS, DISTRIBUTORS, AND NON-CUSTOMERS.
THE PRODUCTS, SUBSCRIPTIONS, AND/OR LICENSES ARE NOT TRANSFERABLE. IF YOU ARE NOT THE CUSTOMER, PLEASE CONTACT FORCEPOINT FOR A TRANSFERABLE SUBSCRIPTION AND/OR LICENSE.

BY ACCEPTING THE AGREEMENT AND THIS ADDENDUM IN WRITING, CUSTOMER ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THE AGREEMENT AND THIS ADDENDUM. IF YOU DO NOT ACCEPT THE AGREEMENT AND THIS ADDENDUM, DO NOT PROCEED WITH THE INSTALLATION/USE OF THE PRODUCT AND PROMPTLY RETURN THE PRODUCT AND ALL ACCOMPANYING ITEMS (INCLUDING DOCUMENTATION, SOFTWARE MEDIA, ETC.) TO FORCEPOINT.

Customer and Forcepoint hereby agree as follows:

1. The following definitions apply:
   "Public Sector Entity" means a Customer that is (i) a member of the U.S. government’s legislative, judicial, or executive branches; (ii) a U.S. state or local government entity; or (iii) an accredited academic institution organized and operated for educational purposes that receives partial or full funding from a federal, state, or local agency, or administrative offices or boards for such academic institutions.
   "U.S. Government Procurement Contract" means, to the extent it includes Forcepoint Products use of which are subject to the terms of the Agreement, the following public sector contract.

2. **Governing Law, Venue, And Dispute Resolution.** To the extent required by law: any dispute arising out of or relating to the Agreement or the breach thereof will be subject to the Contracts Disputes Act of 1978 (41 U.S.C. 7101-7109) and Federal Tort Claims Act (28 U.S.C. 1346(b)), and will be resolved in accordance with the FAR, the Contract Disputes Act, or applicable dispute resolutions process.

3. **Indemnities.** To the extent required by law: indemnities provided by Public Sector Entity in the Agreement are deemed to be deleted, provided that, Public Sector Entity will, to the extent permitted by law, remain responsible for compliance with any such obligations and requirements in lieu of any such deleted indemnity. For clarity, the judicial department may elect to exercise its right (i.e. 28 U.S.C. 516) to represent a Public Sector Entity in any case and a Public Sector Entity may elect not to give sole control over litigation and/or settlement to Forcepoint by not requesting an indemnity from Forcepoint; provided however, that Forcepoint reserves the right to control litigation and/or settlements related to its intellectual property, including its Products.
5. **Future Fees or Penalties.** Those Agreement clauses that violate the Anti-Deficiency Act, which prohibits a Public Sector Entity from paying any fees or penalties beyond the Fees agreed in the Order, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act (31 U.S.C. 3901, 5 U.S.C. 504), are hereby deemed to be deleted.

6. **Travel and Expenses.** Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) for Services Offerings agreed between Forcepoint and Public Sector Entity to be reimbursed by Public Sector Entity at cost must be submitted for payment no more than sixty (60) days after completion of Services Offerings or such payment may be denied. Forcepoint will ensure that such travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Upon request, Forcepoint will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Public Sector Entity.

7. **Limitation of Liability:** To the extent the following damages are prohibited by law against a Public Sector Entity: Public Sector Entity is not liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use, and Public Sector Entity is not liable for punitive damages. No clause in the Agreement will limit the Public Sector Entity’s right to seek recovery for fraud or crimes under applicable fraud statute, such as the False Claims Act (31 U.S.C. 3729-3733).

8. **Public Access to Information.** Forcepoint agrees that the terms and conditions of the Agreement contain no confidential or proprietary information and acknowledges the Agreement may be made available to the public.

9. **Confidentiality.** Those Agreement clauses that require Public Sector Entity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. 552) and any order by a United States Federal Court. Forcepoint’s Products and offerings are and contain valuable, confidential information and trade secrets, and as such, to the extent they may be considered government data, they are trade secret information, "confidential data," and/or not public data. To the extent permitted by law: Public Sector Entity’s initial response to any such FOIA request to provide Forcepoint’s Products or offerings will be to assert the trade secret information and/or not public data exceptions to the disclosure and provide Forcepoint with advance reasonable written notice and an opportunity to seek protection, at its own cost, prior to releasing such information.

10. **Payment Terms.** If Customer is purchasing licenses of the Software under a U.S. Government Procurement Contract, the payment terms are as set forth in the U.S. Government Procurement Contract. Customer agrees to pay the applicable fees as set forth in the Order subject to all applicable Federal laws and regulations.

11. **Termination.**

This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided in the FAR, the underlying U.S. Government Procurement Contract and/or any applicable Order. Upon termination or expiration of the Term, Customer’s right to use the Products ends.

When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. Upon expiration or notification of termination, Customer must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed.

12. **Excusable Delays.** Excusable delays shall be governed by FAR 52.212-4(f).

13. **Intellectual Property Indemnification:** When the purchase is made under a U.S. Government Procurement Contract, the following will replace section 11 of the License Agreement:

In the event of a third-party claim, suit or proceeding against Customer asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Customer and indemnify Customer against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim to the extent permitted under 28 U.S.C. 516. Forcepoint’s obligation under this Section is contingent upon Customer providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to control and direct the defense of the claim as set forth in 28 U.S.C. 516; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Customer to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Customer’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Customer the unused pre-paid Maintenance or Subscription Fees paid for the affected Product applicable to the balance of the then current Term. SUBJECT TO FAR 52.212-4 (h), THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THIRD PARTIES REGARDING THE PRODUCTS AND SERVICES.

FFP EULA (EAR Products) 06.20

GSA Approved 4-Feb-22
THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS END-USER LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE (DEFINED BELOW) AND FORCEPOINT. IF A LICENSE TO USE THE PRODUCTS IS OBTAINED THROUGH A U.S. GOVERNMENT GSA SCHEDULE, THEN THIS AGREEMENT MUST BE INCORPORATED INTO THE CONTRACT EXECUTED BY LICENSEE’S CONTRACTING OFFICER OR OTHER REPRESENTATIVE AND MUST AUTHORIZZE LICENSEE’S ACCEPTANCE OF THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO ("ADDENDUM").

BY ACCEPTING THIS AGREEMENT BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE, FOR THE PRODUCTS, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO AND AGREES TO BE BOUND BY THIS AGREEMENT.

1. Definitions.
   “Affiliate” means an entity controlling, controlled by, or under common control with Licensee, where control is established by a majority ownership (greater than fifty percent (50%)) in or over an entity; provided, however, that the term “Affiliate” will not include an entity that is a direct competitor of Forcepoint.
   “Concurrent User” means the total number of Users simultaneously using the Software at any given time.
   “Device” or “Server” means each computer (whether physical or virtual), electronic appliance, or device on which the Software may be installed or otherwise used, directly or indirectly. In the case of virtual systems, each virtual machine or instance running the Software is considered to be a Device or Server. In the case of Forcepoint Data Diode, each Server license includes the right to use of the Software on up to two Servers solely to facilitate the communication between no more than two Networks through a fiber connection.
   “Documentation” means the Product installation instructions, user manuals, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.
   “Error” means a material failure of the Software to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.
   “Fees” means collectively the License Fees, the Maintenance Fees, the Subscription Fees, and the Services Fees.
   “Forcepoint” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmons court Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12850 Worldgate Drive, Suite 600, Herndon, VA 20170, USA; or (iv) a corporation or entity controlling, controlled by or under the control of Forcepoint with whom an Order has been placed referencing this Agreement.
   “License” means the limited, personal, non-sublicensable, non-exclusive, non-transferable right to use the Software for the License Term set forth in the Order, use the output of the Services Offerings, in accordance with this Agreement and the Order. “License Fees” means the agreed upon license fees for the Software included in an Order.
   “Licensee” means the Ordering Activity under GSA Schedule Contracts that has placed an Order that is the ultimate end user of the Products.
   “License Term” means the period set forth in an Order beginning (i) on the date of the Order if a new purchase, (ii) the date of delivery if the Order is placed through Forcepoint’s GSA Schedule, or (iii) on the renewal date of the expiration of a previous License Term.
   “Maintenance” means a limited-term, non-exclusive, non-sublicensable, non-transferable right to receive the support level purchased pursuant to an Order as further described in Section 3, including if and when available: (i) Error corrections or workarounds, and (ii) the provision of Software Updates, in accordance with this Agreement and the Order.
   “Maintenance Fees” means the agreed upon fees for the Maintenance in an Order.
   “Maintenance Term” means the agreed upon time period for the provision of Maintenance in an Order beginning (i) on the date of the Order if a new purchase, (ii) the date of delivery if the Order is placed through Forcepoint’s GSA Schedule, or (iii) on the renewal date of the expiration of a previous Maintenance Term.
   “Network” means a communication path through a network interface controller, using a physical or virtual infrastructure that interconnects a set of endpoints or devices for the purpose of exchanging data.
   “Order” means a purchase commitment mutually agreed upon between (1) Forcepoint and Licensee or (2) a Forcepoint authorized reseller(s) and Licensee.
   “Permitted Capacity” means the number of Devices, Servers, Concurrent Users, Network, Proxy, Users, or other license metrics as set forth in the Order.
   “Products” means Software, together with applicable Documentation and media, and if purchased pursuant to an Order, Maintenance and Services Offerings.
   “Proxy” means a software module acting as an intermediary between communicating endpoints or devices that controls access between a set of Network endpoints or devices by inspecting, filtering, and forwarding traffic between the senders and receivers.
   “Services Fees” means the agreed upon fees for the Services Offering set forth in an Order, services proposal, or statement of work.
   “Services Offerings” means Forcepoint’s professional services offerings described in a Forcepoint published services datasheet, services proposal, or statement of work.
Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information. The Receiving Party agrees not to disclose such information to any other party without the Disclosing Party’s prior written consent. The Receiving Party shall use such information only in connection with the requesting party’s business.

Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, login IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.

Intellectual Property Rights. All right, title and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

1. 
2. Subject to the provisions contained in this Agreement and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License or if applicable a Subscription to use the Software, Documentation, and Software Updates provided pursuant to Maintenance (including any output of the Services Offerings) identified in the Order solely for Licensee’s internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees and Services Fees, Forcepoint will provide Licensee with Maintenance and the Services Offerings, respectively. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the Software for use on a different server within its location. Licensee will not and may not permit any third party to copy the Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase additional Permitted Capacity sufficient for the excess use.

3. 
4. License/Subscription Grant. Subject to the provisions contained in this Agreement and timely payment of the applicable Fees, Forcepoint hereby grants Licensee a License or if applicable a Subscription to use the Software, Documentation, and Software Updates provided pursuant to Maintenance (including any output of the Services Offerings) identified in the Order solely for Licensee’s internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees and Services Fees, Forcepoint will provide Licensee with Maintenance and the Services Offerings, respectively. Subject to compliance with the terms of this Agreement, Licensee may relocate or transfer the Software for use on a different server within its location. Licensee will not and may not permit any third party to copy the Products, other than copies made solely for data backup and testing purposes. Any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity purchased, and Licensee’s use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Licensee has committed to for the Maintenance Term. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase additional Permitted Capacity sufficient for the excess use.

5. 

7. 
8. 
9. Intellectual Property Rights. All right, title and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

5. 
6. Protections and Restrictions.

7. Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without
For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the original media (if any) containing the Licensee will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized party will itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Licensee’s employees and contractors who have a need to such access and who will be bound by nondisclosure obligations that at least are as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a ‘service bureau’ basis; (vii) disclose or publish, without Forcepoint’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the same except as expressly permitted herein; (ix) use any third-party software included in the Products independently from the Products. Subject to the terms of this Agreement, Licensee may allow its agents and independent contractors to use the Products solely for the benefit of Licensee; provided, however, Licensee remains responsible for any breach of this Agreement. Any other use of the Products by any other entity is forbidden and a violation of this Agreement. If any additional third-party end-user license agreement or open source software license agreement is (a) attached to this Agreement or the Order, or (b) included in the Product “about” file, “readme” file or Documentation, then Licensee’s use of the third-party software is further restricted by and subject to such license.

6. Financial Terms. Fees and payment terms are specified in the applicable Order in accordance with the GSA Schedule Pricelist. Except as otherwise specifically expressed in the Order: (i) all recurring payment obligations start from the receipt of the Order; (ii) when the Order is placed directly with Forcepoint fees must be paid within 30 days after the invoice receipt date; (iii) upon the expiration of each Maintenance Term, the Maintenance Fees will be Forcepoint’s then-current GSA Schedule list price for such Products; and (iv) interest accrues on past due balances at the highest rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Forcepoint’s reasonable travel and lodging expenses incurred in the performance of services on Licensee’s site will be billed separately at actual cost in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. Limited Warranty; Remedies; Disclaimer.

7.1 For ninety (90) days beginning on the date of the Order for the License, Forcepoint warrants that the original media (if any) containing the Software is free from defects in material and workmanship, assuming normal use. As the sole and exclusive remedy for defective media, Forcepoint will replace it free of charge if claimed during the 90-day warranty period. The limited warranty specified in this Section 7 sets forth Forcepoint’s entire liability and Licensee’s exclusive remedy for breach of warranty. Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings.

7.2 EXCEPT FOR THE ABOVE LIMITED MEDIA WARRANTY, THE PRODUCTS ARE PROVIDED “AS IS” AND FORCEPOINT AND ITS LICENSORS DISCLAIM ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE PERFORMANCE, OPERATION, RESULTS, USE OF, OR INABILITY TO USE THE PRODUCTS, AND ANY DATA OR OTHER MATERIALS FURNISHED HEREBUNDER, THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE, OPERATION, RESULTS, USE OF, OR INABILITY TO USE THE PRODUCTS AND ANY DATA OR OTHER MATERIAL FURNISHED HEREBUNDER INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS PROVIDED UNDER THIS AGREEMENT.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE’S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT,
Each party will comply with all applicable laws and regulations that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products.

Neither party will use any data obtained via the Products for any unlawful purpose. Each party’s copies thereof, including backup copies, have been destroyed. Sections 1, 4 – 10, and 12 – 16 will survive the termination of this Agreement.

In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to solely control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Licensee’s continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then-current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must cease using and uninstall any Software, destroy or return all copies of the Products to Forcepoint, and must certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 4 – 10, and 12 – 16 will survive the termination of this Agreement.

Reserved.

Compliance with Laws.

Each party will comply with all applicable laws and regulations that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party’s obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the Forcepoint Data Processing Agreement.

Rights of Government Licensees.

The Products meet the definition of “commercial item” in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Updates, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint’s proprietary rights therein, and of the exclusive applicability of this Agreement.
13. **Export.** Commodities, technology and software, including the Products (collectively referred to as ‘items’) are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Licensee will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services.

14. **Verification.** Upon Forcepoint’s request, Licensee will provide a written certification confirming its compliance with this Agreement. Further, during the License term and one year thereafter, Forcepoint or Forcepoint’s independent auditor may review Licensee’s records related to Licensee’s use of the Products to verify Licensee’s compliance with this Agreement. Licensee will provide reasonable assistance, access to personnel, facilities, and systems, as well as information necessary to facilitate Forcepoint’s compliance verification. The verification will be performed during regular business hours and will not interfere unreasonably with Licensee’s business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee’s system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable or otherwise undermine such license manager’s operation.

15. **General.**

15.1 For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g., Licensee’s reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its communications preferences on Forcepoint.com or by sending an email to privacy@forcepoint.com. Licensee acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Forcepoint may use nonidentifying and aggregate usage and statistical information related to Licensee’s and its users’ use of the Products for its own purposes outside of the Agreement. Licensee acknowledges that Forcepoint may use Licensee’s company name only in a general list of Forcepoint customers.

15.2 Licensee may not transfer any of Licensee’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.

15.3 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices sent to Licensee will be sent to Licensee’s address in Forcepoint’s system of record. Notices are considered to have been received at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.

15.4 Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.
16.3 The Software may include Java technology which is subject to the following additional requirements:

a. Licensee may not create, modify, or change the behavior of, or authorize Licensee’s licensees to create, modify, or change the behavior of, classes, interfaces, or subpackages that are in any way identified as “java”, “javac”, “sun” or similar convention as specified by Oracle in any naming convention designation.

b. Use of the Commercial Features for any commercial or production purpose requires a separate license from Oracle. “Commercial Features” means those features identified in Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at http://www.oracle.com/technetwork/java/javase/documentation/index.html.

c. Export Laws: The third-party software may be controlled under the export laws and regulations of the United States. It
16.4 Notwithstanding anything to the contrary in this Agreement, the following additional terms and conditions will apply to the Oracle JDBC Driver ("Oracle Driver") included in the Software:

a. "Open Source" software - software available without charge for use, modification and distribution - is often licensed under terms that require the user to make the user's modifications to the Open Source software or any software that the user "combines" with the Open Source software freely available in source code form. If you use Open Source software in conjunction with the Oracle Driver, you must ensure that your use does not: (i) create, or purport to create, obligations of us with respect to the Oracle Driver; or (ii) grant, or purport to grant, to any third party any rights to or immunities under our intellectual property or proprietary rights in the Oracle Driver. For example, you may not develop a software program using an Oracle Driver and an Open Source program where such use results in a program file(s) that contains code from both the Oracle Driver and the Open Source program (including without limitation libraries) if the Open Source program is licensed under a license that requires any "modifications" be made freely available. You also may not combine the Oracle Driver with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Oracle Driver or any modifications thereto to become subject to the terms of the GPL.
FORCEPOINT NETWORK SECURITY PRODUCTS LICENSE AGREEMENT

THE PRODUCTS ARE PROVIDED ONLY ON THE CONDITION THAT LICENSEE AGREES TO THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT AND THE MATERIALS REFERENCED HEREIN ("AGREEMENT") BETWEEN LICENSEE AND FORCEPOINT. BY ACCEPTING THIS AGREEMENT FOR THE PRODUCTS BY EXECUTING A WRITTEN ORDER UNDER A GSA SCHEDULE, LICENSEE ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND AGREES TO BE BOUND BY THIS AGREEMENT. TO THE EXTENT CUSTOMER IS A PUBLIC SECTOR ENTITY (AS DEFINED BELOW) PURCHASING SUBSCRIPTIONS OR LICENSES TO PRODUCTS THROUGH A U.S. GOVERNMENT PROCUREMENT CONTRACT (AS DEFINED BELOW) OF AN AUTHORIZED FORCEPOINT DISTRIBUTOR OR RESELLER THAT IDENTIFIES SUCH PURCHASE IS OCCURRING UNDER SUCH CONTRACT, THE AGREEMENT IS SUPPLEMENTED BY THE PUBLIC SECTOR ADDENDUM ATTACHED HERETO ("ADDENDUM").

1. Definitions.
“Application” or “App” means a third-party cloud-based computing application identified at the time of Product implementation.
“Cloud Services” means one or more of Forcepoint’s cloud-based service offerings that have been included in an Order, including their associated components, content, updates, and upgrades thereto (but excludes products for which Forcepoint generally charges a separate fee), if any, and any reports generated as a result of use that are made available to Licensee. “Database” means proprietary database(s) of IPS rules, URL addresses, email addresses, Malware, applications, analytical models, and other valuable information.
“Database Updates” means changes to the content of the Databases.
“Device” or “Node” means any kind of computer, electronic appliance, or device capable of processing data, including without limitation diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANs), terminal servers or portable workstations connected or connecting to the server(s) or network that is authorized to access or use the Products, directly or indirectly. In the case of a virtual system, each virtual machine or instance running the Product is a Device or Node.
“Documentation” means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Licensee.
“Error” means a material failure of the Product to conform to the Documentation, which is reported by Licensee and replicable by Forcepoint.
“Fees” means collectively the License Fees, Maintenance Fees, and Services Fees.
“Forcepoint” means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.
“Hardware” or “Unit” means a single instance of computer hardware purchased from Forcepoint as described in the Order. “License” means the limited, personal, non-sublicensable, non-exclusive, non-transferable right to use the Software (including the Database), including the output of the Services Offerings, for the term set forth in the Order, in combination with the Hardware (if provided in the Order), in accordance with this Agreement and the Order.
“License Fees” means the agreed upon license fees for the Software (including the Database) included in an Order for the License.
“Licensee” means the Ordering Activity under GSA Schedule Contracts that has placed an Order, is the ultimate end user of the Products.
“Maintenance” means a limited, non-exclusive, personal, non-sublicensable, nontransferable right to receive Technical Support during the Maintenance Term.
“Maintenance Fees” means the agreed upon fees in the Order.
“Maintenance Term” means the agreed upon time period for the provision of Maintenance in an Order.
“Malware” means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.
“Order” means a purchase commitment mutually agreed upon between (i) Forcepoint and Licensee, or (ii) a Forcepoint authorized reseller and Licensee.
“Permitted Capacity” means the number of Devices, Units, Nodes, Users, or other license metrics as set forth in the Order. “Products” means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, Technical Support, Cloud Services, Hardware, and Services Offerings.
“Services Fees” means the agreed upon fees in an Order for the Services Offerings.
“Services Offerings” means Forcepoint’s professional services offerings described in a Forcepoint published services datasheet or services proposal.
“Software” means Forcepoint’s proprietary software applications, in object code only.
“Software Upgrades” means certain modifications or revisions to the Software and/or the Database, provided solely pursuant to Maintenance but excludes new products for which Forcepoint generally charges a separate fee.
“Subscription” means a limited, non-exclusive, personal, non-sublicensable, nontransferable right during the Subscription Term to: (a) receive and use the Database Updates, and (b) use the Products, in accordance with this Agreement and the Order.
“Subscription Fees” means the agreed upon fees in an Order for the Subscription.
“Subscription Term” means the agreed upon time period in an Order.
“Technical Support” means the support level purchased pursuant to an Order as further described in Section 5, including if and when available: (i) Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Software Upgrades.
“User” means any person utilizing Licensee’s network with access to the Products directly or indirectly, who is an employee, temporary employee, customer, contractor, or guest of Licensee.

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2. **Software License.** Subject to the provisions contained in this Agreement, and timely payment of the applicable Fees, Forcepoint hereby grants Licensee: (i) a License and if applicable a Subscription to use the Software and Software Upgrades provided pursuant to Maintenance (including any output of the Services Offerings), identified in the Order; and (ii) a Subscription to access the Cloud Services identified in the Order for the Subscription Term, in each case solely for Licensee’s internal business purposes up to the Permitted Capacity set forth in the Order. Provided Licensee pays the Maintenance Fees, Forcepoint will provide Licensee with Maintenance. Upon renewal, Maintenance must be purchased for each Product purchased and running in Licensee’s environment. Licensee will not and may not permit any third party to copy the Products, other than copies made solely for data backup and internal testing purposes. Except as otherwise set forth in this Agreement, any source code provided to Licensee by Forcepoint is subject to the terms of this Agreement. Forcepoint may make changes to the Products at any time without notice. In the event that Forcepoint makes a material change to the Product that diminishes functionality of the Product Ordering Licensee has contracted for, Licensee shall be entitled to a pro rata refund for any fees paid not used. Licensee understands that its right to use the Products is limited by the Permitted Capacity, and Licensee use may in no event exceed the authorized Permitted Capacity. If Licensee’s use exceeds the Permitted Capacity, Licensee must purchase additional Licenses and Maintenance sufficient for the excess use.

3. **Provision of Cloud Services.**

   3.1 Forcepoint will use reasonable efforts to provide Cloud Services for the Subscription Term. The then-current Cloud Services service levels are incorporated by reference into this Agreement and attached hereto in the Cloud Services Service Level Agreement. Forcepoint makes no service level commitments for the Cloud Services’ functionality to the extent it is used to monitor access to third-party services where the continued availability of the functionality is adversely impacted by the third-party’s access policies.

   3.2 If Forcepoint determines that the Products are being used to distribute Spam or Malware, or that the security or proper function of Cloud Services would be compromised due to, hacking, denial of service attacks or other activities originating from or directed at Licensee’s network, then Forcepoint may immediately suspend Cloud Services until the problem is resolved. Forcepoint will promptly notify and work with Licensee to resolve the issues.

   3.3 If Cloud Services are suspended or terminated, Forcepoint will reverse all configuration changes made during Cloud Services enrollment. It is Licensee’s responsibility to make the server configuration changes necessary to reroute traffic flowing through the Cloud Services.

   3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Products and services.

   3.5 If in any one calendar month the total bandwidth used in the performance of Cloud Services for the security access policy enforcement solution divided by the number of Devices or Users is greater than 0.02Mbps, then Forcepoint may terminate the applicable Cloud Services Subscription upon 30 days’ written notice unless Licensee purchases Subscriptions to increase the Permitted Capacity.

   3.6 If in any one calendar month the total throughput including data sent and received through Cloud Services for the internet and intranet application access policy enforcement solution divided by the number of Users is greater than 10 Gigabytes per User, then Forcepoint may terminate the applicable Cloud Services Subscription upon 30 days’ written notice unless Licensee purchases additional Permitted Capacity.

   3.7 Licensee’s use of the Cloud Services is subject to the processing capacity of the Hardware as defined in the Forcepoint datasheet for the unit purchased, and the number of API requests may not exceed 12 submissions per hour per Device with a maximum aggregate of 100 submissions per day per Device.

4. **Licensee Obligations.**

   4.1 Licensee will (i) comply with all applicable laws, statutes, regulations and ordinances, (ii) only use the Products for legitimate business purposes, and (iii) not use the Products to construct or transmit Malware.

   4.2 Licensee acknowledges that certain Products may be configured by Licensee to capture files for submission to other Products for Malware analysis. The Product analyzing files may archive Malware code extracted from such files. If Licensee downloads such extracted Malware code, Licensee recognizes the risk associated with Malware code, and any use by Licensee of Malware code is at Licensee’s sole risk and liability.

   4.3 Licensee acknowledges that the scoring and content by some Products is based on available information at the time it is gathered and may be incomplete, misinterpreted, and is subject to change at any time. As such it is provided for informational purposes only, and Licensee is solely responsible for decisions Licensee makes regarding its use of Applications or services based on such information.

   4.4 Licensee is responsible for (i) having the authority, rights, or permissions to use all content flowing through the Products, (ii) obtaining any necessary consents from its employees, (iii) maintaining all necessary rights to access Application(s), and (iv) maintaining all permissions, authorizations, licenses, and approvals to access and use the data and information inputted, displayed, or processed (including all output and data developed or derived) as a result of Licensee’s use of the Products to access and use data sources and systems.

4.5 Reserved.
Licensee will cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Licensee personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) providing building and network access before, during, and after normal business hours, work space, and workstations for each of the Forcepoint personnel, login IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings.

5. **Technical Support.**

5.1 The support period is defined in the Order and begins (i) on the date of the Order if a new purchase, or (ii) on the renewal date of the expiration of a previous support period. Technical Support is provided under the then-current Forcepoint technical support policies, as described at: [Technical Support Description](#). Maintenance will be provided to Licensee only if Licensee has paid the appropriate Maintenance Fees for the Support Term. Forcepoint may require Licensee to install Software Upgrades up to and including the latest release. In the event Product support expires prior to renewing support Licensee must also purchase technical support to cover the lapsed support period between the date technical support expires and the date it is renewed. In the event technical support has lapsed for one year or more, Forcepoint may charge a reinstatement fee upon renewal in addition to Licensee’s purchase of technical support for the lapsed period.

5.2 Forcepoint’s obligation to provide Maintenance is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which Technical Support is provided; (iii) Licensee’s use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support but will not have any obligation to correct such Error in prior versions.

5.3 Technical Support for on-premise Products may be limited to the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Maintenance or increase the associated fees upon 60 days’ notice should Licensee not stay current with a supported release in accordance with this Section.

5.4 For the support period set forth in an Order, the Hardware support covers defects in materials and workmanship in the Hardware. The Hardware support does not cover: (a) software, including the operating system and software added to the Hardware, or the reloading of software; (b) non-Forcepoint branded products and accessories; (c) problems to the extent they result from (i) external causes such as accident, abuse, misuse, or problems with electrical power, (ii) servicing not authorized by Forcepoint, (iii) usage that is not in accordance with Hardware instructions, (iv) failure to follow the Hardware instructions or failure to perform preventive maintenance, (v) problems caused by using accessories, parts, or components not supplied or directed by Forcepoint; (d) normal wear and tear; and (e) Hardware with missing or altered service tags or serial numbers.

6. **Intellectual Property Rights.**

6.1 All right, title, and interest in and to the Products, any modifications, translations, or derivatives thereof including any related scripts, tools, and know-how and all applicable intellectual property and proprietary rights thereto remain exclusively with Forcepoint or its licensors. The Products may include software products licensed from third parties. Such third parties have no obligations or liability to Licensee under this Agreement but are third-party beneficiaries of this Agreement. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Licensee relating to the Products. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights, and all rights not expressly granted to Licensee in this Agreement are reserved to Forcepoint and its licensors. Licensee may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint’s prior written consent.

6.2 The Hardware is sold by Forcepoint subject to the condition that the sale does not convey any license under any patent claim covering complete equipment, or any assembly, circuit combination, method or process in which any such Hardware are used as components. However, upon sale, title for the Hardware equipment will pass to Licensee. Forcepoint, its licensors or suppliers retain all proprietary rights in and to any Hardware sold. Forcepoint and its suppliers reserve all its rights under such patent claims. Any software supplied with the Hardware is proprietary to Forcepoint or its licensors and use of the software is subject to the terms of this Agreement.

7. **Protection and Restrictions.**

7.1 Each party (the “Disclosing Party”) may disclose to the other (the “Receiving Party”) certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential. “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation prototypes, technical data, trade secrets and know-how, product plans, Products, customer lists and customer information, prices and costs, databases, inventions, processes, hardware configuration information, finances, budgets and other business information), which is designated as “Confidential,” “Proprietary” or some similar designation at or prior to the time of disclosure, or that should
Network Security Products License Agreement

9.1 Financial Terms. Fees and payment terms are specified in the applicable Order. Except as otherwise expressly specified in the Order accordance with the GSA Schedule Pricelist: (i) all recurring payment obligations start from the receipt of the Order; (ii) when the Order is placed directly with Forcepoint fees must be paid within 30 days after the invoice receipt date; (iii) upon the expiration of each Maintenance Term and/or Subscription Term, the Maintenance Fees and/or Subscription Fees will be Forcepoint's then-current GSA Schedule list price for such Products; and (iv) interest accrues on past due balances at the highest rate allowed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Forcepoint’s reasonable travel and lodging expenses incurred in the performance of services on Licensee’s site will be billed separately at actual cost in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Vendor shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

9. Limited Warranty; Remedies; Disclaimer.

For 90 days beginning on the date of the Order for the License, Forcepoint warrants that the Products will be free of defects, and that the Licensee will operate in substantial conformance with the Documentation under normal use (“Warranty Period”). Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings. Forcepoint does not warrant that: (A) the Products will be free of defects, (ii) satisfy Licensee’s.
Article 6. Notice and Waiver

6.1 A party may give notice to the other party under this Agreement by hand or by fax, or by electronic mail, or by U.S. mail, at the address specified in Section 14.3. A notice given by fax or electronic mail is effective when it is received by the party. A notice given by U.S. mail is effective when it is received.

6.2 The parties agree to submit to the jurisdiction of the District of Delaware in the State of Delaware, or if the case is under the U.S. Department of Justice, to the jurisdiction of the U.S. District Court for the District of Delaware, and to the enforcement of any judgment reached in any such action or proceeding in the manner prescribed by the laws of the relevant jurisdiction.

Article 7. Surplus Product

7.1 Licensee must return any surplus Product to Forcepoint at Licensee’s expense within 30 days of Forcepoint’s receipt of Licensee’s written request for return, even if Licensee is not entitled to a refund of the license fee.

7.2 Licensee may retain any surplus Product only if Forcepoint has notified Licensee in writing that the surplus Product is non-infringing while preserving equivalent functionality, and if Forcepoint grants Licensee the right to retain such Product.

Article 8. Termination

8.1 This Agreement will terminate if Licensee breaches any of its obligations hereunder, including without limitation, the obligation to use the Products only for the term of the license granted to Licensee.

8.2 Either party may terminate this Agreement if the other party fails to perform any of its obligations under this Agreement within 30 days after the non-breaching party notifies the breaching party in writing of the failure.

8.3 Upon termination of this Agreement, all license fees paid by Licensee hereunder will be paid to Forcepoint, and Licensee will cease using the Products and return all Products and related materials to Forcepoint.

Article 9. Limitation of Liability

9.1 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

9.2 Licensee must promptly notify Forcepoint during the Warranty Period in writing of a claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint’s responsibility, Forcepoint will, within 30 days of its receipt of Licensee’s written notice, (i) correct the Error or provide a workaround; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable efforts from Forcepoint at Forcepoint’s discretion, then Forcepoint may terminate the affected Product License and Licensee will be entitled to a refund of the Fees paid for the affected Product. This paragraph sets forth Licensee’s sole and exclusive remedy and Forcepoint’s entire liability for any breach of warranty or other duty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Licensee’s failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) breach of this Agreement by Licensee or its users.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) LICENSEE’S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY FORCEPOINT FOR THE LICENSEE’S APPLICABLE LICENSE TO THE PRODUCTS FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. Intellectual Property Indemnification. In the event of a third-party claim, suit or proceeding against Licensee asserting that use of the Product as permitted in this Agreement infringes a third-party’s patent, copyright, or trademark right recognized in any jurisdiction where the Product is licensed, Forcepoint at its expense will have the right to intervene to defend Licensee and indemnify Licensee against costs, expenses (including reasonable attorneys’ fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint’s obligation under this Section is contingent upon Licensee providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to solely control and direct the defense of the claim; and (c) reasonable cooperation. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Licensee may participate in the defense at its own expense. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Licensee to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint’s opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (a) modify the Products to non-infringing while preserving equivalent functionality; (b) obtain a license for Licensee’s continued use of the Products; or (c) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Licensee the unused pre-paid Maintenance Fees paid for the affected Product applicable to the balance of the then current Maintenance Term. THIS SECTION SETS FORTH FORCEPOINT’S ENTIRE LIABILITY AND OBLIGATION AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT.

12. Term and Termination

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. Upon termination or expiration of the Maintenance Term, Licensee’s right to receive Maintenance to the Products terminates. Upon termination or expiration of the Subscription Term, Licensee’s right to use the subscription-based Products terminates.

12.2 Product evaluation subscriptions are available for a period of up to 30 days and limited availability Software licenses may be available for time period determined by Forcepoint. Product evaluation subscriptions and limited availability Software licenses are each subject to the terms and conditions of this Agreement, except however that: (i) evaluation subscriptions and limited availability Software licenses may only be used to evaluate and facilitate Licensee’s decision to purchase a license to the products; and (ii) evaluation subscriptions and limited availability Software licenses are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period or the limited
availability Software license period, Licensee must place an Order and pay the applicable Fees or this Agreement terminates as related to the evaluation subscription or limited availability Software license. Licensee’s continued use of the products after an evaluation or limited availability Software license period is subject to this Agreement.

12. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 6-12, and 14-17 will survive the termination of this Agreement.

12.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forcepoint shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon notification of termination by either party, Licensee must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 6-12, and 14-17 will survive the termination of this Agreement.

12.4 Reserved.

13. **Compliance with Laws.** Each party will comply with all applicable laws and regulations that may apply to issues including the protection of personal data, and anti-bribery. Licensee must obtain any required consents (including employee consent) addressing the interception, reading, copying, analyzing, or filtering of emails and their attachments as well as any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party’s obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the **Forcepoint Data Processing Agreement.**

14. **Rights of Government Licensees.** The Products meet the definition of “commercial item” in Federal Acquisition Regulation (“FAR”) 2.101, were developed entirely at private expense, and are provided to Government Licensees exclusively under the terms of this Agreement. Software, including Software Upgrades, is “commercial computer software” and applicable Documentation and media are “commercial computer software documentation,” as those terms are used in FAR 12.212. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint’s proprietary rights therein, and of the exclusive applicability of this Agreement.

15. **Export.** Commodities, technology, and software, including the Products (collectively referred to as “items”) are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Licensee will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services.
16. **Verification.** Upon Forcepoint’s request Licensee will provide a written certification confirming its compliance with this Agreement. Further, during the term of this Agreement and for a period of one year thereafter Forcepoint or Forcepoint’s independent auditor may review Licensee’s records related to Licensee’s use of the Products to verify Licensee’s compliance with this Agreement. Licensee will provide reasonable assistance, access to personnel, facilities, and systems, as well as information necessary to facilitate Forcepoint’s compliance verification. The verification will be performed during regular business hours and will not unreasonably interfere with Licensee’s business activities. The cost of the verification will be borne by Forcepoint unless a discrepancy indicating that additional Fees are due to Forcepoint, in which case the reasonable cost of the verification will be borne by Licensee. Licensee will promptly cure any noncompliance and will pay any Fees due as a result of such noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Licensee’s system, subject to applicable local law, to determine whether Licensee and its users are complying with the terms of this Agreement. Licensee acknowledges that the Products may include a license manager component to track usage of the Products and Licensee will not impede, disable or otherwise undermine such license manager’s operation.

17. **General.**

17.1 For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Licensee messages of an informational or advertising nature via email and provide account information to related third parties (e.g. Licensee’s reseller). Information will be processed by Forcepoint in accordance with applicable data privacy laws. Licensee may at any time update its communications preferences on Forcepoint.com or by sending an email to privacy@forcepoint.com. Licensee acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Forcepoint may use non-identifying and aggregate usage and statistical information collected in relation to Licensees’ and its users’ use of the Products for its own purposes outside of the Agreement. Licensee acknowledges that Forcepoint may use Licensee’s company name only in a general list of Forcepoint customers.

17.2 Licensee may not transfer any of Licensee’s rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint.

17.3 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices sent to Licensee will be sent to Licensee’s address in Forcepoint’s system of record. Notices are considered to have been received at the time of actual delivery in person, two business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph.

17.4 Any dispute arising out of or relating to this Agreement or the breach thereof will be governed by the Federal laws of the United States.

17.5 In the absence of specific shipping instructions, Forcepoint will ship Hardware by the method it deems most advantageous using standard commercial packaging. Licensee is responsible for obtaining insurance against damage to the Hardware during shipment. At the time Hardware is picked up by the common carrier from a Forcepoint location it is delivered, and title and risk of loss passes to Licensee. Licensee agrees to pay all transportation charges and costs associated with shipment of the Hardware, including any special or export packaging requested or required under the circumstances, as determined by Forcepoint.

17.6 Excusable delays shall be governed by FAR 52.212-4(f).

17.7 This Agreement is the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Licensee agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at Legal Information. Forcepoint is not obligated under any other agreements unless they are in writing signed by an authorized representative of Forcepoint. All pre-printed or standard terms of any Licensee’s purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail.

17.8 If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will be interpreted so as reasonably to affect the intention of the parties.

FPF Public Sector Entity EULA Add 08 21
MEASURES
APPLICABLE TO FORCEPOINT PRODUCTS & SERVICES

1. Background
These Data Processing and Protection Measures (the “Measures”) are subject to and incorporated by reference into the applicable Forcepoint Customer Agreement. Use of the Products by a Customer shall be deemed to be acceptance of the Forcepoint Customer Agreement and, by incorporation, these Measures. In the event of any conflict between the terms of the Forcepoint Customer Agreement and the terms of these Measures, the relevant terms of these Measures shall prevail, unless otherwise specified below. Exhibit 2, which contains the Standard Contractual Clauses contained in European Commission’s Implementing Decision 2021/914 of 4 June 2021, shall prevail in the event of any conflict between the terms of these Measures and Exhibit 2.

These Measures incorporate as Exhibit 1, “Forcepoint Technical And Organisational Security Measures” regarding Forcepoint’s data security management practices.

These Measures shall be effective for the Subscription Term or Maintenance Term of any Order placed under the Forcepoint Customer Agreement.

2. Definitions
Capitalized terms not specifically defined in these Measures shall have the same meaning as provided for in the Forcepoint Customer Agreement(s) or applicable data protection legislation, such as CCPA or Article 4 of GDPR, e.g. for “processing”, “controller”, “processor”, “personal data” and “data subject”. All other capitalized terms have the respective meanings assigned to such terms in the Forcepoint Customer Agreement.

“Affiliates” means an entity controlling, controlled by, or under common control with Forcepoint, that may assist in the provisioning of the Product(s) or Services.
“CCPA” means the California Consumer Privacy Act of 2018.
“Customer” means the Subscriber and/or Licensee as those terms are defined in the applicable Forcepoint Customer Agreements.
“Customer Data” means any data and/or information submitted by Customer to Forcepoint or accessed by Forcepoint through the provisioning and use of the Products or Services which may include, but is not limited to, (i) “End User Personal Data” as defined in the Forcepoint Privacy Policy available at https://www.forcepoint.com/company/privacypolicy; and (ii) Personal Data given or made accessible to Forcepoint by the Customer by virtue of Customer’s subscription or license to or use of the Product(s).
“Data Processing and Protection Measures” means these commitments concerning Forcepoint’s processing of Customer Data applicable to Forcepoint’s Products and Services.
“EU Data Protection Law” means the General Data Protection Regulation (“GDPR”) (EU 2016/679) on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data, and any subsequent amending or replacing European legislation governing the Processing of Personal Data by Forcepoint during the Subscription Term or Maintenance Term.
“Forcepoint Customer Agreement(s)” means the terms and conditions governing the provision of the applicable Products or Services to Customers, which may consist of the following terms and conditions located at www.forcepoint.com/product-subscription-agreement, and/or the terms and conditions governing Products and Services provided to Licensees located at: https://www.forcepoint.com/network-security-products-license-agreement.
“Standard Contractual Clauses” means the attached Exhibit 2 incorporated into these Measures pursuant to the European Commission’s implementing decision 2021/914 of 4 June 2021 on Standard Contractual Clauses and the applicable Data Protection Modules.
“Sub-processor” means any Data Processor engaged by Forcepoint or an Affiliate.

3. Processing of Data

3.1. Access to and processing of Customer Data by Forcepoint Products and Services is done in accordance with the terms of the Forcepoint Customer Agreement and any reasonable and lawful directions received in writing from authorised personnel of Customers that obtained such Products and Services. For the avoidance of doubt, the placing of an Order by Customer shall be deemed to be a general authorization for Forcepoint to process Customer Data in accordance with these Measures.

3.2. To the extent Customer Data includes Personal Data, the Customer will at all times be deemed to be the Data Controller and Forcepoint will at all times be deemed to be the Data Processor within the meaning of the applicable data protection laws. Customer is responsible for compliance with its obligations as Data Controller under applicable data protection laws, in particular for justification of and liability for any transmission of Customer Data to Forcepoint (including providing any required notices and obtaining any required consents), and for its decisions concerning the Processing and use of such Customer Data.

3.3. Forcepoint will promptly notify the Customer about: (a) any legally binding request for disclosure of the Customer Data by a law enforcement authority (where Customer is identified by name by the law enforcement authority and/or the response provided by Forcepoint will result in identifying the Customer by name to the law enforcement authority) unless otherwise prohibited from doing so by law; (b) any request received for the Customer Data directly from an individual regarding that individual’s Personal Data (without responding to that request unless it has been otherwise authorised to do so); and (c) a complaint, communication or request relating to Customer’s obligations under applicable data protection laws (including requests from a data protection authority with competent jurisdiction). Forcepoint will only process Customer Data in compliance with all applicable laws including the EU or Member State law to which Forcepoint is subject, including the EU Data Protection Law.
3.4. Forcepoint will verify the legal basis of any government authority data requests and reject those Forcepoint has reason to believe are not valid.

4. **Security of Data**

4.1. Forcepoint agrees that it shall implement appropriate technical and organisational security measures to seek to prevent unauthorised or unlawful processing of, or accidental loss, destruction or damage to Customer Data, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing. Technical and organisational security measures employed by Forcepoint include those described in Exhibit 1 (which may be amended by Forcepoint from time to time).

4.2. Forcepoint shall also: (i) ensure that only its employees, agents or sub-processors who may be required by Forcepoint to assist it in performing any obligations imposed by the Forcepoint Customer Agreement will have access to the Customer Data; (ii) ensure the reliability of any Forcepoint employees who have access to the Customer Data; (iii) ensure that all employees involved in the processing of the Customer Data have committed themselves to appropriate obligations of confidentiality and have undergone adequate training in the care, protection and handling of Personal Data; and (iv) notify Customer of any actual or reasonably suspected unauthorised or unlawful processing or any accidental loss, destruction, damage, alteration or disclosure of the Customer Data (to the extent reasonably believed by Forcepoint to have targeted Customer Data) without undue delay and, where feasible, not later than 72 hours once it becomes aware of such an event and keep Customer informed of any related developments.

4.3. Forcepoint shall take reasonable steps to ensure that Forcepoint contractors or Sub-processors employees who access Customer Data are obligated to maintain the confidentiality and integrity of Customer Data.

5. **Audit**

5.1. Forcepoint shall audit the security of its data processing facilities used to Process the Customer Data. This audit will be performed annually in accordance with ISO 27001 standards (including for purposes in addition to complying with Section 4).

5.2. Upon Customer's request, Forcepoint will provide Customer with a copy of the relevant certification(s), such as the Forcepoint Cloud ISO 27001 Certification, (such certification(s) being Forcepoint’s confidential information) so that Customer can reasonably verify Forcepoint's compliance with its obligation to seek to take appropriate security measures in accordance with Section 4 and Exhibit 1 of these Measures.

5.3. In addition, upon request in writing by Customer and at Customer’s sole expense, Forcepoint and Customer will appoint a mutually agreed upon auditor who is internationally approved by the ISO 27001 certification auditing body so that Customer can reasonably verify Forcepoint's compliance with its obligation to seek to take appropriate security measures in accordance with Section 4 and Exhibit 1 of these Measures.

5.4. Any such audit will take place during regular business hours and no more frequently than once in any consecutive twelve-month period, and on a mutually agreed upon date, time, location and duration. Customer agrees that (i) such audits shall not adversely affect other Customers of Forcepoint or Forcepoint's provision of Products; (ii) any such third party auditor shall comply with Forcepoint’s policies during such audit; and (iii) Customer shall ensure that any such third party auditor treat all of Forcepoint’s Confidential Information disclosed to such third party auditor as a result of such audit in the same manner Customer is required to treat such Confidential Information.

5.5. Any audit provided for in this section shall only consist of an audit of the architecture, systems and procedures relevant to the protection of Customer Data at locations where Customer Data is stored and/or the review by such auditor of Forcepoint’s regularly-prepared records regarding its obligation to implement appropriate security measures, which in the case of Personal Data take into account the guidelines promulgated in Article 32 of the GDPR.

5.6. The parties agree that the audits described in Clause 8.9 of the Standard Contractual Clauses shall be carried out in accordance with the specifications set out in this Section.

6. **Sub-Processing**

6.1. By placing its Order(s), Customer provides Forcepoint a general authorisation to engage third party sub-processors as Forcepoint determines is necessary to assist with the provisioning and use of Products and Services. Forcepoint will ensure such Sub-processors are required to comply with data protection obligations, which are no less onerous than the data protection obligations of Forcepoint contained within these Measures.


6.3. If Customer has a reasonable basis to object to Forcepoint’s use of a Sub-processor, Customer may terminate the Forcepoint Customer Agreement by providing written notice to Forcepoint.

6.4. For the avoidance of doubt, no refund will be due from Forcepoint in the event of termination by Customer pursuant to Section 6.3.

7. **Consequences of termination of the Forcepoint Customer Agreement**

On termination of the Forcepoint Customer Agreement, Forcepoint shall: (i) cease all Processing of Customer Data on behalf of Customer and upon request by Customer either (i) return to Customer (in a format accessible by Customer) all such Customer Data; or (ii) destroy or otherwise render inaccessible all Customer Data (as far as technically possible and except as may be required by law).

8. **Disputes and liability**
For the avoidance of doubt, the relevant provisions of the Forcepoint Customer Agreement specify the applicable law, jurisdiction, and liability of the parties in relation to any disputes or claims arising in connection with the subject matter of these Measures.

9. **International Transfers and the Application of Standard Contractual Clauses**

9.1. With respect to Customer Personal Data that originates from Customers established in the European Union, and is Processed by Forcepoint outside of the European Union, Forcepoint shall take appropriate steps to ensure such Personal Data is Processed in accordance with applicable data protection laws. Customer shall execute such further documents and do any and all such further things as may be necessary to ensure that any international transfers and subsequent Processing of Personal Data by Forcepoint, Affiliates or their Sub-processors is in compliance with applicable data protection laws.

9.2. Forcepoint and its Sub-Processors will comply with the Standard Contractual Clauses when transferring Customer Personal Data to a third country that has not received an adequacy decision from the EU in accordance with GDPR.

9.3. For the purpose of the Standard Contractual Clauses and this Section 9, the Data Exporter shall be (i) Customer and (ii) all Customer’s affiliates (as defined in the Forcepoint Customer Agreement) established within the European Economic Area and Switzerland using the Products or Services in accordance with the Forcepoint Customer Agreement, and the Data Importer shall be Forcepoint.

9.4. Subject to Section 6 of these Measures and pursuant to Clause 9 of the Standard Contractual Clauses, Customer acknowledges and expressly agrees that Forcepoint and its Affiliates may be retained as Sub-processors and may engage third-party Sub-processors in connection with the provision or use of the Products or Services.

10. **Assistance**

To the extent technically feasible and consistent with its responsibilities related to the sale of its Products and Services to Customer, Forcepoint will assist Customer through appropriate technical and organisational measures to comply with Customer’s Data Controller responsibilities as set forth in Chapter III of GDPR Reg EU 2016/679.

EXHIBIT 1

**FORCEPOINT TECHNICAL AND ORGANISATIONAL SECURITY MEASURES**

Forcepoint implements various technical and organizational measures designed to ensure a level of security appropriate to the risks posed to Customer Data. Such measures seek to prevent unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of access to Customer Data. Consistent with industry standard and guidelines set forth in applicable data protection laws, such measures include:

**Access Control of Processing Areas**

Forcepoint implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the Customer Data is accessed, processed or used. This is accomplished by:

- establishing security areas;
- protection and restriction of access paths;
- securing the decentralized telephones, data processing equipment and personal computers;
- establishing access authorizations for employees and third parties, including the respective documentation;
- regulations on access card-keys;
- restriction on access card-keys;
- all access to the data center where personal data are hosted is logged, monitored, and tracked; and the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

**Access Control to Data Processing Systems**

Forcepoint implements suitable measures to prevent its data processing systems from being used by unauthorized persons. This is accomplished by:

- identification of the terminal and/or the terminal user to the Forcepoint systems;
- automatic time-out of user terminal if left idle, identification and password required to reopen;
- User IDs are monitored and access revoked when several erroneous passwords are entered, log file of events (monitoring of break-in-attempts);
- issuing and safeguarding of identification codes and secure tokens;
- strong password requirements (minimum length, use of special characters, re-use etc.);
- protection against external access by means of a state-of-the-art industrial standard firewall whose connection to the intranet [if applicable] shall in addition be safeguarded by a VPN connection;
- dedication of individual terminals and/or terminal users, identification characteristics exclusive to specific functions; and all access to data content on machines or computer systems is logged, monitored, and tracked.

**Access Control to Use Specific Areas of Data Processing Systems**
Forcepoint commits that the persons entitled to use its data processing systems are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that Customer Data cannot be read, copied or modified or removed without authorization. This shall be accomplished by:

- employee policies and training in respect of each employee’s access rights to the Personal Data;
- allocation of individual terminals and/or terminal user, and identification characteristics exclusive to specific functions;
- monitoring capability in respect of individuals who delete, add or modify the Personal Data;
- effective and measured disciplinary action against individuals who access Personal Data without authorization;
- release of data to only authorized persons;
- control of files, controlled and documented destruction of data; and
- policies controlling the retention of back-up copies.

Transmission Control
Forcepoint implements suitable measures to prevent Customer Data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media and to ensure that it is possible to check and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged. This is accomplished by:

- use of state-of-the-art firewall and encryption technologies to protect the gateways and pipelines through which the data travels;
- use of 128bit SSL-encryption for all http-connections;
- implementation of secure two-factor VPN connections to safeguard the connection to the internet, if applicable;
- encryption of Customer Data by state-of-the-art encryption technology;
- constant monitoring of infrastructure (i.e. ICMP-Ping at network level, disk space examination at system level, successful delivery of specified test pages at application level); and
- monitoring of the completeness and correctness of the transfer of data (end-to-end integrity check).

Input Control
Forcepoint implements suitable measures to ensure that it is possible to check and establish whether and by whom personal data have been input into data processing systems or removed. This is accomplished by:

- an authorization policy for the input of data into hosted service, as well as for the reading, alteration and deletion of stored data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of user codes (passwords and tokens);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are capable of being locked;
- automatic log-off of user ID’s that have not been used for a substantial period of time; logging or otherwise evidencing input authorization; and electronic recording of entries.

Instructional Control of Personal Data
Forcepoint ensures that Customer’s Personal Data may only be Processed in accordance with the Forcepoint Customer Agreement together with any reasonable and relevant instructions received in writing from authorised personnel of the Customer from time to time which may be specific instructions or instructions of a general nature as set out in the Forcepoint Customer Agreement or as otherwise agreed between the Customer and Forcepoint during the term of the Forcepoint Customer Agreement. This is accomplished by binding policies and procedures for Forcepoint’s employees.

Availability Control
Forcepoint implements suitable measures to ensure that Customer Data are protected from accidental destruction or loss. This is accomplished by:

- infrastructure redundancy: reporting data is stored on hardware with redundant disks subsystem backed up in real time with off-site replication backups.

Separation of Processing for different Purposes
Forcepoint implements suitable measures to ensure that data collected for different purposes can be processed separately. This is accomplished by:

- access to data is separated through multiple diverse applications for the appropriate users; and
- interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is Processed separately.

Subprocessors
Forcepoint engages various sub processors in connection with its cloud infrastructure. Forcepoint ensures that it has robust contractual provisions in place to ensure compliance by such sub processors with the organizational security measures outlined herein.
EXHIBIT 2
STANDARD CONTRACTUAL CLAUSES OF
COMMISSION IMPLEMENTING DECISION (EU) 2021/914 of 4 June 2021

SECTION I

Clause 1
Purpose and scope

(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (1) for the transfer of personal data to a third country.

(b) The Parties:

(i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter ‘entity/ies’) transferring the personal data, as listed in Annex I.A (hereinafter each ‘data exporter’), and

(ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each ‘data importer’)

have agreed to these standard contractual clauses (hereinafter: ‘Clauses’).

(c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.

(d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2
Effect and invariability of the Clauses

(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3
Third-party beneficiaries

(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

(i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

(1) Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.
(ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);

(iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);

(iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);

(v) Clause 13;

(vi) Clause 15.1(c), (d) and (e);

(vii) Clause 16(e);

(viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.

(b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4

Interpretation

(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5

Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6

Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7 – Optional

Docking clause

(a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.

(b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.

(c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

SECTION II – OBLIGATIONS OF THE PARTIES

Clause 8
Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

8.1 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I. B. It may only process the personal data for another purpose:

(i) where it has obtained the data subject’s prior consent;

(ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

(iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

8.2 Transparency

(a) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter: (i) of its identity and contact details;

(ii) of the categories of personal data processed;

(iii) of the right to obtain a copy of these Clauses;

(iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.

(b) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.

(c) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

(d) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.3 Accuracy and data minimisation

(a) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.

(b) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.

(c) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.
8.4 Storage limitation

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation (2) of the data and all back-ups at the end of the retention period.

8.5 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter ‘personal data breach’). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

(b) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(c) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(d) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.

(e) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.

(f) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.

(g) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

8.6 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter ‘sensitive data’), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

(2) This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.

8.7 Onward transfers

The data importer shall not disclose the personal data to a third party located outside the European Union (3) (in the same country as the data importer or in another third country, hereinafter ‘onward transfer’) unless the third party is or agrees to be
bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

(i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

(ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;

(iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;

(iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;

(v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or

(vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.8 Processing under the authority of the data importer

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

8.9 Documentation and compliance

(a) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.

(b) The data importer shall make such documentation available to the competent supervisory authority on request.

MODULE TWO: Transfer controller to processor

8.1 Instructions

(a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.

(b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I. B, unless on further instructions from the data exporter.

(3) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union’s internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential...
information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter ‘personal data breach’). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data
concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter ‘sensitive data’), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union (*) (in the same country as the data importer or in another third country, hereinafter ‘onward transfer’) if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

(i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

(ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;

(iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

(iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance

(a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.

(b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.

(c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter’s request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

(d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

(e) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

(4) The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union’s internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

MODULE THREE: Transfer processor to processor

8.1 Instructions

(a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.

(b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data
exporter may give further documented instructions regarding the data processing throughout the duration of the contract.

(c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.

(d) The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter (5).

8.2 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B., unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

8.6 Security of processing

(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter ‘personal data breach’). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

(5) See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.
(b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter ‘sensitive data’), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

8.8 Onward transfers

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union:

(i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

(ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;

(iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

(iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 Documentation and compliance
(a) The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.

(b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.

(c) The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.

(d) The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.

(e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.

(f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

(g) The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

8.1 Instructions

(a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.

(b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.

(c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.

(d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

8.2 Security of processing

(a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter ‘personal data breach’). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data (\(^\ast\)), the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

(b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.

(c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.3 Documentation and compliance
(a) The Parties shall be able to demonstrate compliance with these Clauses.

(b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

Clause 9

Use of sub-processors

MODULE TWO: Transfer controller to processor

(a) OPTION 1: SPECIFIC PRIOR AUTHORISATION The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data exporter’s prior specific written authorisation. The data importer shall submit the request for specific authorisation at least [Specify time period] prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex III. The Parties shall keep Annex III up to date. [Not applicable to Forcepoint Personal Data Processing]

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the data exporter’s general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least [Specify time period] in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

(b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. (8) The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the subprocessor complies with the obligations to which the data importer is subject pursuant to these Clauses.

(7) This includes whether the transfer and further processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions or offences.

(8) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

(c) The data importer shall provide, at the data exporter’s request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

(d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor’s obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

(c) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the subprocessor contract and to instruct the sub-processor to erase or return the personal data.

MODULE THREE: Transfer processor to processor

(a) OPTION 1: SPECIFIC PRIOR AUTHORISATION The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least [Specify time period] prior to the engagement of the sub-processor, together with the information necessary to enable the controller to
decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already
authorised by the controller can be found in Annex III. The Parties shall keep Annex III up to date. (Not applicable to
Forcepoint Personal Data Processing)

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the controller’s general authorisation for the
engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of
any intended changes to that list through the addition or replacement of sub-processors at least [Specify time period] in
advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the
sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller
to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

(b) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller),

it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those

binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. (9)

The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data

importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant
to these Clauses.

(c) The data importer shall provide, at the data exporter’s or controller’s request, a copy of such a sub-processor agreement

and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information,

including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

(d) The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor’s obligations

under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-

processor to fulfil its obligations under that contract.

(c) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data

importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the

right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

(9) This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in

accordance with Clause 7.

Clause 10

Data subject rights

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

(a) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it

receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under

these Clauses without undue delay and at the latest within one month of the receipt of the enquiry or request. (10) The data

importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any

information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.

(b) In particular, upon request by the data subject the data importer shall, free of charge:

(i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and,

where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been

or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view
to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose
of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a
complaint with a supervisory authority in accordance with Clause 12(c)(i);

(ii) rectify inaccurate or incomplete data concerning the data subject;

(iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of
these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the
processing is based.
(c) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.

(d) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter ‘automated decision’), which would produce legal effects concerning the data subject or similarly significantly affect him/her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination, provided that such laws lays down suitable measures to safeguard the data subject’s rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:

(i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved;

and

(ii) implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.

(c) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.

(f) The data importer may refuse a data subject’s request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.

(g) If the data importer intends to refuse a data subject’s request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

MODULE TWO: Transfer controller to processor

(a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

(10) That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.

(b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects’ requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

MODULE THREE: Transfer processor to processor

(a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.

(b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects’ requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

(c) In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.
Clause 11
Redress

(a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body (11) at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)
MODULE TWO: Transfer controller to processor
MODULE THREE: Transfer processor to processor

(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;

(ii) refer the dispute to the competent courts within the meaning of Clause 18.

(11) The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.

(e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.

(f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12
Liability

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)
MODULE FOUR: Transfer processor to controller

(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

(b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.

(c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

(d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
(c) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

(b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.

(c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

(d) The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer’s responsibility for the damage.

(e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

(f) The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

(g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

Clause 13

Supervision

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

(a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

(b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES
Clause 14

Local laws and practices affecting compliance with the Clauses

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (where the EU processor combines the personal data received from the third country controller with personal data collected by the processor in the EU) (Not applicable to Forcepoint Personal Data Processing)

(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

(b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:

(i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;

(ii) the laws and practices of the third country of destination—including those requiring the disclosure of data to public authorities or authorising access by such authorities—relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards

(iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.

(c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.

(d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.

(e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). [For Module Three: The data exporter shall forward the notification to the controller.]

(f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g., technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation [for Module Three: If appropriate in consultation with the controller]. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by [for Module Three: the controller or] the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15
Obligations of the data importer in case of access by public authorities

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller(where the EU processor combines the personal data received from the third countrycontroller with personal data collected by the processor in the EU) (Not applicable to Forcepoint Personal Data Processing)

(12) As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

15.1 Notification

(a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:

(i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

(ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

[For Module Three: The data exporter shall forward the notification to the controller.]

(b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

(c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authorities/ies, whether requests have been challenged and the outcome of such challenges, etc.). [For Module Three: The data exporter shall forward the information to the controller.]

(d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.

(e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.
15.2 Review of legality and data minimisation

(a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

(b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. [For Module Three: The data exporter shall make the assessment available to the controller.]

(c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

Clause 16

Non-compliance with the Clauses and termination

(a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

(b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).

(c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

(i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

(ii) the data importer is in substantial or persistent breach of these Clauses; or

(iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority [for Module Three: and the controller] of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

(d) [For Modules One, Two and Three: Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data.] [For Module Four: Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof.] The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

(c) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.
Clause 17

Governing law

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Ireland.]

[OPTION 2 (for Modules Two and Three): These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of (specify Member State).]

MODULE FOUR: Transfer processor to controller  (Not applicable to Forcepoint Personal Data Processing)

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of (specify country).

Clause 18

Choice of forum and jurisdiction

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

(a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

(b) The Parties agree that those shall be the courts of Ireland.

(c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

(d) The Parties agree to submit themselves to the jurisdiction of such courts.

MODULE FOUR: Transfer processor to controller  (Not applicable to Forcepoint Personal Data Processing)

Any dispute arising from these Clauses shall be resolved by the courts of (specify country).
APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.
ANNEX I

A. LIST OF PARTIES

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller  (Not applicable to Forcepoint Personal Data Processing)

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

1. Name: Customer as defined in the Measures
Address: As provided in the relevant Customer Agreement.
Activities relevant to the data transferred under these Clauses:
Customer Personal Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:
• administration of orders and accounts;
• providing Forcepoint Products and associated technical support;
• Forcepoint Product management and development;
• the conduct of Forcepoint's business activities.

Signature and date: .................................................................
Role (controller/processor): Controller

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

1. Name: Forcepoint (as defined in the relevant Customer Agreement).
Address: As provided in the relevant Customer Agreement
Contact person’s name, position and contact details:

Forcepoint
Attention: Data Protection Officer
10900 -A Stonelake Blvd, Quarry Oaks 1, Suite 350 Austin, TX 78759
Email: Privacy@forcepoint.com

Activities relevant to the data transferred under these Clauses:
Customer Personal Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:
• administration of orders and accounts;
• providing Forcepoint Products and associated technical support;
• Forcepoint Product management and development;  • the conduct of Forcepoint's business activities.

Signature and date: .................................................................
Role (controller/processor): Processor
B. DESCRIPTION OF TRANSFER

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

MODULE FOUR: Transfer processor to controller (Not applicable to Forcepoint Personal Data Processing)

Categories of data subjects whose personal data is transferred

Through their use of Forcepoint Products, Data Exporter may submit Personal Data to Forcepoint, the extent of which is determined and controlled by the Data Exporter in its sole discretion, and which may include but is not limited to the categories of Personal Data listed below:

- Forcepoint Customer ID information: Customer ID (i.e. the ID used to identify which customer send files to ThreatScope), User ID or Visitor ID (the ID used to identify client IP visiting the file), network user name, first name, last name, company name, country, and email address.
- Communication information: email metadata, including email addresses of sender and recipient, sender email in SMTP transaction and email subject.
- Traffic data: proxy log, web traffic logs, apache browsing logs, browsing and diagnostic logs, IP addresses, URL information, website session data and files submitted by ForcepointCustomers.

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

Through their use of Forcepoint Products, Data Exporter may submit Personal Data to Forcepoint, the extent of which is determined and controlled by the Data Exporter in its sole discretion. Forcepoint does not expect to receive sensitive data from the Data Exporter.

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

Customer Personal Data may be transferred for the purposes of the management and administration of customer/client services on a continuous basis.

Nature of the processing

Customer Data is transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development;
- the conduct of Forcepoint's business activities.

Purpose(s) of the data transfer and further processing

Customer Data are transferred for the purposes of the management and administration of customer/client services, including but not limited to:

- administration of orders and accounts;
- providing Forcepoint Products and associated technical support;
- Forcepoint Product management and development;
- the conduct of Forcepoint's business activities.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

Forcepoint will only keep the Data Exporter's Personal Data it collects, as long as necessary, for the purpose for purposes (i) for which it was collected; (ii) of performing or fulfilling contractual obligations; (iii) of complying with law; and/or (iv) of responding to legal actions.
For transfers to (sub-)processors, also specify subject matter, nature and duration of the processing. A list of Forcepoint’s current sub-processors, along with a description of their services, can be found at: https://www.forcepoint.com/sites/default/files/resources/files/datasheet-forcepoint-sub-processors-list-en.pdf. Forcepoint’s sub-processor’s will only keep the Data Exporter’s Personal Data it collects, as long as necessary, for the purpose or purposes (i) for which it was collected; (ii) of performing or fulfilling contractual obligations; (iii) of complying with law; and/or (iv) of responding to legal actions.

C. COMPETENT SUPERVISORY AUTHORITY

MODULE ONE: Transfer controller to controller (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

Identify the competent supervisory authority/ies in accordance with Clause 13
ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES
TO ENSURE THE SECURITY OF THE DATA

MODULE ONE: Transfer controller to controller  (Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor

MODULE THREE: Transfer processor to processor

Forcepoint implements various technical and organizational measures designed to ensure a level of security appropriate to the risks posed to Customer Data. Such measures seek to prevent unlawful destruction or accidental loss, alteration, unauthorized disclosure or access and against all other unlawful forms of access to Customer Data. Consistent with industry standard and guidelines set forth in applicable data protection laws, such measures include:

Access Control of Processing Areas
Forcepoint implements suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment (namely telephones, database and application servers and related hardware) where the Customer Data is accessed, processed or used. This is accomplished by:
• establishing security areas;
• protection and restriction of access paths;
• securing the decentralized telephones, data processing equipment and personal computers;
• establishing access authorizations for employees and third parties, including the respective documentation;
• regulations on access card-keys;
• restriction on access card-keys;
• all access to the data center where personal data are hosted is logged, monitored, and tracked; and
• the data center where personal data are hosted is secured by a security alarm system, and other appropriate security measures.

Access Control to Data Processing Systems
Forcepoint implements suitable measures to prevent its data processing systems from being used by unauthorized persons. This is accomplished by:
• identification of the terminal and/or the terminal user to the Forcepoint systems;
• automatic time-out of user terminal if left idle, identification and password required to reopen;
• User IDs are monitored and access revoked when several erroneous passwords are entered, log file of events (monitoring of break-in-attempts);
• issuing and safeguarding of identification codes and secure tokens;
• strong password requirements (minimum length, use of special characters, re-use etc.);
• protection against external access by means of a state-of-the-art industrial standard firewall whose connection to the intranet [if applicable] shall in addition be safeguarded by a VPN connection;
• dedication of individual terminals and/or terminal users, identification characteristics exclusive to specific functions; and
• all access to data content on machines or computer systems is logged, monitored, and tracked.

Access Control to Use Specific Areas of Data Processing Systems
Forcepoint commits that the persons entitled to use its data processing systems are only able to access the data within the scope and to the extent covered by their respective access permission (authorization) and that Customer Data cannot be read, copied or modified or removed without authorization. This shall be accomplished by:
• employee policies and training in respect of each employee’s access rights to the Personal Data;
• allocation of individual terminals and/or terminal user, and identification characteristics exclusive to specific functions;
• monitoring capability in respect of individuals who delete, add or modify the Personal Data;
• effective and measured disciplinary action against individuals who access Personal Data without authorization;
• release of data to only authorized persons;
• control of files, controlled and documented destruction of data; and policies controlling the retention of back-up copies.
Transmission Control
Forcepoint implements suitable measures to prevent Customer Data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media and to ensure that it is possible to check and establish to which bodies the transfer of Customer Data by means of data transmission facilities is envisaged. This is accomplished by:

- use of state-of-the-art firewall and encryption technologies to protect the gateways and pipelines through which the data travels;
- use of 128bit SSL-encryption for all http-connections;
- implementation of secure two-factor VPN connections to safeguard the connection to the internet, if applicable;
- encryption of Customer Data by state-of-the-art encryption technology;
- constant monitoring of infrastructure (i.e. ICMP-Ping at network level, disk space examination at system level, successful delivery of specified test pages at application level); and
- monitoring of the completeness and correctness of the transfer of data (end-to-end integrity check).

Input Control
Forcepoint implements suitable measures to ensure that it is possible to check and establish whether and by whom personal data have been input into data processing systems or removed. This is accomplished by:

- an authorization policy for the input of data into hosted service, as well as for the reading, alteration and deletion of stored data;
- authentication of the authorized personnel;
- protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data;
- utilization of user codes (passwords and tokens);
- providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are capable of being locked;
- automatic log-off of user ID's that have not been used for a substantial period of time; □ logging or otherwise evidencing input authorization; and □ electronic recording of entries.

Instructional Control of Personal Data
Forcepoint ensures that Customer's Personal Data may only be Processed in accordance with the Forcepoint Customer Agreement together with any reasonable and relevant instructions received in writing from authorised personnel of the Customer from time to time which may be specific instructions or instructions of a general nature as set out in the Forcepoint Customer Agreement or as otherwise agreed between the Customer and Forcepoint during the term of the Forcepoint Customer Agreement. This is accomplished by binding policies and procedures for Forcepoint's employees.

Availability Control
Forcepoint implements suitable measures to ensure that Customer Data are protected from accidental destruction or loss. This is accomplished by:

- infrastructure redundancy: reporting data is stored on hardware with redundant disks subsystem backed up in real time with off-site replication backups.

Separation of Processing for different Purposes
Forcepoint implements suitable measures to ensure that data collected for different purposes can be processed separately. This is accomplished by:

- access to data is separated through multiple diverse applications for the appropriate users; and
- interfaces, batch processes and reports are designed for only specific purposes and functions, so data collected for specific purposes is Processed separately.

Subprocessors
Forcepoint engages various sub processors in connection with its cloud infrastructure. Forcepoint ensures that it has robust contractual provisions in place to ensure compliance by such sub processors with the organizational security measures outlined herein.
ANNEX III

LIST OF SUB-PROCESSORS
(Not applicable to Forcepoint Personal Data Processing)

MODULE TWO: Transfer controller to processor MODULE THREE:
Transfer processor to processor

EXPLANATORY NOTE:
This Annex must be completed for Modules Two and Three, in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

1. Name: ............................................................
   Address: ............................................................
   Contact person’s name, position and contact details: ............................................................
   Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): ............................................................

2. ............................................................

............................................................

1. Terms and Conditions

1.1 Forcepoint provides these SLAs subject to the terms and conditions of the then current Forcepoint Subscription Agreement at: Subscription Agreement, and the Forcepoint Network Security Products License Agreement at: Network Security License Agreement, as applicable and as may be updated by Forcepoint from time to time (the “Agreement”). The defined terms therein have the same meaning when used in this Service Level Agreement. “Subscriber” and “Licensee” under the Agreement are referred to as “Customer” in these SLAs. The current version of these SLAs can be found at: https://www.forcepoint.com/company/terms-and-conditions and may be modified or updated by Forcepoint from time to time in its sole discretion with or without notice to the Customer.

1.2 A Customer must submit a claim in writing within 5 days of the occurrence of the failure to meet an SLA (or earlier if specifically set forth below) (the “Credit Request”), and promptly provide Forcepoint with reasonable evidence to support the basis for the Credit Request. If Forcepoint confirms that an SLA was not met, then Customer will be eligible for a “Service Credit” entitling the Customer to the free use of the affected Cloud Service for the time period set forth in the applicable SLA.

1.3 Service Credits for any failure to meet an SLA will only be provided under a single SLA for a single claim, as identified by the Customer in the Credit Request. One claim cannot result in Service Credits under multiple SLAs.

1.4 The SLAs will not apply to situations where:

GENERAL

- The Cloud Service is unavailable for 1 hour or less or the Customer fails to timely submit a Credit Request in compliance with Section 1.2
- The Customer has used the Cloud Service for 30 days or less
- The Customer is a trial or evaluation customer
- The Customer is misusing the Cloud Service (including without limitation acting as an open relay or open proxy, or using the service to send spam or viruses) or is otherwise in violation of the Agreement
- The failure to comply with the SLA is based on reasons beyond Forcepoint’s reasonable control as set out in the Agreement

CONFIGURATION

- The Cloud Service is incorrectly configured by the Customer, including use of Customer-provided networking equipment that does not meet the guidance in the Documentation
- The Customer configures equipment, network, or software in a manner such that Customer’s connection does not utilize the high-availability capabilities of the Cloud Service
- The Customer provides incorrect or inaccurate information (including change information) to Forcepoint
- For Cloud Email, where an account is not configured to use two or more co-location sites (clusters) Operation
- Forcepoint is performing scheduled or routine maintenance of the Cloud Service, where the Customer has been notified of the maintenance no less than 5 days in advance, or as otherwise set forth below
- Forcepoint is performing emergency maintenance to apply security patches to the Cloud Service Connectivity
- The Customer’s applications or equipment or Internet connection has failed, or equipment is switching between service connection points
- There is an issue with the Customer’s or a third party’s hardware or software, or an issue caused by third parties who gain access to the Cloud Services using Customer’s accounts or equipment
- There is an issue with the Customer’s routing infrastructure (e.g. router, identity-provider or secure web proxy of a third-party)
- There is a network unavailability outside of Forcepoint-controlled systems (servers, hardware, and associated software) that are responsible for delivering the Cloud Service

1.5 The remedies set forth in this Service Level Agreement are the Customer’s sole and exclusive remedy for any failure by Forcepoint to comply with the SLAs. Further information regarding remedies is set forth in the Agreement.

2. SLAs for Forcepoint’s security access policy enforcement Cloud Services solution (“CASB”)
2.1 Definitions

- "NI" or ‘Network Infrastructure’ means the group of Forcepoint controlled systems (servers, hardware, and associated software) that are responsible for delivering CASB.
- "NI Outage" means a period when the Forcepoint NI fails to direct web traffic to the Customer site.
- "PI" or ‘Peripheral Infrastructure’ means the application access, configuration management, and all noninline networking capabilities provided by Forcepoint to Customer for use in connection with CASB.
- "PI Outage" means a period when the Forcepoint PI is unavailable, outside a Scheduled Maintenance window.
- "Outage" means a NI Outage or PI Outage, as applicable.
- "Scheduled Maintenance" means maintenance performed (a) in which Customer is provided electronic notice at least 48 hours in advance if Customer has enrolled in automatic notifications, and (b) a recurring weekly maintenance window pertaining to the “PI” every Sunday between 3:00 AM Pacific to 3:00 PM Pacific. During this maintenance window the “PI” might be intermittently unavailable.

2.2 CASB Availability (Uptime)

- CASB will have a NI monthly uptime percentage of 99.999%.
- CASB will have a PI monthly uptime percentage of 99.5%.
- Monthly uptime percentage is calculated by subtracting from 100% the percentage of 60 second periods during the calendar month in which CASB is in a state of Outage. In the event Forcepoint does not meet the Monthly Uptime Percentage commitment, then Customer may be eligible to receive Service Credits calculated and applied as follows:
  - Forcepoint will use all information reasonably available to it to calculate the Outage length, including analysis of service data immediately prior to the Outage period. If Forcepoint determines that there has been a NI Outage for more than 0.001% or a PI Outage for more than 0.5% of any calendar month, then Forcepoint will make the following Service Credits available to Customer, subject to the conditions of this Service Level Agreement:

<table>
<thead>
<tr>
<th>Outage Length</th>
<th>Service Credit(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 min. – 120 min.</td>
<td>1 day’s credit</td>
</tr>
<tr>
<td>Outages of more than 120 min</td>
<td>1 day’s credit for every 2 full hours of outage</td>
</tr>
</tbody>
</table>

- A Service Credit due to a Customer will: (a) not exceed 30 days in any one month period; and (b) be applied by Forcepoint to Customer’s account. Service Credits for the SLA under this Section 2 will only be credited toward Customer’s use of CASB.

3. SLAs for Forcepoint’s Internet and internal application access policy enforcement Cloud Services solution ("Private Access")

3.1 Service Availability (Uptime)

- Private Access will be available 99.999% of the time
- Private Access "Service Unavailability" means the inability of Private Access to receive, process and forward web (HTTP/HTTPS) and non-web traffic in substantial conformance with Forcepoint’s Documentation, on behalf of the Customer and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.

3.2 Service Latency

- Private Access will process HTTP and HTTPS requests consisting of units of data made into single Internet protocol packages traveling along a network path ("Requests") in no more than 100 milliseconds 95% of the time over any calendar month measured from the time Private Access receives the content to the time Private Access attempts to transmit the content. Communication times outside of Private Access are not included in this SLA
- This service latency SLA only applies to “Qualified Content”, which means Requests that are: less than 1 MB HTTP GET request and response; not SSL-intercepted; not related to streaming applications; not subject to bandwidth management rules (e.g. QoS enforcement); and resulting from a reasonable level of consumption (not more than 2,000 Requests per User per day on average).
If in any one calendar month 5% or more of the Qualified Content is not processed in 100 milliseconds or less as determined by the monthly average Private Access processing time among samples taken by Forcepoint in a given calendar month ("Missed Latency SLA"), Customer may be eligible for a Service Credit equal to 1 week as a result of the Missed Latency SLA subject to a maximum aggregate Service Credit of 4 weeks during any 12-month term.

4. **SLAs for Forcepoint’s user risk analysis Cloud Services solution ("Dynamic User Protection")**

4.1 **Service Availability**

- Dynamic User Protection will be available 99.9% of the time
- Dynamic User Protection “Service Unavailability” means the inability of Customer to access the Dynamic User Protection management portal as specified in Forcepoint’s published documentation (as may be updated by Forcepoint from time to time), and measured over a calendar month.
- In the event of Service Unavailability for more than 0.1% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.

5. **SLAs for Forcepoint’s inbound and outbound email scanning Cloud Services solution ("Cloud Email")**

5.1 **Message Tracking**

- For 95% of all emails processed, the following will be available for review in the Message Center within 5 minutes of receipt of an email: Detailed SMTP logs; and all emails that are quarantined (including those that failed a content filtering rule, were classified as spam or were infected with a virus).
- If more than 5% of email logs or quarantined emails processed in any calendar month are not available for review within 5 minutes when the Customer is using the portal, Customer may be eligible for a Service Credit equal to 1 day for each email log or quarantined email that did not meet this SLA, subject to a maximum credit of 5 days in any 1 month.

5.2 **Service Availability**

- Cloud Email will be available 99.999% of the time.
- Cloud Email “Service Unavailability” means the inability of the email filtering service to receive and process email in substantial conformance with Forcepoint’s published documentation for the email filtering service, as may be updated by Forcepoint from time to time, on behalf of the Customer and measured during any given calendar month.
- In the event of Service Unavailability for more than 0.001% of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 month.

5.3 **Service Management**

- For 99% of all non-spam emails less than 2 Mega Bytes in size, the time required to process an email will be less than 60 seconds.
- If in any 1 calendar month, 1% or more of all processed non-spam emails less than 2 Mega Bytes in size takes 60 seconds or longer for Forcepoint to process (following receipt, ready for processing, to attempted delivery), Customer may be eligible for a Service Credit equal to 1 day for each email that takes 60 seconds or longer to receive, process and attempt to deliver, subject to a maximum credit of 5 days in any 1 month. This SLA applies only to legitimate business email (non-bulk email) and does not apply to emails 2 Mega Bytes or larger in size, denial of service (DOS) attacks, or email loops.

5.4 **Spam Detection Rates**

- Spam will be detected at a rate of 99% or above during each calendar month for Customer’s use of the antispam service.
- The spam SLA does not apply to emails using a majority of Asian language (or other non-English or non-European language) or emails sent to invalid mailboxes.
- In the event the spam detection rate drops below 99% for a period of more than 5 days in any 1 calendar month, Customer may be eligible for a Service Credit equal to 1 month.

5.5 **Virus Detection**

- For Customers subscribing to the anti-virus service, Forcepoint will protect the Customer from infection by 100% of all Known Viruses contained inside email that has passed through Cloud Email. This excludes links (URLs) inside email messages that take the Customer to a website where Viruses can be downloaded.
• A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by 1 of the anti-virus services whose technology is used within Forcepoint’s Cloud Email, at least 30 minutes before the time the email was processed by Cloud Email. This SLA does not apply to forms of email abuse that are not classified as viruses or malware, such as phishing, adware, spyware, and spam.

• In the event that Forcepoint identifies a Known Virus but does not stop the infected email, Forcepoint will use commercially reasonable efforts to promptly notify the Customer, providing information to enable the Customer to identify and delete the Virus-infected email. If such action prevents the infection of the Customer’s systems, then the remedy defined in this Section 5.5 shall not apply. Customer’s failure to promptly act on such information will also result in the remedy defined in this Section 5.5 being inapplicable.

• In the event that 1 or more Known Viruses in any calendar month passes through the email filtering service undetected and infects the Customer’s systems, Customer may be eligible for a Service Credit equal to 1 month, subject to the Customer providing evidence acceptable to Forcepoint that Cloud Email failed to detect the Known Virus within 5 working days of the Virus infection.

• The SLA under this Section 5.5 will not apply if (a) the Virus was contained inside an email that could not be analyzed by the email filtering service, such as an encrypted email or a password-protected file, (b) the Virus infection occurred because an email which had been identified as containing a Virus was released by Forcepoint on the request of the Customer, or by the Customer through the email filtering portal, or (c) there is deliberate self-infection by the Customer or its authorized user.

6. SLAs for Forcepoint’s web access filtering Cloud Services solution (“Cloud Web”)

6.1 Service Availability

• Cloud Web will be available 99.999% of the time.

• Cloud Web “Service Unavailability” means Cloud Web being unable to receive, process and forward Web Content in substantial conformance with Forcepoint’s published documentation as may be updated by Forcepoint from time to time, on behalf of the Customer and measured during any given calendar month.

• In the event of Service Unavailability for 0.001% or more of any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each 2 hour period of Service Unavailability, subject to a maximum credit of 5 days in any 1 calendar month.

6.2 Service Latency

• Cloud Web will process HTTP and HTTPS requests consisting of units of data made into single Internet protocol packages traveling along a network path (“Requests”) in no more than 100 milliseconds 95% of the time over any calendar month measured from the time Cloud Web receives the content to the time Cloud Web attempts to transmit the content. Communication times outside Forcepoint’s data center are not included in this SLA.

• This service latency SLA only applies to “Qualified Content”, which means Requests that are: less than 1 MB HTTP GET request and response; not SSL-intercepted; not related to streaming applications; not subject to bandwidth management rules (e.g. QoS enforcement); and resulting from a reasonable level of consumption (not more than 2,000 Requests per User per day on average).

• If in any 1 calendar month 5% or more of the Qualified Content is not processed in 100 milliseconds or less as determined by the monthly average Cloud Web processing time among samples taken by Forcepoint in a given calendar month (“Missed Latency SLA”), Customer may be eligible for a Service Credit equal to 1 week as a result of the Missed Latency SLA, subject to a maximum aggregate Service Credit of 4 weeks during any 12-month term.

6.3 Virus Detection

• Forcepoint will protect the Customer from infection by 100% of all Known Viruses contained inside Web Content that has passed through the cloud web protection service module of Cloud Web.

• A “Known Virus” means a Virus which has already been identified and a Virus definition has been made available by 1 of the anti-virus services whose technology is used within Forcepoint’s Cloud Web, at least 30 minutes before the time the Web Content was processed by the web filtering service. This SLA does not apply to forms of Web Content abuse that are not classified as viruses or malware, such as phishing, adware, spyware, and spam.

• In the event that Forcepoint identifies a Known Virus but does not stop the infected Web Content, Forcepoint will use commercially reasonable efforts to promptly notify the Customer, providing information to enable the Customer to identify and delete the Virus-infected Web Content. If such action prevents the infection of the Customer’s systems, then the remedy defined in this Section 6.3 shall not apply. Customer’s failure to promptly act on such information will also result in the remedy defined in this Section 6.3 being inapplicable.
• In the event that 1 or more Known Viruses in any calendar month passes through Cloud Web undetected and infects the Customer's systems, Customer may be eligible for a Service Credit equal to 1 month, subject to the Customer providing evidence that Cloud Web failed to detect the Known Virus within 5 working days of the Virus infection.

• The SLA under this Section 6.3 will not apply if (a) the Virus was contained inside Web Content that could not be analyzed by the web security service, such as HTTPS or a password-protected file, (b) the user bypassed the web security service when downloading the Web Content, (c) the Customer configured the Cloud Service to not filter the web content, or (d) there is deliberate self-infection by the Customer or its authorized user.

7. SLAs for Forcepoint's Cloud Email archiving Cloud Service solution ("Email Archiving")

7.1 Service Availability

• Email Archiving will be available 99.99% of the time over a calendar month.

• Email Archiving “Service Unavailability” means the inability of the email archiving server to receive and transmit Customer's requests to store and retrieve archived email in conformance with Forcepoint’s published documentation, as may be updated by Forcepoint from time to time, and measured over a full calendar month.

• In the event of Service Unavailability for more than 0.01% for any calendar month, Customer may be eligible for a Service Credit equal to 1 day for each calendar month where Service Unavailability exceeds 0.01%.
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Single-Use Term License. Same usage terms as the Single-Use Perpetual License. The period of use is limited to a fixed duration, out of which the Product must be uninstalled from the computer unless the license is renewed for an additional period of time.

Subscription License. The Product is licensed on a monthly or annual subscription basis, You may only apply the subscription license on the Permitted Number of Compatible Computer(s) as long as you maintain a currently paid-up subscription of the Product.

ADDITIONAL LIMITATIONS. You may not reverse engineer, decompile, or disassemble the Product, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation. You may not rent, lease, lend or transfer the Product, or host the Product for third parties without the express written consent of Foxit. The
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Third Party Software. The Product may contain third party software that Foxit can grant sublicense to use or in the case of the Microsoft Corporation AD RMS Client Foxit grants a limited use license, all which is protected by copyright law and other applicable laws.

RMS Plug-in Limitations. Organizational users of the Product who use the RMS functionality will be required to pay RMS encryption and decryption fees. Please contact sales@foxitsoftware.com for further information.

DocuSign Limitations. Organizations having 200 or more registered DocuSign users of the Product will be required to pay the Maintenance Fee for each Product for which Maintenance is desired and as further described in Section 5.4 below. Please contact sales@foxitsoftware.com for further information.

EDUCATIONAL USE. If the Product You have received with this Agreement is an Educational Software Bundle (where the Product is received by virtue of Your participation in a Foxit program designed for educational or research institutions, or is provided by Foxit to You under some other arrangement), You are not entitled to use the Product unless You are an employee or student of such educational institution. Educational Software Products may be used for educational and research purposes only. Commercial and general production use of Educational Software Products are specifically prohibited. The Product is provided under a Single-Use Term License as described above. You may install one copy of the Product on one desktop computer in a designated computer used for educational purposes under Your license agreement. Your Educational license is granted for a period of one year, unless stated otherwise, from when the Product license keys are made available to You. Your Educational license entitles You to email and telephone support for up to two designated employees and product upgrades during the term of Your license. You grant Foxit the right to use material created under such license for marketing and advertising purposes.

SUPPORT, MAINTENANCE, AND UPGRADE PROTECTION TERMS AND CONDITIONS.

Term of Maintenance. Foxit agrees to provide Maintenance (as defined herein) to You pursuant to the terms and conditions set forth herein provided that You pay the Maintenance Fee or Subscription Fee for each Product for which Maintenance is desired and as further described in Section 5.4 below. Maintenance will be provided for a period of one year or as long as a subscription is active and paid-up, unless otherwise agreed to by the parties in writing, from the date of purchase of the Product (the “Initial Support and Maintenance Term”), and with renewals, annually from the expiration date of the prior Support and Maintenance Term. Failure to renew annual maintenance may result in You having to purchase a new license in order to receive future versions of software and associated ongoing support and maintenance.

Maintenance Services. In exchange for the Maintenance Fee, Foxit agrees to provide to You during the term of this Agreement support and maintenance (collectively “Maintenance”) as follows:
Support: Foxit will provide email and telephone support to You for current versions of the Product. Foxit will investigate all of Your questions and problems promptly. You agree to provide adequate information to Foxit to assist in the investigation and to confirm that any problems have been resolved. Foxit does not provide guaranteed response time but will make good faith effort to answer emails and voice mails within twenty-four (24) hours or less during weekdays, excluding holidays.

Maintenance: Foxit will supply to You, at no additional charge, any improvements or modifications to the Product that Foxit makes generally available as a minor release such as: 2.1, 2.2, 2.3 etc. Any such improvements or modifications shall become part of the Product for all purposes of this Agreement.

You acknowledge and agree that the Maintenance to be provided by Foxit hereunder is limited to the most current version of the Product and the immediately preceding version.

Term of Upgrade Protection. Foxit agrees to provide Upgrade Protection (as defined herein) to You pursuant to the terms and conditions set forth herein provided that You pay the Upgrade Protection Fee for each Product for which Upgrade Protection is desired and as further described in Section 5.2.1 below. Upgrade Protection will be provided for a period of one year, unless otherwise agreed to by the parties in writing, from the date of purchase of the Product (the "Initial Upgrade Protection Term"), and with renewals (as described in Section 5.4), annually from the expiration date of the prior Upgrade Protection Term. Failure to renew annual Upgrade Protection may result in You having to purchase a new license in order to receive future versions of software and associated ongoing Upgrade Protection.

Upgrade Protection Services. In exchange for the Upgrade Protection Fee, Foxit agrees to provide to You during the term of this Agreement Upgrade Protection (collectively "Upgrade Protection") as follows:

Support: Foxit will provide email and telephone support to You for current versions of the Product. Foxit will investigate all of Your questions and problems promptly. You agree to provide adequate information to Foxit to assist in the investigation and to confirm that any problems have been resolved. Foxit does not provide guaranteed response time but will make good faith effort to answer emails and voice mails within twenty-four (24) hours or less during weekdays, excluding holidays.

Maintenance: Foxit will supply to You, at no additional charge, any improvements, upgrades, or modifications to the Product that Foxit makes generally available. Any such improvements, upgrades, or modifications shall become part of the Product for all purposes of this Agreement.

You acknowledge and agree that the Upgrade Protection Services to be provided by Foxit hereunder is limited to the most current version of the Product and the immediately preceding version.

Exclusions. Foxit’s obligation to provide Support is contingent upon proper use of the Product and full compliance with this Agreement. Moreover, Foxit shall be under no obligation to provide Support should such services be required due to (a) failure to operate the Product within the systems requirements provided for the Product (b) any modification or
attempted modification of the Product by You or any third party or (C) Your failure or refusal to implement Product changes recommended by Foxit.

Consideration. In payment of the Support, Maintenance and Upgrade Protection services to be provided by Foxit hereunder, You shall pay Foxit, or its authorized agent, the applicable fee for the Initial Support, Maintenance and Upgrade Protection Term as indicated on the related invoice, receipt, purchase order, or other ordering document ("Support, Maintenance and Upgrade Protection Fee"). At the end of the Initial Support, Maintenance and Upgrade Protection Term, or any subsequent Support, Maintenance and Upgrade Protection Term, You may renew participation in Support, Maintenance and Upgrade Protection services for additional annual term(s) provided You (a) are current on all payments due to Foxit and (b) pay Foxit, or its authorized agent, the applicable renewal fee, which Foxit, or its authorized agent, shall invoice prior to the end of the preceding term, unless terminated by You at least 30 days prior to the expiration of the then current Support, Maintenance and Upgrade Protection Term. Support, Maintenance and Upgrade Protection shall be discontinued for any and all subsequent Support, Maintenance and Upgrade Protection Terms for which You fail to pay Foxit the invoice within ten (10) days after the prior Support, Maintenance and Upgrade Protection expiration date.

Exceptions. For use of the Product or a Beta Software Product, only the Maintenance Services and Exclusions paragraphs of this section apply. For use of the Product under Educational Use terms, the Maintenance Services and Exclusion paragraphs apply as long as You pay for the maintenance period defined under Your Single-Use Term License.

6. PAYMENT TERMS. Customer shall pay all fees in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315, and with FAR 52.212-4, subsection (i).

TAXES. The fees and all other amounts due as set forth in this Agreement are net amounts to be received by Foxit, exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, excise, ad valorem, and use taxes (collectively, the “Taxes”), and are not subject to offset or reduction because of any Taxes incurred by You or otherwise due as a result of this Agreement. You shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall not apply to taxes based solely on Foxit’s income.

CONSENT TO USE OF DATA.

The software (main application and plug-ins) may contact a Foxit server periodically to check for software updates and vulnerability fixes.

The software may collect usage information to support the integrity of features and enhance the quality of the software. Such usage information may contain personally identifiable information when it is reasonably needed for providing necessary services to the user, or when the user consents to providing such information and only to the extent as allowed
by the applicable laws. The usage information collected includes:

- File name
- Author
- Created time
- Created device
- Creator application
- Creator location
- Document pages
- Document size
- Document Versions
- Document version description
- Other usage information

You agree that Foxit and its affiliates may collect and use information You provide as a part of any such support services related to the Product. Foxit agrees not to use this information in a form that personally identifies You. Foxit maintains user login information under which Foxit may collect your Foxit product login email only. Collection of this information occurs in accordance with the Foxit Privacy Policy. Such usage information which includes protected data must be safeguarded by Foxit and its third party service providers (if applicable) and shall not used for any purpose other than to fulfill Foxit's obligations under this Agreement and any applicable orders.

INTELLECTUAL PROPERTY RIGHTS. Subject to the license grant hereunder, all right, title and interest in and to the Product, the accompanying printed materials, and any copies of the Product are owned by Foxit and its licensors.
EXPORT RESTRICTIONS. You acknowledge that Product is of U.S. origin. You agree to comply with all applicable foreign, federal, state and local laws and regulations governing Your use of the Product. Without limiting the foregoing, in the event that this Agreement permits export of the Product outside the U.S., You shall be solely responsible for compliance with all applicable U.S. export laws, rules, and regulations. The Product is subject to the U.S. Export Administration Regulations and other U.S. law, and may not be exported or re-exported to certain countries (currently Cuba, Iran, Libya, North Korea, Sudan and Syria) or to persons or entities prohibited from receiving U.S. exports (including those (a) on the Bureau of Industry and Security Denied Parties List or Entity List, (b) on the Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, and (c) involved with missile technology or nuclear, chemical or biological weapons).

WARRANTY

LIMITED WARRANTY ON MEDIA

FOXIT warrants that any media on which the Licensed Software is distributed shall be free from material defects for a period of thirty (30) calendar days from the date of receipt of the License. If Licensee discovers a defect in the media during this thirty (30) day period, Licensee may return the defective media to FOXIT within fifteen (15) calendar days of discovering the defect, and Licensee's sole remedy shall be to have the defective media replaced. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT'S negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract

NO WARRANTY ON LICENSED SOFTWARE

1.2 THE LICENSED SOFTWARE IS PROVIDED TO LICENSEE "AS IS". FOXIT, AND FOXIT'S LICENSORS AND SUPPLIERS, MAKE NO WARRANTY AS TO ITS USE OR PERFORMANCE. FOXIT, AND FOXIT'S LICENSORS AND SUPPLIERS, MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR TERMS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE) AS TO THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT FOR, AND ONLY TO THE EXTENT THAT, ANY SUCH REPRESENTATION, WARRANTY CONDITION OR TERM MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. Notwithstanding the foregoing, Foxit will repair or replaced defective items discovered within a reasonable period of time after acceptance.

11.3. Warranty Disclaimer. Other than the warranty set forth in Section 11.1 above, and to the maximum extent permitted by applicable law, Foxit, its authorized resellers and their subsidiaries provides the Product and any support services related to the Product ("Support Services") AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness
of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Product, and the provision of or failure to provide support services.

LIMIT OF LIABILITY AND EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FOXIT, ITS AUTHORIZED RESELLERS OR THEIR SUBSIDIARIES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR
PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS LICENSE, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF FOXIT, EVEN IF FOXIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT’s negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract.

LIMITATION OF LIABILITY AND REMEDIES. Notwithstanding any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Foxit, its resellers and their subsidiaries under any provision of this License and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You for the Product. The foregoing limitations, exclusions and disclaimers shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from FOXIT’s negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract.

NOTICE TO U.S. GOVERNMENT END USERS

For contracts with agencies of the Department of Defense, the Government’s rights in: (1) commercial computer software and commercial computer software documentation shall be governed, pursuant to 48 C.F.R. 227.7201 through 227.7202-4, by Foxit’s standard commercial license(s) for the respective product(s); (2) software and software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 252.227-7014; (3) technical data for commercial items other than software or software documentation shall be governed by 48 C.F.R. 252.227-7015(b); and (4) technical data for non-commercial items other than software or software documentation shall be governed by 48 C.F.R. 252.227-7013.

For contracts with U.S. Government agencies other than the Department of Defense agencies, the Government’s rights in:
(1) commercial computer software and commercial computer software documentation shall be governed, pursuant to 48 C.F.R. 2.101 and 12.212, by Foxit's standard commercial license(s) for the respective product(s); (2) software and software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 52.227-14, Alternative III; and (3) technical data other than software and software documentation shall be governed by 48 C.F.R. 52.227-14 including, where applicable Alternatives I or II.

GENERAL. This Agreement will be governed by and construed in accordance with the laws of the United States of America. The United Nations Convention on Contracts for the International Sale of Goods will not apply. You may not assign this Agreement or any right or interest hereunder, by operation of law or otherwise, without Foxit’s express prior written consent. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this
Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this section. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. This Agreement, Foxit’s Federal Supply Schedule Contract and price list and any subsequent order and Foxit’s support and maintenance services terms constitutes the entire and exclusive agreement between the parties concerning its subject matter and supersedes all prior written and oral understandings and agreements between the parties regarding its subject matter. 14. COMPLIANCE WITH LICENSES. If You are a business, company or organization, You agree that upon request from Foxit or its authorized representative You will within thirty (30) days fully document and certify that use of any and all Foxit Products at the time of the request is in conformity with Your valid licenses from Foxit.

DISCONTINUING OR MODIFYING SERVICES. You acknowledge that Foxit has the right to discontinue the manufacture and development of any of the Product and the support for that Product, in its sole discretion at any time, including the distribution of older Product versions, provided that Foxit agrees not to discontinue the support for that Product during the current annual term of this Agreement, subject to the termination provisions herein. Notwithstanding the foregoing, if Foxit discontinues the manufacture and support for a particular Product, Support for any remaining Products covered by this Agreement shall not be adversely affected. Foxit reserves the right to alter the Support, in its sole discretion but in no event shall such alterations result in: (a) diminished support from the level of support set forth herein; (b) materially diminished obligations for Foxit; or (c) Your materially diminished rights.

Termination and Breach – Your termination rights shall be governed by FAR 52.212-4(l) and (m) and Foxit’s termination rights shall be governed by the FAR 52.212-4(d). Note: FAR 52.233-1, requires the Foxit to submit a claim to the contracting officer if it believes the Government to be in breach, and to continue performance during the pendency of the claim. Claims shall be addressed in accordance with the Contract Disputes Act.

Should You have any questions concerning this License, or if You desire to contact Foxit for any reason, please call (510) 438-9090.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Fortinet, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of
the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

FORTINET, INC.

FORTINET, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. License Grant.
This is a license, not a sales agreement, between Ordering Activity and Contractor. The term "Software", as used throughout this Attachment A, includes all Fortinet and third party firmware and software provided to Ordering Activity with, or incorporated into, Fortinet appliances and any stand-alone software provided to Ordering Activity by Contractor, with the exception of any open source software contained in Fortinet's Products which is discussed in detail in section 15 below, and the term "Software" includes any accompanying documentation, any updates and enhancements of the software or firmware provided to Ordering Activity by Contractor, at its option. Contractor grants to Ordering Activity a non-transferable (except as provided in section 5 ("Transfer") and section 13 ("Open Source Software") below), non-exclusive, revocable (in the event of your failure to comply with these terms or in the event Contractor is not properly paid for the applicable Product) license to use the Software solely for Ordering Activity's internal business purposes (provided, if a substantial portion of Ordering Activity's business is to provide managed service provider services to Ordering Activity's end-customers, Ordering Activity may use the Software embedded in FortiGate and supporting hardware appliances to provide those services, subject to the other restrictions in this Attachment A), in accordance with the terms set forth in this Attachment A and subject to any further restrictions in Fortinet documentation, and solely on the Fortinet appliance, or, in the case of blades, CPUs or databases, on the single blade, CPU or database on which Fortinet installed the Software or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed, or, in the case of blades, CPUs or databases, on a single blade, CPU or database. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on blades, CPUs or databases are licensed on a per single blade, solely for one blade and not for multiple blades that may be installed in a chassis, per single CPU or per single database basis, as applicable. The Software is "in use" on any Fortinet appliances when it is loaded into temporary memory (i.e. ROM). Ordering Activity agrees that, except for the limited, specific license rights granted in this section 1, Ordering Activity receive no license rights to the Software.

2. Limitation on Use.
Ordering Activity may not attempt to, and, if Ordering Activity is a corporation, Ordering Activity is responsible to prevent Ordering Activity's employees and contractors from attempting to, (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software; (b) rent or lease any rights in the Software in any form to any third party or make the Software available or accessible to third parties in any other manner; (c) except as provided in section 5, transfer assign or sublicense right to any other person or entity, or (d) remove any proprietary notice, labels, or marks on the Software, Products, and containers.

All rights, title, interest, and all copyrights to the Software and any copy made thereof by Ordering Activity and to any Product remain with Fortinet. Ordering Activity acknowledges that no title to the intellectual property in the Software or other Products is transferred to Ordering Activity and Ordering Activity will not acquire any rights to the Software or other Products except for the specific license as expressly set forth in section 1 ("License Grant") above.

4. Limited Warranty.
Contractor provides this limited warranty for its product only to the single Ordering Activity person or entity that originally purchased the Product from Contractor or its authorized reseller or distributor and paid for such Product. The warranty is only valid for Products which are registered on Fortinet's Support Website: https://support.fortinet.com; or on the TalkSwitch support website: http://global.talkswitch.com; or such other website as provided by Contractor. For the below software warranty to start, registration must take place within three hundred sixty-five (365) days from the date the Product was originally shipped from Contractor's facilities or the warranty is null and void and will not be honored. For the hardware warranty, such warranty starts on the earlier of the date of Product registration on Fortinet's Support Website or ninety (90) days from the date that the Product was originally shipped from Contractor's facilities. It is the Contractor distributor's and reseller's responsibility to make clear to the Ordering Activity the date the product was originally shipped from Contractor, and it is the Ordering Activity's responsibility to understand the original ship date from the party from which the end user purchased the product. All warranty claims must be submitted in writing to Contractor before the expiration of the warranty term or such claims are waived in full, i.e. ninety (90) days from the earlier of registration or the automatically started term for hardware and spare parts claims and three hundred sixty-five (365) days from registration within three hundred sixty-five (365) days from registration for software claims. Contractor provides warranty for any beta, donation or evaluation Products, for any spare parts not purchased directly from Contractor by the Ordering Activity and, for spare parts, solely a ninety (90) days limited warranty. Contractor's obligation shall be to repair or replace the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labor or installation costs, and any other cost which are not directly associated to the Product. Such repair or replacement will be rendered by Contractor through Fortinet at an authorized Fortinet service facility as determined by Fortinet. The replacement Hardware need not be new or of an identical make, model, or part; Contractor may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Contractor reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The Hardware Warranty Period for
the repaired or replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety days from the delivery of the repaired or replacement Hardware. If Contractor determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Contractor upon return to Contractor of the defective Hardware. All Hardware (or part thereof) that is replaced by Contractor, or for which the purchase price is refunded, shall become the property of Contractor upon replacement or refund.

Contractor warrants that the software portion of Hardware Products will substantially conform to Contractor's then current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days ("Software Warranty Period"), if the Software is properly installed on approved Hardware and operated as contemplated in its documentation. Contractor's obligation shall be to repair or replace the non-conforming Software with software that substantially conforms to Contractor's functional specifications. Except as otherwise agreed by Contractor in writing, the replacement Software is provided only to the original licensee, and is subject to the terms and conditions in this Attachment A of the license granted by Contractor for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any replacement software is delivered. If Contractor determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Contractor; provided that the non-conforming Software (and all copies thereof) is first returned to Contractor. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Contractor that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Attachment A, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

5. Disclaimer of Other Warranties and Restrictions.
EXCEPT FOR THE LIMITED WARRANTY SPECIFIED IN SECTION 4 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM CONTRACTOR. EXCEPT AS EXPRESSLY COVERED UNDER THE LIMITED WARRANTY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY, SELECTION AND PERFORMANCE OF THE PRODUCT IS WITH THE PURCHASER OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE HARDWARE WARRANTY PERIOD DISCUSSED ABOVE DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIFONE WHICH HAS A NINETY (90) DAY LIMITED WARRANTY AND FORTITOKEN WHICH HAS A 365 DAY WARRANTY FROM THE DATE OF SHIPMENT FROM CONTRACTOR'S FACILITIES, AND THE SOFTWARE WARRANTY DOES NOT APPLY TO CERTAIN FORTINET PRODUCTS, INCLUDING FORTIGATE-ONE AND VDOM SOFTWARE.

The warranty in Section 4 above does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used has been altered, except by Contractor or its authorized representative, has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or is licensed for beta, evaluation, donation, testing or demonstration purposes or for which Contractor does not charge a purchase price or license fee. In the case of beta, testing, evaluation, donation or free Software or Product, the end user acknowledges and agrees that such Software or Product may contain bugs or errors and could cause system failures, data loss and other issues, and the Ordering Activity agrees that such Software or Product is provided "as-is" without any warranty whatsoever, and Contractor disclaims any warranty or liability whatsoever. An Ordering Activity's use of evaluation or beta Software or Product is limited to thirty (30) days from original shipment unless otherwise agreed in writing by Contractor.

The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying documentation by the United States Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms of this Attachment A and its successors.

7. Open Source Software.
Fortinet's products may include software modules that are licensed (or sublicensed) to the user under the GNU General Public License, Version 2, of June 1991 ("GPL") or GNU Lesser General Public License, Version 2.1, of February 1999 ("LGPL") or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Open Source Software"). The GPL requires that for any Open Source Software covered under the GPL, which is distributed to someone in an executable binary format, that the source code also be made available to those users. For any Open Source Software covered under the GPL, the source code is made available on this CD or download package. If any Open Source Software licenses require that Contractor provides rights to use, copy or modify a Open Source Software program that is broader than the rights granted in this Attachment A, then such rights shall take precedence over the rights and restrictions herein. All open source software modules are licensed free of charge. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "AS-IS" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third party license disclosures applicable to certain Fortinet products, may obtained by contacting Contractor through Fortinet's Legal Department at legal@fortinet.com.
EXHIBIT A – FORTICARE/FORTIGUARD SERVICES

DEFINITIONS

“Ordering Activity” means any person or entity that has purchased a Service Contract from Contractor.

“Defective Unit” means a Product purchased by the Ordering Activity which has ceased to operate in accordance with Fortinet's Product Documentation.

“Hardware” means the Fortinet computer peripheral devices excluding all Software incorporated in or bundled with such devices.

“No Trouble Found Unit(s)” means a Product that has been returned to Fortinet as a Defective Unit by the Ordering Activity, and is later discovered to be in proper working order.

“Product(s)” means any Fortinet Hardware with associated Software or stand-alone Software product which is/are available for sale.

“Registration Date” means the date when the Service Contract is registered via Fortinet's website: https://support.fortinet.com.

“Renewal Service Contract” means a Service Contract (FortiCare and/or FortiGuard), as identified in Contractor's then current GSA price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at Fortinet’s Support site.

“Return Material Authorization” or “RMA” means the required number or code obtained from Fortinet prior to returning a Defective Unit for a Replacement Unit.

“Replacement Unit” means a Product shipped by Fortinet to replace an Ordering Activity reported Defective Unit for which the Ordering Activity has obtained an RMA.

“Service Contract” means the purchase order for the Services purchased by the Ordering Activity as evidenced by their Service Contract Registration Document.

“Service Plan Documentation” means the Fortinet issued collateral, product description, or documentation which outlines the Services to be performed by Fortinet.

“Service Contract Registration Document” means the electronic document emailed by Fortinet with a contract registration number to the email address provided for in the Order Documentation which contains the Ordering Activity's entitlements.

“Services” means any individual or combination of Support and/or Subscription services purchased by the Ordering Activity and evidenced in the Ordering Activity's Service Entitlement Document.

“Software” means the Fortinet computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by Fortinet.

“Subscription Services” means Fortinet's FortiGuard suite of services, per Fortinet's current Customer Support Services Reference Guide, which may include one or all of the following: Antivirus, Antispam, IPS, and Web Filtering.

“Support” or “Support Services” means Fortinet's technical telephone, email, and web assistance provided by Fortinet or its Partners, per Fortinet's current Customer Support Services Reference Guide, to help the Ordering Activity with problem resolutions.

SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED

Service Contracts Offered. Contractor through Fortinet offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, Fortinet offers Subscription Services and other Product service offerings to protect Ordering Activity's newly purchased assets.

Ordering and Use. Each Service Contract purchased by Ordering Activity is valid for a single unit of Product. For clarity, use of a Service Contract with a replacement unit, or with certain upgraded units identified by Contractor through Fortinet as applicable to the Service Contract, shall not be considered a material breach of this Attachment A.

TERMS OF SERVICE

Registration. Ordering Activity must register the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by Contractor through Fortinet of the applicable Product and Service Contract to Ordering Activity. SERVICE CONTRACTS WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM CONTRACTOR THROUGH FORTINET SHALL BE FORFEITED AND CONTRACTOR SHALL HAVE NO OBLIGATION TO THE ORDERING ACTIVITY REGARDING THIS ATTACHMENT A OR ANY RELATED SUPPORT SERVICES. It is Ordering Activity's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period. Notwithstanding anything to the contrary, Contractor through Fortinet may register any

https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Ordering Activity authorizes Contractor through Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.

Renewal Registration. In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the “Renewal Service Contract Effective Date”). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Ordering Activity’s previous service contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Ordering Activity’s previous Services Contract. In such case the start date shall be the date of registration.

For example and for illustration purposes only, in the event a one year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one year Renewal Service Contract is registered two-hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

Support Policy. The delivery of all Services shall be subject to and provided in accordance with Contractor through Fortinet's then current Customer Support Services Reference Guide (“Reference Guide”). The Reference Guide details the Service and Support process and any service levels provided by Contractor through Fortinet with your specific Fortinet Support Services. The Reference Guide is available at the following link https://support.fortinet.com/Login/UserLogin.aspx. The Reference Guide is subject to change and Fortinet shall post notices of any changes on the support website https://support.fortinet.com/Login/UserLogin.aspx with no less than thirty (30) days notice prior to the effective date of the change. The Ordering Activity hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provided for in any notice, the Ordering Activity accepts and agrees the changes to the Reference Guide. Furthermore, the Ordering Activity hereby acknowledges and agrees that Ordering Activity is solely responsible for adhering to and monitoring Contractor through Fortinet’s support website for updates and changes to the Reference Guide.

Product Life Cycle Policy. All Services provided hereunder are subject to Fortinet's Product Life Cycle Policy which is available Fortinet's Support website.

POINT OF CONTACT

Contractor through Fortinet may, at its option, provide the Services directly or indirectly, through any of its FortiPartner, agents, or sub-contractors.

DESCRIPTION OF PROGRAMS

Principle Period of Services. Services are provided during the hours described in the Reference Guide.

Telephone and Email Support. All telephone and email support will be delivered in accordance with any Service Plan Documentation and Fortinet's Support Policy.

Web-based Support. The Fortinet corporate website www.fortinet.com provides access to a variety of information including on-line documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the Fortinet support website https://support.fortinet.com. This site includes access to the FortiCare ticketing system for product and contract registration as well as creation of ticket and webchat requests. It may also include Subscription Service updates, Maintenance and Feature Releases, and technical support alerts. Login information and passwords are provided upon registration of the account. Ordering Activity hereby agrees and warrants that only authorized information technology personnel shall have access to the login and password information. Contractor through Fortinet shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.

Hardware Support. If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with Fortinet's Support Policy. Please refer to Fortinet's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, Contractor through Fortinet is not responsible for any delays in delivery related to export or customer regulations or processes. For any Service Contract which incorporates four-hour replacement Services, Ordering Activity acknowledges that Contractor through Fortinet shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot (“Staging Period”). As such Ordering Activity's four-hour replacement Services shall commence until the end of such Staging Period.

Software/Firmware Updates. If Ordering Activity's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this Attachment A. Ordering Activity may access such updates via password-protected web access. Ordering Activity may install only one (1) copy of the upgrade per product covered by a Service Contract. Support shall be provided on the then-current major release of Product and the previous release of software. At Contractor through Fortinet's option, Fortinet may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration.

Real-Time Updates. If the Ordering Activity’s Service Contract contains Subscription Services, the Ordering Activity will have access to Contractor through Fortinet's real-time Anti-Virus and Network Intrusion Detection System (“NIDS”) updates that will protect the Ordering
Activity against some of the latest network-based threats. These updates may either be pushed to properly configured and authorized Products, retrieved on a pre-scheduled basis, or retrieved manually by the Ordering Activity.

EXCLUSIONS

General. Ordering Activity acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, Contractor through Fortinet may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by Contractor through Fortinet hereunder do not include warranty, support and/or maintenance for any third party software or hardware, whether or not such third party software or hardware is provided by Contractor through Fortinet. Contractor through Fortinet is not required to provide Services for problems arising from: (i) Ordering Activity's failure to implement all maintenance or features issued under this Attachment A; (ii) any alterations of or additions to the Products performed by parties other than Contractor through Fortinet; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by Contractor through Fortinet.

On-Site Support Not Included. Support Services are strictly limited to telephone and electronic support.

LICENSE

All updates or upgrades to Software or Hardware provided for under this Attachment A shall be deemed to be included within the Products and subject to these Attachment A License terms and conditions. Further, Ordering Activity hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any proprietary or copyright restrictions from any Product or support updates or software; (iii) not to copy the Product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software in any other software program; (iv) only to use the Product and support updates and software for internal business purposes, and (v) to keep confidential any software and support updates and not share them with third parties.

WARRANTY

Except as expressly stated otherwise, maintenance releases, updates and upgrades provided hereunder are warranted for the remaining software warranty period of the original Product purchased, if any, as specified in this Attachment A. Nothing in this Attachment A shall be construed as expanding or adding to the warranty set forth above. Contractor cannot guarantee that every question or problem raised in connection with the Services will be addressed or resolved. EXCEPT FOR WARRANTIES CLEARLY AND EXPRESSLY STATED HEREIN, NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR MAKES, AND ORDERING ACTIVITY RECEIVE, NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS ATTACHMENT A OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND, TO THE EXTEND PERMISSIBLE BY LAW, FORTINET SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Fujitsu Network Communications, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions
affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the乙方 will be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is not an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract, the Manufacturer shall treat such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derived Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

FUJITSU NETWORK COMMUNICATIONS

FUJITSU NETWORK COMMUNICATIONS LICENSE, WARRANTY AND SUPPORT TERMS

Grant of License. Upon delivery or access of the Licensed Product to Ordering Activity and payment by Ordering Activity of the applicable annual license fee for base software and individually licensed Software features or other consideration as determined by Contractor, Contractor grants to Ordering Activity a restricted, personal, nontransferable and non-exclusive right-to-use license to the Software that is embedded in, loaded, activated, or downloaded into applicable Fujitsu Network Communications (“FNC”) equipment and use of the Documentation, solely for Ordering Activity’s internal business purposes and only on or for the products Ordering Activity obtains from Contractor.

U.S. Government Rights. If the Licensed Products are being provided to the United States Government they are, to the maximum extent permitted under applicable laws and regulations, provided pursuant to the terms, and subject to the limitations, of this Attachment A. To the extent that applicable laws and regulations grant the Government greater rights than provided by this Attachment A, then the Government receives only the minimum rights required by such laws and regulations. Development of the Licensed Products was privately funded and use, reproduction, or disclosure is subject to restrictions set forth in any of the following that are applicable: paragraph (c) of the Commercial Computer Software - Restricted Rights (June 1987) clause at FAR 52.227-19, the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data - General (June 1987) clause at FAR 52.227-14, DFARS 227.7202-3, and the Technical Data - Commercial Items (Nov. 1995) clause at DFARS 252.227-7015, all as may be amended from time to time.

Restrictions. Ordering Activity may not: (i) modify, adapt, translate, reverse engineer, disassemble, decompile, or otherwise attempt to derive source code from or create or prepare derivative works of or from the Licensed Products, (ii) distribute, sublicense, rent, lease, loan, or make unauthorized copies of any portion of the Licensed Products, (iii) publicly display visual output or publish any test results of the Software, or (iv) use the Software in inherently high-risk applications such as, but not limited to, aircraft navigation or communications, nuclear facilities, mass transit, or medical emergency communications. Ordering Activity is authorized to make one copy of the Software in any machine-readable medium for backup or archival purposes in support of Ordering Activity’s permitted use hereunder. Ordering Activity

may not lend, sublicense, rent or lease the Software, or otherwise make it available to any third party, or transfer or assign this Attachment A or any rights hereunder. Any portion of the Software merged into another software program will continue to be subject to the terms and conditions of this Attachment A. The Software is licensed as a single product with individual Software license features, and it may not be separated for use other than as permitted above.

SOFTWARE ACCESS. Ordering Activity may obtain the Software by downloading a copy from the FNC website or a CD, or entering the applicable machine line code ("TL1 Command") on equipment preloaded with the Software.

Ownership of the Licensed Products. The Licensed Products are licensed, not sold. Ordering Activity agrees that all right, title, and interest, including all copyright, patent, trademark, trade secret and other intellectual property rights in and to the Licensed Products and all complete or partial copies thereof belong exclusively to FNC or its licensors, and this Attachment A does not transfer or assign any such rights. The Licensed Products are protected by copyright and other laws and international treaties. Ordering Activity agrees to mark any copies of the Software Ordering Activity is permitted to make under this Attachment A with the applicable copyright notice provided by FNC. Except as expressly granted in this Attachment A, no right or license, whether express or implied, by estoppel or otherwise, is granted in any copyright, patent, trademark, trade secret, or other intellectual property of FNC or its licensors.

Warranty Disclaimer and Limitation. EXCEPT AS PROVIDED IN THE AGREEMENT BETWEEN CONTRACTOR AND ORDERING ACTIVITY, THE LICENSED PRODUCTS ARE LICENSED TO ORDERING ACTIVITY "AS IS". CONTRACTOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY WARRANTIES CLAIMED TO ARISE FROM PERFORMANCE OR CUSTOM OR USAGE OF TRADE WITH RESPECT TO THE LICENSED PRODUCTS. ORDERING ACTIVITY ASSUMES ALL RISK RELATING TO USE OF THE LICENSED PRODUCTS. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOST PROFITS, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF DATA, OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
Scope. This Rider and the attached Getvisibility (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order.
and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
END-USER LICENSE AGREEMENT FOR GETVISIBILITY SYNERGY. IMPORTANT

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE CONTINUING WITH THIS PROGRAM INSTALL

End-User License Agreement ("EULA") is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("you" or "Ordering Activity") and Getvisibility for the Getvisibility software product(s) identified above which may include associated software components, media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). By both parties executing this EULA, or by executing a purchase order incorporating this EULA, you agree to be bound by the terms of this EULA. This license agreement represents the entire agreement concerning the program between you and Getvisibility, (referred to as "licenser"), and it supersedes any prior proposal, representation, or understanding between the parties. If you do not agree to the terms of this EULA, do not install or use the SOFTWARE PRODUCT.

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

GRANT OF LICENSE.
The SOFTWARE PRODUCT is licensed as follows:

INSTALLATION AND USE.
Getvisibility grants you the right to install and use copies of the SOFTWARE PRODUCT on your computer running a validly licensed copy of the operating system for which the SOFTWARE PRODUCT was designed which are Windows 7 SP1 and Windows 10.

BACKUP COPIES.
You may also make copies of the SOFTWARE PRODUCT as may be necessary for backup and archival purposes.

DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

Maintenance of Copyright Notices.
You must not remove or alter any copyright notices on any and all copies of the SOFTWARE PRODUCT.

DISTRIBUTION.
You may not distribute registered copies of the SOFTWARE PRODUCT to third parties. Evaluation versions available for download from Getvisibility’s websites may be freely distributed if available.

PROHIBITION ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY.
You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

RENTAL.
You may not rent, lease, or lend the SOFTWARE PRODUCT.

**SUPPORT SERVICES.**
Getvisibility or an approved Getvisibility reseller or partner may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this EULA.

**COMPLIANCE WITH APPLICABLE LAWS.**
You must comply with all applicable laws regarding use of the SOFTWARE PRODUCT.

**TERMINATION**
Without prejudice to any other rights, Getvisibility may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT in your possession.

**COPYRIGHT**
All title, including but not limited to copyrights, in and to the SOFTWARE PRODUCT and any copies thereof are owned by Getvisibility or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. All rights not expressly granted are reserved by Getvisibility.

**LIMITED WARRANTY**
GETVISIBILITY WARRANTS THAT THE SOFTWARE PRODUCT WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Getvisibility expressly disclaims any warranty for the SOFTWARE PRODUCT. The SOFTWARE PRODUCT is provided 'As Is' without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, noninfringement, or fitness of a particular purpose. Getvisibility does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the SOFTWARE PRODUCT. Getvisibility makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. Getvisibility further expressly disclaims any warranty or representation to Authorized Users or to any third party.

**LIMITATION OF LIABILITY**
In no event shall Getvisibility be liable for any consequential, indirect or special damages (including, without limitation, lost profits, business interruption, or lost information) rising out of 'Authorized Users' use of or inability to use the SOFTWARE PRODUCT, even if Getvisibility has been advised of the possibility of such damages. In no event will Getvisibility be liable for loss of data or for indirect, special, incidental, consequential (including lost profit), or other damages based in contract, tort or otherwise. Getvisibility shall have no liability with respect to the content of the SOFTWARE PRODUCT or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, privacy, trademark rights, business interruption, loss of privacy, moral rights or the disclosure of confidential information. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached GitLab, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3501 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms relating to termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sept. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentation of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1.1 Subject to the terms and conditions of this Agreement, GitLab hereby grants to Customer and its Affiliates (as defined below) a limited, non-exclusive, nontransferable, non-sublicensable license for Customer’s and its Affiliates’ employees and contractors to (1) internally (a) use, reproduce, modify, prepare derivative works based upon, and display the code of GitLab Enterprise Edition at the tier level selected by Customer with the specifications generally promulgated by GitLab from time to time (the “Software”), excluding additional Products for the Enterprise Edition unless listed on the Quote, solely (i) for its internal use in connection with the development of Customer’s and/or its Affiliates’ own software, and (ii) by the number of internal users for which Customer has paid GitLab; and (b) use the documentation, training materials or other materials supplied by GitLab (the “Other GitLab Materials”); and (2) modify the Software and publish patches to the Software, solely by the number of internal users for which Customer has paid GitLab. Notwithstanding anything to the contrary, Customer agrees that GitLab and/or its licensors (as applicable) retain all right, title and interest in and to all Software incorporated in such modifications and/or patches, and all such Software may only be used, copied, modified, displayed, distributed, or otherwise exploited in full compliance with this Agreement, and with a valid GitLab Enterprise Edition subscription for the correct number of user seats. The Software and Other GitLab Materials are collectively referred to herein as the “Licensed Materials.” “Affiliate” means any entity(ies) controlling, controlled by, and/or under common control with a party hereto, where “control” means the ownership of more than 50% of the voting securities in such entity.

1.2 Subject to the terms hereof, GitLab will provide reasonable support service to Customer for the Licensed Materials as set forth in the underlying GSA Schedule Contract. 1.2.1 GitLab will use reasonable commercial efforts to respond to support questions by phone or email during the next business day at the latest. The number of support questions is not limited.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as expressly authorized in Section 1.1, Customer will not, and will not permit any third party to: use the Licensed Materials for any purpose other than as specifically authorized in Section 1, or in such a manner that would enable any unlicensed person to access the Licensed Materials; use the Licensed Materials or any other GitLab software for timesharing or service bureau purposes or for any purpose other than its own internal use (including without limitation, sublicensing, distributing, selling, reselling any of the foregoing); except as expressly permitted herein; use the Licensed Materials in connection with any high risk or strict liability activity (including, without limitation, space travel, firefighting, police operations, power plant operation, military operations, rescue operations, hospital and medical operations or the like); use the Licensed Materials or software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any privacy laws, and laws and regulations concerning intellectual property, consumer and child protection, obscenity or defamation); or use the Licensed Materials in any manner that (1) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any user authentication or security process), (2) impersonates any person or entity, including without limitation any employee or representative of GitLab, or (3) contains a virus, Trojan horse, worm, time bomb, unsolicited bulk, commercial, or ‘spam’ message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs).

2.2 Customer will cooperate with GitLab in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as GitLab may reasonably request. Customer will also cooperate with GitLab in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Licensed Materials. Customer shall maintain during the term of this Agreement and through the end of the third year after the date on which the final payment is made under this Agreement, books, records, contracts and accounts relating to the payments due GitLab under this Agreement (collectively, the “Customer Records”). GitLab may, at its sole expense, upon 30 days’ prior written notice to Customer and during Customer’s normal business hours and subject to industry-standard confidentiality obligations, hire an independent third party auditor to audit the Customer Records only to verify the amounts payable under this Agreement.

2.3 Customer will be responsible for maintaining the security of Customer’s account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent.

3. CONFIDENTIALITY

3.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s technology or business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Without limiting the foregoing, the Licensed Materials are GitLab Proprietary Information.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees of a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, GitLab may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Licensed Materials’ performance and Customer’s usage of the Licensed Materials; provided that GitLab will not identify Customer as the source of any such data without Customer’s prior written consent. However, courts of competent jurisdiction may require certain information to be released. Federal agencies are subject to the Freedom of Information Act (FOIA) (5 USC 552), and some information may be released despite being characterized as confidential by GitLab.
3.3. Both parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Except as expressly set forth herein, GitLab alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Licensed Materials and any suggestions, ideas, enhancement requests, feedback, code, recommendations or other information provided by Customer or any third party relating to the Licensed Materials, which are hereby assigned to GitLab. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Licensed Materials, or any intellectual property rights.

4.2 Customer shall not remove, alter or obscure any of GitLab’s (or its licensors’) copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of GitLab’s (or its licensors’) ownership or contribution from the Licensed Materials. Additionally, Customer agrees to reproduce and include GitLab’s (and its licensors’) proprietary and copyright notices on any copies of the Licensed Materials, or on any portion thereof, including reproduction of the copyright notice. Notwithstanding anything to the contrary herein, any part of the Licensed Materials distributed by GitLab as part of the GitLab Community Edition is licensed under the terms of the MIT License.

4.3 Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all software, information, content and data provided by or on behalf of Customer or made available or otherwise distributed through use of the Licensed Materials (“Content”) and the intellectual property rights with respect to that Content. Subject to the foregoing, GitLab may participate in the defense and/or settlement of any applicable Claim with counsel of its choosing at its own expense to the extent permitted by 28 U.S.C. 516.

4.4 GitLab will defend, indemnify and hold Customer harmless from liability and other amounts paid or payable to unaffiliated third parties resulting from (i) the infringement or violation of any intellectual property or proprietary rights by the Licensed Materials or (ii) the violation of applicable law or regulation by GitLab in performance of its obligations hereunder, provided GitLab is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement thereof. Subject to the foregoing, Customer may participate in the defense and/or settlement of any claim that is indemnifiable by GitLab with counsel of its choosing at its own expense. The foregoing obligations do not apply with respect to portions or components of the Licensed Materials (i) not created by GitLab, (ii) that are modified by 28 U.S.C. 516.

4.5 GitLab will defend, indemnify and hold Customer harmless from liability and other amounts paid or payable to unaffiliated third parties resulting from (i) the infringement or violation of any intellectual property or proprietary rights by the Licensed Materials or (ii) the violation of applicable law or regulation by GitLab in performance of its obligations hereunder, provided GitLab is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement thereof. Subject to the foregoing, Customer may participate in the defense and/or settlement of any claim that is indemnifiable by GitLab with counsel of its choosing at its own expense. The foregoing obligations do not apply with respect to portions or components of the Licensed Materials (i) not created by GitLab, (ii) that are modified by GitLab, (iii) combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (v) where Customer’s use of the Licensed Materials is not strictly in accordance with this Agreement and all related documentation.

5. PAYMENT OF FEES

5.1 Unless and until GitLab and Customer have executed a quote document specifically referencing this Agreement with respect to amounts due on account of the Licensed Materials (a “Quote”, which is hereby incorporated by reference, if applicable), Customer will pay GitLab the applicable fees as set forth at https://about.gitlab.com/pricing/ (the “Pricing”) for the Licensed Materials selected and/or used by Customer (the “Fees”) without any right of set-off or deduction. To the extent applicable, Customer will pay GitLab for additional services, such as integration fees or other consulting fees agreed by both parties hereto in writing (email to suffice). On each anniversary of the Effective Date, GitLab will invoice Customer with respect to any and all additional Customer users of the Licensed Materials beyond those for whom Customer has pre-paid, as of such date (and for whom the Fees due pursuant to such invoice will be the per-user fee set forth in the Quote or Pricing (as applicable) with respect to the year just ended, and the per-user fee set forth in the Quote or Pricing (as applicable) with respect to all subsequent years, unless otherwise agreed in writing by both parties (collectively, a “True-Up”). For Customers that have pre-paid all Fees for multi-year subscriptions for Licensed Materials pursuant to a Quote, on each anniversary of the Effective Date during the term of this Agreement, (i) a new license key will be provided, and (ii) a True-Up will be conducted. All additional users purchased shall be coterminated through the end of the original Subscription period.

5.2 All payments and invoice terms will be made in accordance with FAR 52.212-4 and the underlying GSA Schedule Contract. Except as expressly set forth in this Agreement, all Fees paid and/or due hereunder (including any prepaid amounts) are non-refundable, including without limitation if this Agreement is terminated in accordance with Section 6 below. If Customer terminates this Agreement pursuant to Section 6.2 within 45 calendar days from receipt of the initial invoice for the Licensed Materials, GitLab will refund all Fees paid hereunder.

5.3 Payments not received when due shall be governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CCR 1315. Additionally, notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. GitLab shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6. TERMINATION

6.1 When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this agreement must be made as a dispute under the Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Geotab shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
6.2 Customer’s rights to the Licensed Materials, and any licenses granted hereunder, shall terminate upon any termination of this Agreement.

7. WARRANTY; CUSTOMER SOFTWARE SECURITY

GitLab represents and warrants that (i) it has all rights and licenses necessary for it to perform its obligations hereunder, and (ii) it will not knowingly include, in any GitLab software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, Trojans, or time bombs, that are intentionally designed to disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, GitLab fails to comply with the warranty in this Section, Customer may promptly notify GitLab in writing of any such noncompliance. GitLab will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance.

8. WARRANTY DISCLAIMER

GitLab warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. Except as just stated, THE LICENSED MATERIALS, SOFTWARE AND GITLAB PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. GITLAB HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY OR THEIR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, ANY DELAY OR INABILITY TO USE THE LICENSED MATERIALS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EACH PARTY AND ITS LICENSORS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE GREATER OF (i) ONE THOUSAND DOLLARS ($1,000), OR (ii) THE FEES PAID TO GITLAB HEREUNDER IN ONE YEAR PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL NOT APPLY IN THE EVENT OF (a) FRAUD OR DECEPTION; (b) PERSONAL INJURY OR DEATH; OR (c) A VIOLATION OF A PARTY'S TRADE SECRETS.

10. U.S. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Licensed Materials or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of the Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any other person or entity on the U.S. Department of the Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Licensed Materials is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by GitLab are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party without the other party's prior written consent, not to be unreasonably withheld or delayed; provided that either party may transfer and/or assign this Agreement to a succesee in the event of a sale of all or substantially all of its business or assets to which this Agreement relates. Both parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or
e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. GitLab will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United State of America.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Globalscape, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract").

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The Government Customer is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(l) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

Force Majeure. Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.232-3, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ's jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.

Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
GLOBAL SCAPE, INC.

GLOBAL SCAPE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. SOFTWARE. The capitalized term "Software" refers to the object code for the computer program known as Enhanced File Transfer Server Enterprise (or EFT Server Enterprise) Version 7.1, including the Server Program and the Administrator Interface and all Optional Add-on Modules, which may include without limitation the AWE Module (as defined in Section 2 below), you may purchase and any updates, supplemental code or programs provided to you by GlobalSCAPE with or in connection with Enhanced File Transfer Server Enterprise Version 7.1, such as the user’s manual and Help file, any components, any related media and printed materials, and any related "online" or electronic documentation.

2. GRANT OF LICENSE.

A. EVALUATION LICENSE. If you acquired the license for any component of the Software on an evaluation or trial basis, you may use the Software without charge for the evaluation period. Your evaluation period begins on the day the evaluation serial number is issued by GlobalSCAPE. You must pay the license fee and activate your copy in the manner required below to continue to use the Software after the evaluation period. An evaluation license for the Software may not be transferred to any other person.

B. STANDARD LICENSE.

(i) SERVER PROGRAM. You may install and use one copy of the Server Program on that number of server computers for which you have purchased a separate license as indicated on your ordering document.

(ii) ADMINISTRATOR INTERFACE. For so long as you have an active license to use the Server Program, you may copy, install and use the Administrator Interface on as many personal desktop computers as you wish.

(iii) OPTIONAL ADD-ON MODULES.

(a) WEB TRANSFER CLIENT. You may concurrently use that number of Web Transfer Clients for which you have paid a separate license fee as indicated on your invoice or sales receipt. If you wish to increase the number of concurrent users after your initial license purchase, upon issuing an order for the additional license fee you will be issued a new registration serial number which will be utilized to activate the additional Web Transfer Client licenses purchased and to reactivate the Web Transfer Client licenses previously purchased.

(b) SECURE AD HOC TRANSFER MODULE. If you have purchased a separate license for the Secure Ad Hoc Transfer module (hereafter referred to as “SAT Module”), you may install and use one copy of the SAT Module on that number of server computers for which you have purchased a license as indicated on your ordering document. The SAT Module shall be installed solely on the same server(s) as the Server Program. It is your duty, at your cost, to install and maintain Microsoft IIS and all necessary equipment and connectivity required to use the SAT Module. Notwithstanding the restrictions in Section 7.1 but subject at all times to GlobalSCAPE’s rights set forth in Section 13, you may modify the SAT Module solely to customize the web interface to the Software created through the SAT Module. Upon modification, however, GlobalSCAPE shall have no further obligations under Section 8 or any related M & S Plan in relation to the Secure SAT module. If you purchase additional copies of the SAT Module for back-up or archival purposes, you will need to make all applicable modifications to the newly licensed copies.

(c) ADVANCED WORKFLOW ENGINE. If you have purchased a separate license for the Advanced Workflow Engine module (“AWE Module”), you may install and use one copy of the AWE Module on that number of computers for which you have purchased a license as indicated on your invoice or sales receipt. You may not separate the AWE Module for use on more than one computer. Certain consents required to be obtained from GlobalSCAPE pursuant to this Agreement may also require the consent of Network Automation, Inc. ("NAI"). You acknowledge that you have only the limited, non-exclusive right to use and copy the AWE Module as expressly stated in this Agreement and that GlobalSCAPE and NAI, as the case may be, retains title to the Software and all other rights not expressly granted herein.
C. STANDBY OR DEVELOPMENT LICENSE. If you have purchased a license to use the Server Program and/or the Add-On on a non-production basis, then you may use the Server Program and/or Add-On so licensed only as follows:

(i) STANDBY LICENSE: One (1) copy on a stand-by computer that is not processing traffic or doing work of any kind except in the event that, and only for so long as, the primary production server upon which the Server Program license is associated is offline.

(ii) DEVELOPMENT LICENSE: One (1) copy on a server (and associated desktop personal computers) used solely for testing, evaluation, or API development, so long as such server does not process actual traffic in a production environment.

D. ACTIVATION. You must activate the evaluation or standard license for the Software by entering the evaluation or registration serial number as prompted by the Software and as otherwise instructed by GlobalSCAPE.

E. RESERVED.

3. RIGHT TO COPY OR BACKUP. You may make one copy of the Software or the installation media for the Software solely for back-up or archival purposes at no additional charge.

4. UPGRADES. To use Software identified as an upgrade, or new version, you must first be licensed for the Software identified by GlobalSCAPE as eligible for the upgrade and issue an order for the purchase of the upgrade or new version. After upgrading, you may no longer use the Software that formed the basis for your upgrade eligibility and the license for that Software shall be deemed immediately terminated upon your installation of the upgrade.

5. TRANSFER. You may use the Software solely for your internal business process as contemplated by this Agreement and shall not license, sub-license, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than as contemplated by this Agreement, without the prior written consent of GlobalSCAPE. You shall not sell, sell access to, or sell use of the Software or utilize the Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You shall not use the Software in connection with the provision of a service to any third party that includes file transfer or any other service that is a substitute for some or all of the Software's functions without the prior written consent of GlobalSCAPE. If modifications are made to a SAT Module as permitted herein, such modification may only be used for your internal business purposes and may not be licensed or sublicensed or otherwise provided to any third party. You may, however, make a one-time permanent transfer of all of your license rights to the Software to another party, provided that: (a) the transfer must include all of the Software, including all component parts, programs, media, printed materials, all registration serial numbers, all modules you purchase in conjunction with the Software, and this license in connection with the sale of all or substantially all of the assets for that line of business; (b) you do not retain any copies of the Software, full or partial, including copies stored on a computer or other storage device; (c) the person to whom you transfer the Software agrees to be bound by the terms of this license; and (d) you provide notice to GlobalSCAPE at least 10 days prior to such transfer of the identity and contact information for the transferee and such transferee is not a competitor of GlobalSCAPE as determined by GlobalSCAPE in its sole discretion. If you purchased the license for the Software on a multi-computer basis that is, one registration serial number valid for the number of computers indicated on your invoice, you may permanently assign your rights under this license to only a single person or entity. Notwithstanding anything else in this Agreement to the contrary, a license for the Software provided on a free, promotional, or "for-resale" (NFR) basis may be used only for testing, demonstration or evaluation and may not be sold or transferred to another person in any manner.

6. INFORMATION COLLECTION AND PRIVACY. The Software includes a feature that assigns a unique identifier to your computer based on system information. The Software reports this identifier to GlobalSCAPE either when you install the Software, enter your evaluation serial number, or enter your registration serial number, or upon the occurrence of each of these. During the evaluation period, the Software will contact our registration and activation servers periodically to verify that the Software is still eligible for use on an evaluation basis. The Software may also identify and report to us your Windows language identifier setting, IP address, and the date and time of installation and/or activation. GlobalSCAPE uses this information to count installations, detect piracy of the Software, and develop rough statistical data regarding the geographic location of the Software users. GlobalSCAPE may tie this information to personally identifiable information it has about you. GlobalSCAPE may use any non-proprietary information you provide as part of obtaining support services for GlobalSCAPE's business purposes, including product support and development.

7. RESTRICTIONS. You may not reduce the Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not use the Software to perform any unauthorized transfer of information, such as copying or transferring a file in violation of a copyright, in violation of any law related to the transfer of encrypted data or for any illegal purpose.

8. MAINTENANCE AND TECHNICAL SUPPORT SERVICES. If you purchased a maintenance and support plan ("M & S Plan"), GlobalSCAPE shall provide the support services at the level agreed by you and Contractor in an applicable ordering document and as defined in the GlobalSCAPE Maintenance and Support Guide (Exhibit 1) (the "Guide"). To be eligible for maintenance and support services, the Server Program and the Administrator Interface as well as all associated Add-On Modules must be covered by an active M & S Plan.

9. RESERVED.
10. SECURITY. The Software creates a means for others to gain access to your computer. Although we have taken commercially reasonable measures to prevent unauthorized persons from gaining access to your computer via the Software, we cannot foresee or control the actions of third parties. Therefore, use of the Software will make you vulnerable to security breaches that you might not otherwise face and could result in the loss of your privacy or property. You are responsible for your use of the Software or otherwise. Use of secure passwords and keeping passwords confidential are not the responsibility of GlobalSCAPE or the Software.

11. RESERVED.

12. RESERVED.

13. INTELLECTUAL PROPERTY. You acknowledge that you have only the limited, non-exclusive right to use and copy the Software as expressly stated in this Agreement and that GlobalSCAPE retains title to the Software and all other rights not expressly granted. You agree not to remove or modify any copyright, trademark, patent, or other proprietary notices that appear, on, in or with the Software. The Software and all derivatives thereof, including any modifications made to the SAT Module are protected by United States copyright, patent and trademark law and rights granted by international treaties related to intellectual property rights. The Software is copyright (c) 2004-2015 GlobalSCAPE, Inc. All rights reserved.

14. EXPORT RESTRICTIONS. THE SOFTWARE CONTAINS ENCRYPTION TECHNOLOGY THAT IS CONTROLLED FOR EXPORT BY THE U.S. GOVERNMENT. You agree to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that (i) the Software is not exported, directly or indirectly (including as a result of providing access to the Software to a national or resident of and embargoed or restricted country), in violation of Export Laws, or the applicable laws of any other jurisdiction or (ii) or provided to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List. Among other things, the Export Laws provide that the Software may not be exported or re-exported to certain countries that are embargoed or restricted, or to certain restricted persons. Embargoed and restricted countries currently include but are not limited to Cuba, Iran, Libya, North Korea, Syria and Sudan. In addition to other restrictions described in this section, you may not use the Software, or export the Software to any destination where you know or have reason to know that the Software may be used, in connection with the proliferation of nuclear, chemical or biological weapons or missiles.

15. WARRANTIES. THE WARRANTY IS LIMITED TO NINETY (90) DAYS FROM YOUR RECEIPT OF A COPY OF THE SOFTWARE. COMPUTER PROGRAMS ARE INHERENTLY COMPLEX, AND THE SOFTWARE MAY NOT BE FREE OF ERRORS. THE SOFTWARE IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. GLOBALSCAPE DISCLAIMS ALL LIABILITY FOR ANY ACTION THAT YOU, YOUR DESIGNEE, OR YOUR AGENTS MIGHT TAKE IN CONNECTION WITH, OR IN RELIANCE UPON, THE TRANSMISSION OR RECEIPT OF ANY MESSAGE USING THE SOFTWARE. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

16. RESERVED.

17. U.S. GOVERNMENT. The Software is commercial computer software developed solely at private expense. The rights of civilian and non-civilian agencies of the U.S. Government to use, disclose and reproduce the Software are governed by the terms of this Agreement. Publisher is GlobalSCAPE Inc., 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249, USA.

18. RESERVED.

Exhibit 1 – Client Support Services Maintenance and Support Guide Meeting Client Needs
Our Client Support Services team is committed to helping you, our trusted partner, be successful! To this end, Globalscape offers world-class client support and product maintenance to help ensure that your Globalscape implementation is a success. We take pride in optimizing the business value of your security solution and realize that one size doesn’t always fit all. That’s why we’ve developed varying levels of technical support to ensure that you get the service your business deserves.

Online services include product updates, user guides, a knowledgebase, online help files, printable documentation, a user community discussion forum, and more. In addition to our self-service resources that are available to all customers at the Globalscape website, we offer two Maintenance and Support plans: a Standard Plan and a Platinum Plan. Both plans include the same level of software maintenance protection. The Platinum Maintenance and Support plan provides you with emergency support anytime, 24 hours per day, seven days per week from your assigned support technicians. As part of this commitment, our maintenance and support program includes the following:

World Wide Web Support
Take advantage of the easy-to-use, 24-hour support resources that are available on the Globalscape Support Center Web site at http://support.globalscape.com. Online services include product updates/ notifications, user’s guides, a knowledge base, online help files, printable documentation, a user community discussion forum and more.

Email Support
Submit your request via our online submission form available on the Globalscape Support Center Web site at http://www.globalscape.com/support/techsupport.aspx and receive an answer via email or telephone. Our response will include a ticket number and the name of the assigned support professional.

Telephone Support
Standard Support Plan members can call us at 1-210-366-3993, Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time) for help with any product-related issue.
Additionally, Platinum Support Plan members can receive emergency after-hours technical support 24 hours per day, seven days per week. After hours Platinum Support services are available only via a special telephone number that will be provided when you purchase a Platinum Support Plan.
Maintenance and Support Plans
Included with your active support plan is software maintenance, which provides all major upgrades and minor updates that are publicly released during the term of the agreement at no additional charge. Free upgrades must be requested or obtained while the maintenance and support plan remains in force.

Globalscape offers both Standard and Platinum Support plans for our enterprise software solutions. Both plans include the same level of software maintenance protection. A Platinum Maintenance and Support plan provides you with emergency access to our support professionals anytime, 24 hours per day, seven days per week.

Plan Details

<table>
<thead>
<tr>
<th>Plan Benefits</th>
<th>Standard Plan</th>
<th>Platinum Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority Telephone Support</td>
<td>Regular business hours</td>
<td>24h/7d*</td>
</tr>
<tr>
<td>Minimum Term</td>
<td>12 Months</td>
<td>12 Months</td>
</tr>
<tr>
<td>Priority Email Technical Support†</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Access to the User Discussion Forum</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Access to Online Self-Help Resources</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Software Upgrades and Updates</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

†Email technical support is available through our online submission form.

Business Hours
Our regular business hours are Monday through Friday from 8:00 A.M. to 6:00 P.M. (Central Time). Platinum support plan members can call the Platinum Support Line anytime, 24 hours per day, seven days per week*.

*Routine requests are handled during normal business hours. Priority service for production system emergencies is available at any time.

†Email technical support is available through our online submission form.

Contacting Technical Support

<table>
<thead>
<tr>
<th>Type of Contact</th>
<th>Address or Number</th>
<th>Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Technical Support Line</td>
<td>1-210-366-3993</td>
<td>8:00am to 6:00pm M–F</td>
</tr>
<tr>
<td>Platinum Technical Support Line (Provided with Platinum Plan)</td>
<td></td>
<td>Anytime</td>
</tr>
<tr>
<td>Priority Email Technical Support</td>
<td><a href="http://www.globalscape.com/support/techsupport.aspx">http://www.globalscape.com/support/techsupport.aspx</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Online Support Center / Software Upgrades and Updates</td>
<td><a href="http://www.globalscape.com/support/">http://www.globalscape.com/support/</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Serial Number Assistance</td>
<td><a href="http://www.globalscape.com/support/serial.aspx">http://www.globalscape.com/support/serial.aspx</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>Knowledge Base</td>
<td><a href="http://kb.globalscape.com">http://kb.globalscape.com</a></td>
<td>Anytime</td>
</tr>
<tr>
<td>User Discussion Forum</td>
<td><a href="http://forums.globalscape.com">http://forums.globalscape.com</a></td>
<td>Anytime</td>
</tr>
</tbody>
</table>

Troubleshooting and Diagnostics
When contacting the Globalscape Technical Support team, it is important to provide as much detail as possible about the problem. Please gather as much diagnostic and logging information as possible to help us in our diagnosis of the issue. Be prepared to provide us with relevant error logs or messages including server log files, screen shots, and event log reports. At a minimum, please gather the following details. If you are submitting an inquiry via our online submission form, please provide these details with your submission:

- Your name and company name
- Your telephone number and email address
- The name of the program and complete version information (From Help > About)
- Product serial number (From Help > About or Platinum Support Plan membership card)
- Your operating system and specific version information
- A complete description of the problem including:
  - All of the steps necessary to reproduce the problem
  - A description of the environment and the network; useful information includes the data flow, Java runtime version, and database versions

Generally, service tickets are not closed until you and the Globalscape Support Professional both agree that the issue has been satisfactorily resolved. However, Globalscape support may close a service ticket
if you have not provided requested information within a reasonable period.

Your Responsibilities

During the course of an issue’s diagnosis and resolution, we ask you to respond to all technical information requests as quickly as possible so that our Technical Support team can resolve your case in a timely manner.

<table>
<thead>
<tr>
<th>Level of Severity</th>
<th>After-hours Acknowledgement</th>
<th>Target Initial Response Time</th>
<th>Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production system outage</td>
<td>Standard Plan - Not Applicable</td>
<td>Standard Plan - Same Business Day</td>
<td>• Satisfactory workaround is provided</td>
</tr>
<tr>
<td>Product unusable, complete disruption of work, critical business impact. No workaround immediately available.</td>
<td>Platinum Plan - One Hour</td>
<td>Platinum Plan - Two Hours</td>
<td>• Product patch is provided</td>
</tr>
<tr>
<td>Major feature or function failure</td>
<td>Standard Plan - Not Applicable</td>
<td>Standard Plan - One Business Day</td>
<td>• Fix incorporated into future release</td>
</tr>
<tr>
<td>Operations are severely restricted, but a workaround is available.</td>
<td>Platinum Plan - One Hour</td>
<td>Platinum Plan - 12 Hours</td>
<td>• Fix or workaround incorporated into knowledge base</td>
</tr>
<tr>
<td>Minor feature or function failure</td>
<td>Standard Plan - Not Applicable</td>
<td>Standard Plan - Three Business Days</td>
<td>• Answer to question is provided</td>
</tr>
<tr>
<td>General usage questions. Product not working as designed. Minor usage impact; acceptable workaround deployed. Documentation, general information, or enhancement requested.</td>
<td>Platinum Plan - One Hour</td>
<td>Platinum Plan - One Business Day</td>
<td>• Satisfactory workaround provided</td>
</tr>
</tbody>
</table>

1. After-Hours Acknowledgement: An initial call back to acknowledge our receipt of the issue and to determine the level of severity. The acknowledgement may be combined with the Initial Response.
2. Target Initial Response Time: Globalscape uses commercially reasonable efforts to respond within the target response time but cannot guarantee response times.
3. Resolution: A satisfactory resolution may not be immediately available or provided with the initial response, in which case Globalscape will use commercially reasonable means and effort to provide a resolution within a reasonable period.

Issue Escalation

Our support professionals follow predefined processes to gather information for identification and resolution of issues. For some issues, our support professionals may need to escalate the issue to software development in order to resolve it.

The escalation process allows for wider review of the issue, including technical and management directives for applying additional resources to the problem, and increased levels of communication between your organization and Globalscape.

If at any time you are not satisfied with the level of support that is being provided to you, we encourage you to bring this to the attention of Globalscape’s management staff. Please contact one of the Globalscapes Support managers listed below. At our discretion, we may assign an account manager, product manager, or problem resolution team to focus on your issue.

| Director, EFT Product Support | Amit Patel | 1-210-293-7909 | apatel@globalscape.com |
| Senior Director, Client Support Services | Jason Reams | 1-210-308-8267 | jreams@globalscape.com |

Scope of Technical Support

While we are happy to support your use of our products, and will help in overcoming any difficulties you may encounter, there are certain limitations to the technical support that we can provide.
Technical Support is limited to the reporting and correction of product defects and installation and configuration assistance.

- Technical Support does not include support for problems related to the failure of your system, network, or environment to comply with the system requirements for the software.
- Technical Support does not include support for development or consulting issues such as COM or other programmatic development. This includes HTML development and custom script creation.
- While we constantly strive to assist in any way we can, there can be situations that are outside our control. Technical support does not include support for any other issues not directly related to the workings of our software.

- Technical support is offered for recent versions of Globalscape software only. Technical support for older versions is available only through our online self-help resources. It is always recommended that you begin by examining the program help files, knowledgebase articles, and user forums if you are interested in customizing your environment or software beyond the availability of technical support options. You can also engage the services of our Professional Services team, described on our website at http://www.globalscape.com/services/pro-services.aspx.

Globalscape End of Life (EOL) and Support Life Policy

Rapidly changing technologies as well as competitive pressures influence the level, timing, and nature of demand for a particular product or group of products. These factors drive the need to introduce new products and services and to actively plan for end-of-life for older software versions as well as specific product lines. With that in mind, we have provided the Globalscape end-of-life (EOL) policy to help customers better manage their end-of-life transition and to understand the role that Globalscape can play in helping to migrate to alternative Globalscape technologies. A copy of the policy can be provided upon request.

Support Agreement

The technical support services described in this Guide are provided pursuant to the terms of the License Agreement you entered into as a condition to the installation of the software indicated below.

Please complete the information below and fax or mail to:
GlobalSCAPE, Inc.
4500 Lockhill Selma Rd., Suite 150
San Antonio, Texas 78249-2073
Fax: 1-210-293-8003
1. **Scope.** This Rider and the attached **Gupta Technologies** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Software Maintenance Terms and Conditions") would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Gupta Technologies**

**1420 ROCKY RIDGE DRIVE, SUITE 380**

**ROSEVILLE, CA 95661**

**EC America Rider to Product Specific License Terms and Conditions**

(for U.S. Government End Users)

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

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1. DEFINITIONS

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

GUPTA TECHNOLOGIES

GUPTA TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS
“Application Solution” defined as the Application Solution developed by Ordering Activity with the Software.

b.) “Central Processing Unit (CPU)” defined as a computation hardware unit such as a microprocessor that serves as the main arithmetic and logic unit of the computer.

c.) “Developer Seat” defined as a single computer utilized by a single person at any one time to perform the tasks associated with the development of Application Solutions.

d.) “Deployment Software” defined as the Deployment Software specified in Exhibit A and licensed by payment of the proper License Fee.

e.) “Development Software” defined as the Development Software specified in Exhibit A and licensed by payment of the proper License Fee.

f.) “Services” defined as Unify provided Services for Support and Maintenance, Consulting and Training services.

g.) “Software” defined as the Development and Deployment Software, including User Documentation as defined in Exhibit A. Unify reserves the right to discontinue Software at its sole discretion. The Software is protected by applicable intellectual property laws including copyright laws and international treaties.

h.) “User Documentation” defined as the Unify user manual(s) and other materials on the proper installation and use of the Software, which is normally distributed with the Software.

2. LICENSE GRANT AND LIMITATIONS

License Grant. Pursuant to this Attachment A, Ordering Activity agrees to properly license and pay the appropriate License Fee for the Software (as set forth on Exhibit A and or the Contractor quote), and Contractor agrees to grant Ordering Activity a non-exclusive, non-transferable, non-assignable license to use the Development Software to design, develop, test and maintain the Application Solutions, and to use the Deployment Software to deploy the Application Solutions into a production environment subject to the conditions set forth in this Attachment A.

Limitations. All rights not expressly granted herein are reserved by Contractor and/or its licensors. Without limiting the generality of the preceding sentence, Ordering Activity agrees: (i) not to modify, port, translate, localize, or create derivative works of the Software; (ii) not to disassemble, decompile, reverse engineer or otherwise reduce the Software to human perceptible form, except as permitted by the 1991 EC Directive; (iii) not to remove, or allow to be removed, any Contractor or its Licensors copyright, trade secret, or other proprietary rights notice from any Software; (iv) not to make copies of the Software except for normal backup purposes; (v) not to transfer, assign, (except as permitted by Section 9.2) re-use or re-license the Software licenses to any third party without the prior written consent of Contractor; and (vi) not to use the Software to develop an Application Solution for re-sale or usage as an Application Service Provider or any other “access fee basis”.

3. GUPTA TECHNOLOGIES SERVICES

3.1 Ordering Activity will purchase Support and Maintenance Services for the first year from Contractor under the terms and conditions set forth in Exhibit B. All items (upgrades and updates) delivered by Contractor through Gupta Technologies shall be deemed to become a part of the applicable Software licensed hereunder and shall be subject to all terms and conditions of this Attachment A.

3.2 Ordering Activity may obtain Consulting Services from Contractor through Gupta Technologies under the terms and conditions as defined in Exhibit C. Ordering Activity may also participate in Gupta Technologies's standard training programs by contacting info@GuptaTechnologies.com.

4. TITLE

4.1 Title, ownership and all intellectual property rights in and to the Software belong exclusively to Gupta Technologies and its licensors (which licensors shall have third party beneficiary rights to the extent permitted by applicable law). This Attachment A grants Ordering Activity no additional express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Software or take any action that would cause the Software to be placed in the public domain.

5. LIMITED WARRANTIES

5.1 Contractor warrants that (i) it has full right to enter into and perform this Attachment A; (ii) to the best of Contractor’s knowledge, the Software does not violate any intellectual property rights of a third party under applicable patent or copyright laws; (iii) during the first sixty (60) days of normal use from the date Ordering Activity receives the Software from Contractor, the media will be free of defects in materials and workmanship and the Software will perform substantially in accordance with the Documentation or Contractor will replace the defective media without charge if returned to Contractor during this period; and (iv) Contractor warrants that it will perform the work associated with the Services in accordance with professional standards for similar work.

5.2 EXCEPT FOR THESE EXPRESS LIMITED WARRANTIES, ORDERING ACTIVITY ACCEPTS THE SOFTWARE AND SERVICES “AS IS”, WITH NO OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, OR IMPLIED BY STATUTE, COMMON LAW, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor has no control over the conditions under which Ordering Activity uses the Software and does not and cannot warrant the results obtained by such use. Additionally, Contractor makes no warranties that the Software will satisfy Ordering Activity’s data processing needs or function without interruption, errors or defects. Contractor makes no warranties regarding the applications developed with the Software or regarding Software which has been modified or altered by any party other than Contractor or to any problems caused by computer hardware or operating systems. The parties further agree that Contractor shall not be liable to Ordering Activity for any
delay or failure of Contractor to perform its obligations hereunder if such delay or failure arises from any cause beyond the reasonable control of Contractor, such as acts of God, delays or non-responsiveness of Ordering Activity, or the temporary unavailability of qualified personnel.

EXHIBIT A - Products licensed by this EULA

DEFINITIONS

“Developer Seat-based” is defined as requiring the Ordering Activity to purchase a license for each computer where the Software is installed and used by a Developer to develop the Application Solutions.

“CPU-based” is defined as requiring the Ordering Activity to purchase a license equal to or greater than the number of CPUs in the computer(s) where the deployed Application Solution, including the Software, is installed.

“User-based” is defined as any machine or device that executes, utilizes or displays the Software. User would include a server, client, or X-terminal as a hardware device or software emulator, batch processes, interactive users, and connecting devices.

SOFTWARE LICENSED:

<table>
<thead>
<tr>
<th>Product Licensed</th>
<th>License Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gupta Technologies Vision AppBuilder</td>
<td>1 User</td>
</tr>
<tr>
<td>Gupta Technologies Vision AppServer Desktop</td>
<td>1 User</td>
</tr>
<tr>
<td>Gupta Technologies Vision AppServer Enterprise</td>
<td>_CPUs</td>
</tr>
</tbody>
</table>

EXHIBIT B - Software Support & Maintenance Services Terms and Conditions

Contractor through Gupta Technologies is pleased to provide the Annual Software Support and Maintenance Services (the “Support Services”) to Ordering Activity. Gupta Technologies has developed multiple Support Service offerings to meet the individual needs of each of our valued customers. Gupta Technologies agrees to provide the Support Services pursuant to the Attachment A terms and conditions and the additional Support Services terms and conditions below:

Annual Software Support and Maintenance Service Programs.

1. Ordering Activity is required to purchase the first year of Support Services for the Software purchased.

2. All updates, patches, fixes and other error corrections pertaining to the Software provided to Ordering Activity shall become a part of the Gupta Technologies Software, which is licensed under the terms and conditions of the Attachment A.

EXHIBIT C - Consulting Services Terms and Conditions

1. Consulting Agreement Terms and Conditions

1.1 Pursuant to the Attachment A terms and conditions and the additional Consulting Services terms and conditions as follows, Contractor through Gupta Technologies agrees to provide, upon Ordering Activity’s request, the consulting services (“Assignments”) described on separately executed assignment orders (the "Assignment Orders").

2. Assignment(s) Scope and Changes

2.1 Each Assignment Order shall define a specific Assignment authorized by Ordering Activity, the Assignment schedule or term, the applicable rates and charges, and any other specific terms and conditions as required to complete the Assignment. Each Assignment Order shall be governed by the terms and conditions of this Exhibit C and only the terms or conditions set forth herein.

2.2 Contractor through Gupta Technologies reserves the right to select and assign personnel to each Assignment based on the skill classifications required and available personnel resources. Should an employee be unable to perform the required services because of reasons beyond Gupta Technologies’s reasonable control, Gupta Technologies will replace such person within a reasonable period of time. Gupta Technologies shall have the right to use third parties in performance of its obligations and services hereunder and for purposes of this Consulting Agreement all references to Gupta Technologies or its employees shall be deemed to include such third parties. Gupta Technologies shall insure that all such third parties shall execute confidentiality agreements as may be necessary to comply with Gupta Technologies’s obligations or confidentiality under any confidentiality agreements between the parties.

3. Ownership

3.1 All development tools, database management programs, programming languages, or programs provided by Contractor through Gupta Technologies which contain any of Gupta Technologies's proprietary program code or related documentation (the "Gupta Technologies Software") are not Works Made for Hire and shall belong exclusively to Gupta Technologies and no ownership rights thereto shall accrue in any manner to Ordering Activity. This Attachment A grants no express or implied license, right or interest in any copyright, patent, trade secret, trade name, trademark, invention or other intellectual property right of Gupta Technologies. Ordering Activity will not sell, assign, lease, transfer, encumber or allow any security interest on the Gupta Technologies Software or take any action that would cause the Gupta Technologies Software to be placed in the public domain. Ordering Activity shall not disassemble, decompile, reverse engineer or otherwise reduce the Gupta Technologies Software to human perceptible form.
3.2 Except as provided in 3.1 above, Contractor through Gupta Technologies agrees that all work undertaken by Gupta Technologies under this Attachment A or any Assignment Order (in whole or in part, either alone or jointly with others) shall be the sole property of Ordering Activity. Ordering Activity shall be the sole owner of all rights in connection therewith. Furthermore, except as provided in section 3.1 above, all works of authorship will be “works made for hire” to the extent allowed by law. Ordering Activity acknowledges that during the term of this Attachment A Gupta Technologies will be acting as a consultant to other entities and, providing Gupta Technologies does not violate these terms and conditions, Ordering Activity shall have no rights in any such work provided by Gupta Technologies to such entities.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached HackerOne Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. §1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.**Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a
Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

HACKERONE INC.

MANUFACTURER SPECIFIC TERMS (FOR U.S. GOVERNMENT END USERS)

These HackerOne Inc. (“HackerOne”) Manufacturer Specific Terms (these “Terms”) govern the use of HackerOne’s software as a service Solutions (the “Services”) by customers (“Customers” or “Ordering Activities”) purchasing the Services under EC America’s GSA MSA contract number GS-35F-0511T.

1. DEFINITIONS. The following capitalized terms used herein shall have the meanings given to them below:

A. “Affiliate” means any entity which controls, is controlled by or under common control with a party, where “control” means ownership or control, direct or indirect, of fifty percent (50%) or more of such entity’s voting capital, and any such entity shall be an affiliate of such party only as long as such ownership or control exists.

B. “Applicable Law” shall mean all laws (including the requirements of any government or regulatory authority) applicable to a party and/or the Services under these Terms for the time being in force in the relevant jurisdiction. These include but are not limited to anti-money laundering, anti-bribery, data privacy, export and intellectual property laws.

C. “Confidential Information” means any confidential or proprietary business or technical information about a party disclosed by it or its Affiliates or made available in connection with these Terms, whether disclosed in written, oral, electronic or visual form, which is identified as confidential at the time of disclosure or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including without limitation business, operations, finances, technologies, products and services, pricing, personnel, customer and suppliers, including the HackerOne Platform and the content of Finder Submissions. Confidential Information does not include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party; (iii) is already in the possession the receiving party at the time of disclosure by the disclosing party; (iv) is obtained by the receiving party from a third party without a breach of such third party’s obligations of confidentiality; or (v) is independently developed by the receiving party without use of the disclosing party’s Confidential Information.

D. “Customer Report” means a report or similar documentation made available by HackerOne to Customer through the HackerOne Platform or otherwise that summarizes or is based upon Finder Submissions, including, without limitation, penetration test reports, checklist reports, re-testing reports and similar documentation regarding Finder activities related to a Program.

E. “Feedback” means any feedback, comments or suggestions for improvements to the Services.

F. “Finder” means an individual or entity using the HackerOne Platform to provide Finder Submissions.

G. “Finder Submission” means documents and related materials evidencing a Finder’s activities related to a Program, including, without limitation, Vulnerability Reports.

H. “Finder Terms and Conditions” means the terms and conditions applicable to Finders at https://www.hackerone.com/terms/finder.

I. “HackerOne Aggregate Data” shall have the meaning set forth in Section 6(A) of these Terms.

J. “HackerOne Fees” shall have the meaning set forth in Section 4(A) of these Terms.

K. “HackerOne Platform” means the software-as-a-service platform offered by HackerOne.

L. “HackerOne Property” means any property of any kind, tangible or intangible, which is acquired, created, developed or licensed by HackerOne prior to or outside the scope of these Terms and any improvement or modification thereof and all intellectual property rights therein, including without limitation the HackerOne Platform and Services.

M. “HackerOne Site” means HackerOne or its Affiliate’s website located at hackerone.com and related domains and subdomains.

N. “Program” means the security initiative(s) for which Customer desires to receive Finder Submissions from Finders, which Customer posts to the HackerOne Platform.

O. “Program Materials” means the Program Policy, the description of the Program and any other materials made available by Customer to Finders in connection with a Program.

P. “Program Policy” means a Customer created description of the security-related and other services that Customer is seeking from Finders, which includes, among other things, the terms, conditions and requirements governing the Program to which the Finders must agree, and the Rewards (if applicable) that Customer may award to Finders who participate in the Program.

Q. “Reward(s)” means bounties, grants, pay for effort payments and other financial or non-financial rewards that are awarded to Finders participating in a Program.

R. “Services” means HackerOne’s software as a service solution made available by HackerOne to Customer through the HackerOne Platform together with any ancillary services purchased by Customer and as set forth in an Order Form. A general description of HackerOne’s SaaS solution and examples of such ancillary and related Services provided by HackerOne’s program operations and customer success teams or other HackerOne personnel or consultants is set forth in Exhibit A hereto.

S. “Vulnerability Reports” means bug reports or other vulnerability information, in text, graphics, image, software, works of authorship of any kind, and information or other material that Finders provide or otherwise make available through the HackerOne Platform to Customer resulting from participation in a Program.

2. HACKERONE PLATFORM AND SERVICES.
A. HackerOne Platform. Customer may access and use the HackerOne Platform solely for its own business purposes in order to connect with Finders and utilize the Services set forth in an Order Form. Among other things, Customer may create Programs and offer Rewards to Finders for Finder Submissions to such Programs. Finders can browse the Programs and contact Customer through the HackerOne Platform if Finders are interested in participating in such Programs and submitting Finder Submissions for the Programs on the terms described in Finder Terms and Conditions and/or the Program Policy. HackerOne may change all or any part of the HackerOne Platform or HackerOne Site provided that such change in compliance with the terms of these Terms and does not diminish the Services provided to Customer. Customer can submit Feedback regarding the HackerOne Platform and Services by emailing HackerOne at feedback@hackerone.com. By submitting any Feedback, Customer grants to HackerOne a worldwide, perpetual, irrevocable, non-exclusive, transferable, sublicensable, fully-paid and royalty-free license to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose. HackerOne acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

B. HackerOne Services. HackerOne will provide the Services purchased by Customer. The Services may contain links to third-party websites or resources. HackerOne provides these links only as a convenience and is not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. Customer acknowledges sole responsibility for and assumes all risk arising from Customer’s use of any third-party websites or resources. HackerOne may delegate certain rights and obligations relating to the performance of these Terms to its Affiliates, provided however, HackerOne shall be the sole responsible party for all obligations under these Terms and shall ensure the compliance of its Affiliates with these Terms.

C. Service Level Agreement. The HackerOne Service Level Agreement, a copy of which is attached as Exhibit B, will apply to HackerOne’s provision of the HackerOne Platform and the Services.

3. FINDERSUBMISSIONS AND FINDERS.
A. Unless otherwise expressly agreed to in writing by HackerOne, any use of or reliance on Finder Submissions that Customer receives is at Customer’s own risk. HackerOne does not endorse, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Finder Submission and HackerOne will not be liable for any errors or omissions in any Finder Submission, or any loss or damage of any kind incurred as a result of the use of any Finder Submission.

B. Unless otherwise expressly agreed to in writing by HackerOne, HackerOne does not endorse any Finders, or assume any liability for any damage or harm resulting from Customer’s communications or interactions with Finders or other HackerOne customers, either through the HackerOne Platform or Services or otherwise. Any reputation ranking or description of any Finder as part of the Services is not intended by HackerOne as an endorsement of any type. Any selection or use of any Finder is at Customer’s own risk.

C. Finders are not employees, contractors or agents of HackerOne, and are independent third parties who want to participate in Programs and connect with Customer through the Services. Unless otherwise expressly agreed to in writing by HackerOne, Customer agrees that any legal remedy that Customer seeks to obtain for actions or omissions of a Finder regarding Customer’s Program or Finder Submissions will be limited to a claim against the particular Finder. Any contract or other interaction between Customer and a Finder, including with respect to any Customer Program Policy, will be between Customer and the Finder. HackerOne is not a party to such contracts and disclaims all liability arising from or related to such contracts.

4. FEES.
A. Fees. Customer agrees to pay the GSA Schedule Contract holder on behalf of HackerOne all fees for HackerOne’s Services (collectively, “HackerOne Fees”) and any Reward prepayments listed in any applicable Order Form in accordance with the GSA Schedule Pricelist within thirty (30) days of receipt of HackerOne’s invoice unless otherwise stated on Order Form. HackerOne, or the GSA Schedule Contract Holder as applicable, will refund any unused Reward prepayments at the end of the term. Except for any amounts disputed in good faith, all undisputed past due amounts will incur interest at a rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

B. Taxes. HackerOne shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5. PROGRAMS AND PROGRAM MATERIALS.
A. HackerOne makes available through the HackerOne Platform both managed Programs, under which HackerOne is responsible for the management and the administration of Customer’s Programs with input and approval from Customer as mutually agreed throughout the Program, and Programs that are self-managed by Customers. If an Order Form does not specifically identify HackerOne as being responsible for the management and administration of Customer’s Programs, then Customer is solely responsible for the management and administration of Customer’s Programs through the Services. HackerOne’s Vulnerability Guidelines, the current version of which is attached hereto as Exhibit C and is available at https://www.hackerone.com/disclosure-guidelines, describes the default disclosure policy governing vulnerability reporting through the Services and will be applicable to the Services except to the extent Customer adopts its own Program Policy with respect to its Program. In the event of any conflict between Customer’s Program Policy and HackerOne’s Vulnerability Guidelines, Customer’s Program Policy shall prevail.

B. Where any Program is inactive or unattended by Customer, HackerOne shall have the right to remove or disable access to the relevant Program Material and/or pause Finder Submissions if Customer has not responded to HackerOne’s written notice (by email) requiring...
attention within ten (10) business days of such written notice.

C. While HackerOne may assist Customer in preparing Customer’s Program Material, Customer is solely responsible for Customer’s Program Material.
6. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES.
   A. HackerOne does not claim any ownership rights in any Program Material or Finder Submissions, and nothing in these Terms or otherwise will be deemed to restrict any rights that Customer may have to use and exploit Customer’s Program Material and Finder Submissions. Customer acknowledges and agrees that HackerOne may collect aggregated and anonymized statistical and other information from Finder Submissions and Customer’s use of the HackerOne Platform and Services (“HackerOne Aggregate Data”), which information will not identify particular customers, and may use such information for, among other things, reporting, research, improvements of the Platform and the Services, industry collaboration, and other reasonable business purposes. HackerOne and its licensors exclusively own all right, title and interest in and to the HackerOne Property.
   B. By making any Program Material available through the Services, Customer hereby grants to HackerOne a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use, copy, reproduce, display, modify, adapt, transmit and distribute copies of Customer’s Program Material for the sole purpose of providing the Services.
   C. HackerOne hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to access and view the content and other HackerOne Property that HackerOne makes available on the Services solely in connection with Customer’s permitted use of the HackerOne Platform and Services.
   D. HackerOne hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to access and view the Finder Submissions that are made available through the HackerOne Platform and the Services solely in connection with Customer’s permitted use of the HackerOne Platform and Services.
   E. Subject to HackerOne’s ownership of any HackerOne Property contained therein, Customer will own all right, title and interest to each Customer Report. HackerOne hereby grants Customer a non-exclusive, non-transferable, perpetual, worldwide license to access, use and reproduce any HackerOne Property included in each Customer Report.

7. CONFIDENTIALITY; PRIVACY; SECURITY. HackerOne understands that it may receive Confidential Information of Customer, and Customer understands that it may receive Confidential Information of HackerOne. Except as expressly provided in these Terms, the receiving party agrees not to divulge to any third person any Confidential Information of the disclosing party and not to use any Confidential Information of the disclosing party for any purpose not contemplated by these Terms, provided the parties acknowledge and agree that the anonymized HackerOne Aggregate Data is not Confidential Information. HackerOne’s Privacy Policy, the current version of which is attached hereto as Exhibit D and which is available at [https://www.hackerone.com/privacy], describes how HackerOne collects, uses and discloses information from HackerOne’s Customers and Finders and is applicable to the Services. HackerOne will provide the Services and the HackerOne Platform in accordance with HackerOne’s Data and Information Security Terms, the current version of which is attached as Exhibit E and is located at [https://www.hackerone.com/terms/security]. At Customer’s request, HackerOne will, on an annual basis, furnish to Customer the current version of any independent third-party attestation report related to the HackerOne Services and Platform.

8. WARRANTY; WARRANTY DISCLAIMER. HackerOne represents and warrants that the HackerOne Platform and the Services provided to Customer will be provided as described in the applicable Order Form, by qualified personnel in a professional manner, and will comply in all material respects with the documentation and content made available by HackerOne with respect thereto. In order to state a claim for breach of the foregoing warranty, Customer must provide notice of such non-compliance within the thirty (30) day period following such non-compliance specifying the details of such noncompliance. If Customer timely provides HackerOne with the required notice, as Customer’s sole and exclusive remedy, HackerOne shall re-perform such portion of the Services or otherwise use commercially reasonable efforts to correct any such non-compliance, at its expense, within thirty (30) days of its receipt of such notice. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED BY HACKERONE “AS IS,” WITHOUT WARRANTY OF ANY KIND. HACKERONE EXPLICITLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, CUSTOM OR USAGE OF TRADE. HackerOne makes no warranty that the Services will meet Customer’s specific requirements or be available on an uninterrupted, secure or error-free basis.

9. LIMITATION OF LIABILITY. NEITHER CUSTOMER NOR HACKERONE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL CUSTOMER’S OR HACKERONE’S TOTAL LIABILITY TO THE OTHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE TOTAL OF THE AMOUNTS PAID BY CUSTOMER TO HACKERONE FOR USE OF THE SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH
LIABILITY CANNOT BE EXCLUDED BY LAW.

10. **COMPLIANCE WITH LAWS.** Each party shall comply with all Applicable Laws in connection with the performance of its obligations and the exercise of its rights under these Terms.

11. **PUBLICITY.** Except for information that is already made public by Customer through the Customer’s Programs and Program Materials and except as may be required by law, neither party shall make any public announcement or conduct any advertising or public relations regarding these Terms unless mutually agreed by the parties. With the Customer’s prior written consent (which consent may be withdrawn at any time) and to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, HackerOne may refer to Customer as a customer on its website and utilize Customer’s logo for such purpose.

12. **TERM AND TERMINATION.** These Terms shall continue in effect for the subscription period of the Services purchased by the Customer. The Customer may terminate these Terms and the applicable subscription if HackerOne fails to cure a material breach of hereof or thereof within thirty (30) days after receiving written notice of the breach from the Customer. When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HackerOne shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon any termination or expiration of these Terms or the subscription period of the Services purchased, Customer shall be entitled to a refund of any unused Reward prepayment.

13. **GOVERNING LAW.** This Agreement and any action related thereto will be governed by the Federal laws of United States. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions contemplated by these Terms. The Uniform Computer Information Transactions Act (“UCITA”) will not apply to these Terms regardless of when and howsoever adopted, enacted and further amended under the governing state laws.

14. **GENERAL.** To the extent of any conflict between these Terms and any of the HackerOne policies or documents linked to or referenced in these Terms, the terms of these Terms shall govern and control. During the Term, HackerOne shall provide notice to Customer of any material changes to any such linked policies or documents and shall not alter any such policies or documents in any way that would derogate or degrade in any way the Services or modify any of its obligations to Customer hereunder. Any waiver, modification or amendment of any provision of these Terms will be effective only if in writing and signed by duly authorized representatives of both parties. Any terms and conditions contained in any Customer purchase order that are inconsistent with or in addition to the terms and conditions of these Terms will be deemed stricken from such purchase order, unless expressly agreed to in writing by HackerOne. If any provision of these Terms is held to be invalid, prohibited or otherwise unenforceable by legal authority of competent jurisdiction, the other provisions of the Agreement shall remain enforceable, and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Customer shall not use the Services, or any portion thereof, for the benefit of any third party or in any manner not permitted by these Terms. Any notices or other communications provided by HackerOne under these Terms will be given via email or by posting to the HackerOne Site.
Exhibit A

Services Description

HackerOne provides the HackerOne Platform that allows its customers to gain access to Finders and leverage the Finders to, among other things, find security vulnerabilities on the various systems or scope as set forth in the customer’s Program Policy or to perform such other tasks as may be set forth in the customer’s Program Policy or agreed to by the customer and the Finders. Finders are independent contractors, not HackerOne’s employees or consultants. Programs can be run in private mode where only invited Finders will be notified of the existence of such Program and are permitted to participate in the Program. Depending on the Services purchased from HackerOne, HackerOne may perform or assist in performing various vetting of the Finders before invitations are sent out to Finders for private Programs. The Programs can also be run in public mode, in which case all Finders on the HackerOne Platform are notified the existence of the Program, no specific invitation is needed, and any Finder who meets the condition set forth on the Program Policy will be eligible to participate in the Program. Finders do their tasks independently using their own systems and resources, and then use the HackerOne Platform to describe and submit Finder Submissions. Because Finders discover the vulnerability and create the Vulnerability Report, unless the customer’s Program Policy or the details of the specific Services provide otherwise, the intellectual property of the Vulnerability Report belongs to the submitting Finder. Typically, the Finder grants via Finder Terms and Conditions or the customer’s Program Policy the necessary license right, free of charge, to allow HackerOne and HackerOne’s customer to use the Finder Submissions via the HackerOne Platform, including use via the HackerOne API and integrations with third party tools. All Finders on the HackerOne Platform agree to the HackerOne Finder Terms and Conditions as well as the HackerOne Privacy Policy and the default Disclosure Guidelines when the Finder joins the HackerOne Platform. However, any customer can have its own Program Policy that may be different from or supplement the HackerOne’s default Disclosure Guideline and which may set any rules or requirements the customer desires to impose on Finders participating in its Program. When there is a difference between a customer’s Program Policy and the default Disclosure Policy or the Finder Terms and Conditions, the Program Policy will govern. HackerOne may also process Reward payments on behalf of a customer after a monetary Reward is awarded under a Program. When a Finder initially signs up on the HackerOne Platform, only username and email address are collected. When a Reward is awarded and before payment is processed by HackerOne, HackerOne first requires the Finder to fill out an appropriate tax form, which collects necessary personal data per IRS tax forms. HackerOne checks to make sure the tax form appears valid, and then uses the information from the tax form to perform an OFAC check. If the Finder fails the OFAC check, and payment preference and payment information are supplied, HackerOne will process the payment to the Finder according to the Finder designated payment preference. If the Finder fails the OFAC check, the customer is informed, and the customer and HackerOne will decide jointly the subsequent action to take.

If purchased by a customer, HackerOne may also provide report management/triage Services, in which HackerOne views the information contained in a Vulnerability Report and performs a series of activities, including attempting to reproduce and validate the vulnerability submitted by the Finder, communicating to Finders, and (if applicable) performing activities on the customer’s systems as part of reproducing and validating the vulnerability. HackerOne utilizes staff augmentation contractors to provide such Services. Each such contractor has agreed to confidentiality obligations at least as protective of the Vulnerability Report as HackerOne is subject to under these Terms and HackerOne remains fully liable for all acts or omissions of any such contractors in performing the report management/triage Services. By purchasing such Services, Customer consents to HackerOne’s access to and use of the Vulnerability Reports for the purpose of providing such Services and to the use of such staff augmentation contractors.
Exhibit B
Service Level Agreement

This is the Service Level Agreement (this “SLA”) by HackerOne for the HackerOne Platform and the associated Services HackerOne provides to its customers who pay for the HackerOne Platform and/or for the Services including all HackerOne Enterprise and Professional offerings. This SLA is not intended for customers who use the HackerOne Platform for free, nor for Finders.

1. **Service Level Agreement.** HackerOne commits to provide a level of service for the HackerOne Platform demonstrating:

1.1 **Platform Uptime.** The HackerOne Platform will be operational and available to customers 24 hours per day, 7 days per week at least 99.5% of the time in any calendar month, except for scheduled maintenance and upgrades, and excluding API interruptions or third party system interruptions. HackerOne shall provide at least 24 hours’ advance notice to Customer on scheduled maintenance in excess of 30 minutes. Notice will be delivered via electronic means including via the HackerOne Platform.

1.2 **Severity Levels and First Response Time.** HackerOne Platform software defects/errors will be classified by the reporting party in accordance with the following severity incident guidelines. HackerOne will respond to Customer and provide a First Response in accordance with the time requirements set forth in the table below. “First Response” means a written electronic response from HackerOne to the customer regarding a reported or discovered error acknowledging receipt. Response may be delivered via the HackerOne Platform.

<table>
<thead>
<tr>
<th>Incident Severity Level</th>
<th>Definition</th>
<th>SLA for Customers on Enterprise Product Edition</th>
<th>SLA for Customers on Professional Product Edition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>A critical problem with the HackerOne Platform software in which any of the following occur: the entire services are down, inoperable, inaccessible or unavailable, the entire services otherwise materially cease operation.</td>
<td>2 business hours</td>
<td>4 business hours</td>
</tr>
<tr>
<td>Severity 2</td>
<td>A problem with the HackerOne Platform software in which any of the following occur: the services are severely limited or degraded, major functions are not performing properly, the situation is causing a significant impact to certain portions users’ operations or productivity.</td>
<td>4 business hours</td>
<td>8 business hours (1 business day)</td>
</tr>
<tr>
<td>Severity 3</td>
<td>A problem with the HackerOne Platform software in which any of the following occur: the problem is an irritant, affects non-essential functions, has minor impact to business operations; the problem is localized or has isolated impact; the problem is an operational nuisance.</td>
<td>1 business days</td>
<td>3 business days</td>
</tr>
</tbody>
</table>

1.3 **Report Management/Triage Services SLA.** HackerOne provides report management, or triage, services for customers who have purchased such Services. Triage Services include validating the Vulnerability Reports submitted by Finders. HackerOne commits to the following First Response timelines for the triage Services it performs for its customers:

- Triage First Response to customers generally: 2 business days
- Triage First Response for Enterprise tier customers: 1 business day

2. **SLA Exclusions.** This SLA and any applicable Service Levels do not apply to any performance or availability issues:

(a) Due to factors outside HackerOne’s reasonable control;

(b) That resulted from the customer’s or a third party’s (not within HackerOne’s control) hardware or software;

(c) That resulted from actions or inactions of the customer (or the customer’s employees, agents, contractors, or vendors gaining access to HackerOne’s Service by means of the customer’s authorized users’ accounts or equipment) or third parties not within HackerOne’s control;

(d) Caused by the customer’s use of the Service after HackerOne advised the customer to modify its use of the Service, if the customer did not modify its use as advised; or
3. Service Credit Claims.

3.1 In the event HackerOne fails to deliver against the service levels as described above (an “Incident”), the sole and exclusive remedy for such failure shall be in the form of service credit to the customer. If the Service fails to meet the above service levels, a customer can file a claim to and will receive a service credit equal calculated in accordance with Section 4 of this SLA.

3.2 In order to be eligible to submit a claim for a service credit (a “Claim”) with respect to any Incident, the customer must first have notified HackerOne’s Customer Support of the Incident, using the procedures set by HackerOne, within five business days following the Incident.

3.3 To submit a Claim, the customer must submit, by the end of the calendar month following the month in which the Incident occurred, the Claim to claims@hackerone.com and provide to Customer Support all reasonable details regarding the Claim, including but not limited to, detailed descriptions of the Incident(s), the duration of the Incident, network traceroutes, the URL(s) affected and any attempts made by the customer to resolve the Incident.

3.4 HackerOne will use the information submitted and all information reasonably available to it to validate Claims and make a good faith judgment on whether a service credit is due with respect to such Claims.

4. Service Credits. Service credits are a customer’s sole and exclusive remedy for any violation of this SLA. Service credits are provided in the form of a no charge subscription extension and will only be calculated as set forth below.

<table>
<thead>
<tr>
<th>Outage in a Month (Minutes)</th>
<th>Service Credit in Subscription Extension</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 216 Minutes</td>
<td>0</td>
<td>This is for 99.5% platform uptime</td>
</tr>
<tr>
<td>217 – 500 Minutes</td>
<td>One week</td>
<td>Customer subscription will be extended by one week</td>
</tr>
<tr>
<td>500 – 1,000 Minutes</td>
<td>Two weeks</td>
<td>Customer subscription will be extended by two weeks</td>
</tr>
<tr>
<td>&gt;1,000 Minutes</td>
<td>Four weeks</td>
<td>Customer subscription will be extended by four weeks</td>
</tr>
</tbody>
</table>
Exhibit C
Current Version of Vulnerability Disclosure Guidelines

All technology contains bugs. If you've found a security vulnerability, we'd like to help out. By submitting a vulnerability to a program on HackerOne, or signing up as a Security Team, you acknowledge that you have read and agreed to these guidelines.

VULNERABILITY DISCLOSURE PHILOSOPHY

Finders should...

- **Respect the rules.** Operate within the rules set forth by the Security Team, or speak up if in strong disagreement with the rules.
- **Respect privacy.** Make a good faith effort not to access or destroy another user's data.
- **Be patient.** Make a good faith effort to clarify and support their reports upon request.
- **Do no harm.** Act for the common good through the prompt reporting of all found vulnerabilities. Never willfully exploit others without their permission.

Security Teams should...

- **Prioritize security.** Make a good faith effort to resolve reported security issues in a prompt and transparent manner.
- **Respect Finders.** Give finders public recognition for their contributions.
- **Reward research.** Financially incentivize security research when appropriate.
- **Do no harm.** Not take unreasonable punitive actions against finders, like making legal threats or referring matters to law enforcement.

Safe Harbor

We are committed to protecting the interests of Finders. However, vulnerability disclosure is an inherently murky process. The more closely a Finder's behavior matches these guidelines, the more we'll be able to protect you if a difficult disclosure situation escalates.

Submission Process

Security Teams will publish a program policy designed to guide security research into a particular service or product. You should always carefully review this program policy prior to submission as they will supersede these guidelines in the event of a conflict.

If you believe you have found a vulnerability, please submit a Report to the appropriate program on the HackerOne platform. The Report should include a detailed description of your discovery with clear, concise reproducible steps or a working proof-of-concept. If you don't explain the vulnerability in detail, there may be significant delays in the disclosure process, which is undesirable for everyone.

The Report will be updated with significant events, including when the vulnerability has been validated, when more information is needed from you, or when you have qualified for a bounty.

Vulnerability Disclosure Process

The contents of the Report will be made available to the Security Team immediately, and will initially remain non-public to allow the Security Team sufficient time to publish a remediation. After the Report has been closed, Public disclosure may be requested by either the Finder or the Security Team.

- **Default:** If neither party raises an objection, the contents of the Report will be made public within 30 days.
- **Mutual agreement:** We encourage the Finder and Security Team members to remain in open communication regarding disclosure timelines. If both parties are in agreement, the contents of the Report can be made public on a mutually agreed timeline.
- **Protective disclosure:** If the Security Team has evidence of active exploitation or imminent public harm, they may immediately provide remediation details to the public so that users can take protective action.
- **Extension:** Due to complexity and other factors, some vulnerabilities will require longer than the default 30 days to remediate. In these cases, the Report may remain non-public to ensure the Security Team has an adequate amount of time to address a security issue. We encourage Security Teams to remain in open communication with the Finder when these cases occur.
- **Last resort:** If 180 days have elapsed with the Security Team being unable or unwilling to provide a vulnerability disclosure timeline, the contents of the Report may be publicly disclosed by the Finder. We believe transparency is in the public's best interest in these extreme cases.

Private Program

Some Finders may receive invitations to private Programs. Your participation in a private Program is entirely optional and subject to strict non-disclosure by default. Prior to accepting an invitation to a private Program, Finders should carefully review any program policies and non-disclosure agreements required for participation. Finders that intend any form of public disclosure should not participate in private Programs.

HackerOne recommends two alternatives:

(a) Submit directly to the Security Team outside of the Program. In this situation, Finders are advised to exercise good judgement as any safe harbor afforded by the Program Policy may not be available.
(b) Utilize our disclosure assistance process.

**Public Recognition**

You may receive public recognition for your find if 1) you are the first person to file a Report for a particular vulnerability, 2) the vulnerability is confirmed to be a valid security issue, and 3) you have complied with these guidelines. If a Finder prefers to remain anonymous, we encourage them to submit under a pseudonym.

**Bug Bounty**

Some Security Teams may offer monetary rewards for vulnerability disclosure. Not all Security Teams offer monetary rewards, and the decision to grant a reward is entirely at their discretion. The amount of each bounty payment will be determined by the Security Team. Bounty payments are subject to the following eligibility requirements:

- Because we're based in the United States, we aren't able to pay bounties to residents or those who report vulnerabilities from a country against which the United States has trade restrictions or export sanctions as determined by the U.S. Office of Foreign Assets Control (OFAC).
- Minors are welcome to participate in the program. However, the Children's Online Privacy Protection Act restricts our ability to collect personal information from children under 13, so you will need to claim your bounties through your parent or legal guardian if you are 12 or younger.
- All payments will be made in U.S. dollars (USD) and will comply with local laws, regulations and ethics rules. You are responsible for the tax consequences of any bounty you receive, as determined by the laws of your country.
- It is your sole responsibility to comply with any policies your employer may have that would affect your eligibility to participate in this bounty program.

**Definitions**

**Security Team:** A team of individuals who are responsible for addressing security issues found in a product or service. Depending on the circumstances, this might be a formal security team from an organization, a group of volunteers on an open source project, or an independent panel of volunteers (such as the Internet Bug Bounty).

**Finder:** Also known as hackers. Anyone who has investigated a potential security issue in some form of technology, including academic security researchers, software engineers, system administrators, and even casual technologists.

**Report:** A Finder's description of a potential security vulnerability in a particular product or service. On HackerOne, Reports always start out as non-public submissions to the appropriate Security Team.

**Vulnerability:** A software bug that would allow an attacker to perform an action in violation of an expressed security policy. A bug that enables escalated access or privilege is a vulnerability. Design flaws and failures to adhere to security best practices may qualify as vulnerabilities. Weaknesses exploited by viruses, malicious code, and social engineering are not considered vulnerabilities unless the Security Team says otherwise in the program's policy.

**Programs:** Security Teams may publish a Program and Program Policy designed to guide security research into a particular service or product. If this program is private, your participation is entirely optional and subject to non-disclosure by default.

**Contact**

HackerOne is always open to feedback, questions, and suggestions. If you would like to talk to us, please feel free to email us at support@hackerone.com or follow us on Twitter @hacker0x01.

**Changes to These Guidelines**

We may revise these guidelines from time to time. The current version is 1.2, updated on July 29, 2019 will always be at [https://www.hackerone.com/disclosure-guidelines](https://www.hackerone.com/disclosure-guidelines). If we make changes that we believe will substantially alter your rights, we will email you and prominently display a notice on our site 7 days before we make those changes.
Effective as of April 12, 2021, HackerOne Inc. and its affiliates (collectively, "HackerOne", "we", "us", or "our") have updated our Privacy Policy.

Your data is just that, YOUR data. HackerOne is committed to ensuring the privacy of your data. We are further committed to preventing unauthorized access to that data. Our Privacy Policy details what data is collected from our Customers and Finders, how we use it, and how it is stored.

1. WHO WE ARE
HackerOne is an industry leader in hacker-powered security. HackerOne partners with the global security researcher community, which may be referred to as hackers or Finders (we will use the term Finder(s) for the purposes of our Privacy Policy), to provide businesses with access to top talent Finders who identify and surface relevant security issues in a business's products or services. HackerOne operates a bug bounty & vulnerability disclosure software-as-a-service platform known as the HackerOne Platform, the website located at hackerone.com and related domains and subdomains, and related services, including live hacking events, marketing, and customer service and ancillary support services (collectively referred to as "Services"). HackerOne is a Delaware corporation headquartered in San Francisco, California with offices currently in London and the Netherlands.

We respect your privacy and take safeguarding your data seriously. Please read this Privacy Policy carefully together with the General Terms and Conditions ("Terms") available at https://www.hackerone.com/terms/general, which governs your use of the Services, to understand what Personal Information (defined below) we collect from you, how we use it, and your choices related to our use of your Personal Information. By using the Services, you acknowledge our collection, use, disclosure, and retention of your personal information as described in the Privacy Policy. If you do not agree with the terms of this Policy, please do not use the Services.

2. WHAT IS PERSONAL INFORMATION?
"Personal Information" means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person. Under specific laws, Personal Information may include any information relating to a household.

3. WHERE IS (YOUR) INFORMATION STORED?
As a global company we understand that there are many different privacy and data protection laws where our Customers and Finders are based. We know and understand the value of your information. We will take all reasonable steps to ensure that your Personal Information is treated securely and in accordance with the laws and regulations relevant to where you are located.

We are a company headquartered in California and so, our Sites and Servers are hosted here in the United States. Therefore, the Personal Information that we collect from you will be received, transferred and/or stored in the United States.

If you are located outside the United States, please see our section on International Data Transfer below.

4. PERSONAL INFORMATION WE PROCESS
We process Personal Information that you actively submit to us, that we automatically collect through your use of our Services, and that we collect from third-parties for the following reasons We may, when securing our website and Services, collect details about your device, your computer's internet protocol (IP addresses) and other technical information, through our data security and firewall providers and/or when marketing our Services, we may collect identity and contact data from publicly available sources. For compliance with applicable laws (including but not limited to anti-money laundering and financing laws and regulations), we may through third parties who use verification providers or due diligence, and screening information providers identify and surface relevant security issues in a business's products or services. HackerOne operates a bug bounty & vulnerability disclosure software-as-a-service platform known as the HackerOne Platform, the website located at hackerone.com and related domains and subdomains, and related services, including live hacking events, marketing, and customer service and ancillary support services (collectively referred to as "Services").

We DO NOT sell the Personal Information we collect to other parties.

4.1 Personal Information that you actively submit to us.
We collect Personal Information that you actively submit to us through your account, website forms, email subscriptions, surveys, events, conferences, customer service and ancillary support services, inquiries, and other interactions. You will normally know when we collect your Personal Information because we will directly ask you for the information. Examples are provided below. We will require certain Personal Information in order for you to use our Services or for us to be able to contact you. There may also be circumstances where providing Personal Information is optional and does not impact your access to Services.

4.1.1 Your Account. Whether you are a Customer or a Finder (or both), when you create a HackerOne account, you are required to provide us with profile information, including your email address and password. HackerOne stores this information to help identify you when you log in. Once you've registered, you create a user profile. Your profile information includes your name (if you choose to provide it), chosen username, company name (if applicable), and if you choose, a profile photo, your location, your social media and other third-party affiliations, and any other information you include in the "About me" or "Intro" fields. We may display your profile information on our site where other users of the Services and visitors to
our website will be able to see that information. If you enable two-factor authentication, we will store a phone number used for account recovery purposes.

If you are a Customer, in addition to your profile information, you may provide us with financial information, such as your credit card or debit card information or your banking information, in order to assist us in awarding bounties, collecting bounty deposits, or collecting HackerOne fees.

If you are a Finder, in addition to your profile information, you may need to provide us with other personally identifying information necessary for background and fraud checking purposes where required. This includes your date of birth, nationality, current and previous addresses, your social security number (or tax identification number), and for Reward purposes, your banking, Coinbase, PayPal, or similar information in order to allow us to pay you monetary Rewards from Customers. In addition, in order that we can award any "swag" where available, we may ask for information such as a mailing address, telephone number, and clothing size. In addition to Personal Information we collect, your profile may be publicly associated with any vulnerability reports or other content that you submit, in the event these are published on the Services.

4.1.2 Events. We host events to bring together industry professionals in a casual setting. We also host live hacking events where top Finders from all over the globe join together to find vulnerabilities on HackerOne Customer programs. To register in advance for these events, we may collect your first name, last name, email address, company name (if applicable), job title (if applicable), and give you an option to provide us a website reference.

4.1.3 Email Subscriptions. We actively communicate with subscribers through newsletters, webinars, and education content, and also send emails about product updates, events, the status of the HackerOne Platform, and updates to the third-party service providers (sub-processors) used to process Personal Information. A subscriber may be required to provide their email address and other contact information to receive communications.

4.1.4 Text Subscriptions. We may communicate with subscribers through text messages concerning the status of the HackerOne Platform. A subscriber is required to provide their phone number to receive texts.

4.1.5 Recruitment. We are always looking out for new employees. So should you decide to apply to us (or a partner recruitment provider or service) for a role, we will collect the information contained in your resume/cv, (information such as where you went to school or previous employment) along with any other relevant information you choose to provide to us.

4.1.6 Surveys. We occasionally conduct surveys in order to gather data central to assessing our business objectives and understanding the Finder community. Participation in surveys is always optional. Information provided in surveys is anonymized and aggregated for analysis.

4.1.7 Contact Us. There are multiple opportunities for you to contact us, including for support, to report a bug, make a suggestion, make a sales inquiry, request a product demonstration, request research, and for customer service and ancillary support services. Online forms collect Personal Information such as a first name, last name, email address, company (if applicable), job title (if applicable), reason for contact, and may provide an option to attach a file. When we contact you in response to your request, we may collect additional Personal Information.

4.2 Personal Information we automatically collect through your use of the Services. We receive some Personal Information automatically when you visit HackerOne Services. This includes information about the device, browser, and operating system you use when accessing our site and Services, your IP address, the website that referred you, which pages you request and visit, and the date and time of each request you make. If you visit the HackerOne Platform when you are logged into your account, we also collect the user identification number we assign you when you open your account.

4.3 Personal Information we collect from third-party sources. We are continually expanding our Customer reach. As part of our business-to-business marketing, we collect Personal Information from third-party sources to identify individuals who hold relevant job roles in key industries. Personal Information collected generally includes a first name, last name, job title, company name, email address, and phone number. We generally communicate via email or telephone to provide information about HackerOne programs and offer businesses an opportunity to try out HackerOne Services.

4.4 Personal Information of minors. We welcome all Finders to register a HackerOne account as a Finder, participate in our programs, and submit reports to HackerOne. We believe that skilled Finders are not determined by age. However, applicable laws may restrict our ability to collect Personal Information from minors unless we have first obtained the consent of the minor's parent or guardian. Please note that the definition of a minor varies by jurisdiction and various laws institute age related requirements. If you are considered a minor and wish to submit a vulnerability report to us, please ask your parent or guardian to submit it for you. Please note that in addition, any Reward payments that may apply are only issued to an adult. HackerOne does not otherwise knowingly collect Personal Information of minors, and the HackerOne Services are not directed to minors. If we become aware that we have collected Personal Information from a minor in conflict with applicable law, we will delete that information or obtain the requisite consent from the minor's parent or guardian.

4.5 Personal Information we collect using cookies and similar tracking technologies. We (and the third-party service providers working on our behalf) use various technologies to collect Personal Information. This may include saving cookies to your device, using pixels and similar technologies. For information on what cookies and pixels are, which ones we use, why we use them, and how you can manage their use, please see our Cookies Policy, which provides more information about how and why we or our commercial partners may process certain personal data relating to you, and should be read in conjunction with this privacy policy.

5. HOW WE USE YOUR PERSONAL INFORMATION

We use your Personal Information to operate our Services, fulfill our contractual obligations in our contracts with Customers and Finders or take steps preparatory to entering into those contracts, to review and enforce compliance with our Terms, guidelines, and policies, to analyze the use of the Services in order to understand how we can improve our content and service offerings and products, and for administrative and other business purposes. We process Personal Information for sales leads, subscription services, payments, employee training, marketing, data analysis, security monitoring, auditing,
research, and to comply with applicable laws, to exercise legal rights, and meet tax and other regulatory requirements.

In this context, the legal basis for our processing of your Personal Information is either the necessity to perform or enter into contractual and other obligations, our legitimate business interests as a provider of security services (and the other legitimate interests described above), compliance with legal and regulatory requirements, or in some instances your consent.

6. SHARING OF PERSONAL INFORMATION

WE DO NOT SELL YOUR PERSONAL INFORMATION!

We may share your Personal Information in the following circumstances:

6.1 Third-party Service Providers.

We may share information we collect about you with third-party service providers to perform tasks on our behalf in supporting the Services. The types of service providers, or sub-processors, to whom we entrust Personal Information include: (i) payment providers; (ii) providers of hosting services; (iii) sales and marketing providers; (iv) providers of document and content management tools; (iv) providers of analytic data services; and (v) other services such as system support, subscription services, verification, and ticketing.

6.2 Customers.

For Finders who participate in certain Customer programs, to the extent described in the policies of such Customer programs, HackerOne may share contact information about those Finders (for example, name, company name (if applicable), and email address) to allow those Customers to contact those Finders to allow them to interact directly or as otherwise authorized by the Finder with respect to the specific Customer program or service. For Finders who choose to submit a vulnerability report directly to a Customer outside the HackerOne Platform, HackerOne may provide that Customer with a reference to your public profile information. In the event of a serious security concern, HackerOne may determine, in its sole discretion, that Personal Information will be shared with a Customer to identify and resolve the security concern.

6.3 Regulatory Bodies, Public Authorities, and Law Enforcement.

We may access and disclose your Personal Information to regulatory bodies if required under applicable law or regulation. This may include submitting Personal Information required by tax authorities. We may disclose your Personal Information in response to lawful requests by public authorities or law enforcement, including to meet national security or law enforcement requirements. If we are going to release your Personal Information in this instance, our policy is to provide you with notice unless we are prohibited from doing so by law or court order (including ordersunder 18 U.S.C. § 2705(b)).

6.4 Merger, Sale, or Other Asset Transfers.

If we are involved in a merger, acquisition, financing due diligence, reorganization, bankruptcy, receivership, sale of company assets, or transition of service to another provider, then your Personal Information may be disclosed or transferred as part of such a transaction as permitted by law and/or contract. Should such an event occur, HackerOne will endeavor to direct the transferee to use Personal Information in a manner that is consistent with the Privacy Policy in effect at the time such Personal Information was collected.

6.5 Other Disclosures.

Where there is agreement by Customers and Finders that Finder Submissions are publicly disclosed, then certain information about the submission associated with your profile may be published through our Services. We may share Personal Information with our affiliated companies. We may also disclose your Personal Information to exercise or defend legal rights; to take precautions against liability; to protect the rights, property, or safety of HackerOne, other users of our Services, of any other individuals, or of the general public; to maintain and protect the security and integrity of our Services or infrastructure; to protect HackerOne and our Services from fraudulent, abusive, or unlawful uses; or to investigate and defend HackerOne against third-party claims or allegations. Disclosures may be made to courts of law, attorneys and law enforcement, or other relevant third parties in order to meet these purposes.

Please note that we share aggregated information and non-identifying information with third parties for industry research and analysis, demographic profiling, and other similar purposes. In addition, our Services may contain links to other websites not controlled by us, and these other websites may reference or link to our Services; we encourage you to read the privacy policies applicable to these other websites.

5.6 California Consumer Privacy Act of 2018 ("CCPA”).

Pursuant to §§ 1798.110 and 1798.115 of the CCPA, the categories of Personal Information we have collected about consumers and disclosed about consumers for a business purpose in the preceding 12 months are:

- Identifiers such as a real name, alias, postal address, email address, unique personal or online identifier, Internet Protocol address, account name, SSN, driver's license or passport number, or other similar identifiers;
- Other information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including signature, bank account number, credit card number, debit card number, or any other financial information;
- Commercial information, including products or services purchased, obtained, or considered; other purchasing or consuming histories or tendencies;
- Internet or other electronic network activity information, including, browsing history, search history, and information regarding a consumer's interaction with an internet website, or advertisement;
- Professional or employment-related information; and
- Inferences drawn from any of the information identified to create a profile about a consumer reflecting the consumer's preferences,
intelligence, abilities, and aptitudes (applies only to Finders who have registered an account and participate in programs and subsequent skill ratings).

7. RETENTION OF PERSONAL INFORMATION
HackerOne retains Personal Information for a reasonable time period to fulfill the processing purposes mentioned above. Personal Information is then archived for time periods required or necessitated by legal or regulatory considerations. When archival is no longer required, Personal Information is deleted from our records.

You may choose to disable your HackerOne account at any time. This means your user profile will no longer be visible on the Services. However, for the purposes mentioned above, we may need to retain information within our internal systems. In addition, public vulnerability reports and associated information that you have submitted will still be available on the Services.

We retain Personal Information that we are required to retain to meet our regulatory obligations including tax records and transaction history. We regularly review our retention policies to ensure compliance with our obligations under data protection laws and other regulatory requirements. We regularly audit our databases and archived information to ensure that Personal Information is only stored and archived in alignment with our retention policies.

8. PROTECTION OF PERSONAL INFORMATION
HackerOne uses technical and organizational measures to protect the Personal Information that we store, transmit, or otherwise process, against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. We regularly consider appropriate new security technology and methods as we maintain and develop our software and systems.

However, you should keep in mind that the Services are run on software, hardware, and networks, any component of which may, from time to time, require maintenance or experience problems or breaches of security beyond our control. Please also be aware that despite our best efforts to ensure the security of your data, we cannot guarantee that your information will be 100% secure.

Please recognize that protecting your Personal Information is also your responsibility. We urge you to take every precaution to protect your information when you are on the Internet, such as using a strong password, keeping your password secret, and using two-factor authentication. If you have reason to believe that the security of your account might have been compromised (for example, your password has been leaked), or if you suspect someone else is using your account, please let us know immediately.

9. INTERNATIONAL DATA TRANSFER
If you are located outside the United States and choose to provide your Personal Information to us, we will transfer your Personal Information to (or receive it in) the United States and process it there. Your Personal Information may be transferred to, and maintained on, computers located outside of your state, province, country, or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction.

Whenever we transfer your Personal Information, we will take all reasonable steps to ensure that your privacy rights continue to be protected. Wherever you are based, we are responsible for the processing of your Personal Information, including any subsequent transfers to third parties.

9.1 EU - US Data Transfers
If HackerOne transfers Personal Information to a jurisdiction (or to a third party in a jurisdiction) for which the European Commission, Switzerland or the UK (as applicable) has not issued an adequacy decision, HackerOne will implement appropriate technical and security safeguards as required, including Standard Contractual Clauses (see below) approved by competent authorities, to transfer Personal Data in accordance with data protection and privacy laws, either internally between our group entities, or between us and our Finders and Customers (such as where we process personal data on their behalf).

9.2 Standard Contractual Clauses
In order to comply with the transfer of data rules between the US and the UK, Switzerland or EU we offer Standard Contractual Clauses (sometimes referred to as EU Model Clauses). Standard Contractual Clauses are contractual clauses designed to ensure HackerOne meets the legal and regulatory requirements for Customers and Finders using the Services in the European Economic Area (“EEA”), Switzerland and the UK. A copy of our standard Data Processing Agreement which incorporates the Standard Contractual Clause is available here.

Much like our Privacy Policy, should you or others (on whose behalf you lawfully share Personal Information) be located in the EEA, Switzerland or the UK and use the Services, all parties will be deemed to have accepted these Standard Contractual Clauses. HackerOne is committed to safeguarding Personal Information and will always undertake to meet the approved safeguards and findings of adequacies, under all applicable data protection and privacy laws. Please let us know if you would like more information about the measures we have in place.

10. PRIVACY RIGHTS
Subject to where you are based you may have rights under data protection and privacy laws, including but not limited to the CCPA and the EU General Data Protection Regulation (“GDPR”). Under these laws, individuals have the right to access Personal Information and to correct, amend, restrict, or delete that information where it is inaccurate, or has been processed in violation of your rights, except in some cases where their request is manifestly unfounded or excessive, or where certain other circumstances apply, for example where the rights of persons other than the individual will be violated.

If you have a HackerOne account, we rely upon you to keep your information up to date. You may edit your profile information and may also choose to disable your HackerOne account at any time through your account settings. For subscription services, such as newsletters, webinars, events, and the like,
we offer you the ability to manage your preferences and choose whether to receive email communication for each service. To manage your preferences, please visit the Email Subscription Preference Center at https://ma.hacker.one/SubscriptionManagement.html. Where you are receiving communication from us of a marketing nature, we provide the ability for you to unsubscribe directly from the email.

Where we rely upon consent as a legal basis for processing, you may withdraw your consent at any time. Please note the withdrawal of your consent does not affect the lawfulness of processing based on consent before withdrawal.

Individuals in the many territories where we operate have certain rights that may be subject to limitations and/or restrictions. These include but are not limited to, the right to: (i) request access to and rectification or erasure of their Personal Information; (ii) obtain restriction of processing or to object to processing of their Personal Information; and (iii) ask for a copy of their Personal Information to be provided to them, or a third party, in a digital format. If you wish to exercise one of the above-mentioned rights, please send us your request to the contact details set out below. Individuals also have the right to lodge a complaint about the processing of their Personal Information with their local data protection authority.

Personal Information subject rights under the CCPA may also apply to certain individuals and households. These rights include the right to: (i) know what Personal Information is being collected about them, (ii) know whether their Personal Information is sold or disclosed at to whom, (iii) say no to the sale of Personal information, (iv) access their Personal Information, and (v) equal service and price, even if they exercise their privacy rights.

10.1 Exercising your rights and Privacy Disputes
You may also contact us with your Personal Information inquiries or for assistance in modifying or updating your Personal Information and to exercise any additional applicable statutory rights. We respect the privacy of all individuals and invite you to submit your requests, irrespective of where you reside. Our contact details are provided at the end of this Privacy Policy.

11. CHANGES TO THIS POLICY
We may modify this Privacy Policy from time to time, which will be indicated by changing the date indicated at the top of this page. The most current version of the Privacy Policy will govern our use of your Personal Information and will always be at https://www.hackerone.com/privacy. If we make changes that we believe will substantially alter your rights, we will notify you by email (sent to the email address specified in your HackerOne account), by means of a notice on our Services prior to the change becoming effective, or as otherwise required by law. In certain cases, we may also seek your consent to further use of your Personal Information where this is required.

12. CONTACT INFORMATION
If you would like to contact us with questions or concerns about this Privacy Policy, our privacy practices, or would like to exercise your privacy rights, you may contact us via any of the following methods:

Email: privacy@hackerone.com
Toll-free Number (USA): +1 (855) 242-8699

Mailing Address:
Attn: Privacy Officer
HackerOne Inc.
548 Market Street, PMB 24734
San Francisco, CA 94104-5401
United States of America

Our EU representative:
Attn: Privacy Officer
HackerOne B.V. Griffeweg
97/4
9723 DV Groningen
The Netherlands
Exhibit E
Current Version of Data and Information Security Terms

Last Updated: February 16, 2021
Certain capitalized terms used in this document are defined in the General Terms and Conditions found at https://www.hackerone.com/terms/general, which are incorporated by reference. This document shall form a part of the Terms.

1. **Policies and Procedures.** HackerOne shall maintain written security management policies and procedures to prevent, detect, contain, and correct violations of measures taken to protect the confidentiality, integrity, and availability of HackerOne information systems and/or Customer's Confidential Information. Such policies and procedures shall (i) assign specific data security responsibilities and accountabilities to specific individual(s); (ii) include a formal risk management program, which includes periodic risk assessments; and (iii) provide an adequate framework of controls that safeguard Customer's information systems, including without limitation any hardware or software supporting Customer, and Customer's Confidential Information.

2. **Security Evaluations.** HackerOne shall engage one or more third parties to periodically (no less than annually) evaluate its processes and systems to ensure continued compliance with obligations imposed by law, regulation, or contract with respect to the confidentiality, integrity, availability, and security of Customer's Confidential Information within HackerOne information systems as well as the maintenance and structure of HackerOne's information systems. The results of these evaluations and any remediation activities taken in response to such evaluations will be documented and available to Customers upon request.

3. **Physical Security.** HackerOne shall maintain appropriate physical security controls (including facility and environmental controls) to prevent unauthorized physical access to HackerOne information systems and areas in which Customer's Confidential Information is stored or processed.

4. **Visitor Access Logs.** HackerOne shall maintain sign in access logs for visitors and guests and ensure that such visitors and guests are escorted while in the facility. In addition, these access logs shall be maintained in a secure location for three (3) months.

5. **Perimeter Controls.** HackerOne shall maintain reasonable network perimeter controls such as firewalls at all perimeter connections. HackerOne shall periodically (no less than annually) evaluate its network perimeter controls.

6. **Vulnerability Management.** HackerOne shall employ reasonable vulnerability management processes to mitigate data security risks to Customer's Confidential Information. These processes shall include mitigation steps to resolve issues identified by HackerOne, Customer, or any regulator, auditor, or other external constituent of either party.

7. **System Hardening.** System configuration parameters shall include procedures to disable all unnecessary services on devices and servers. This practice shall at a minimum be applied to all systems that access, transmit, or store Customer's Confidential Information.

8. **Patch Management.** HackerOne shall establish and adhere to policies and procedures for patching systems. Systems and applications used to access, process or store Customer's Confidential Information shall be maintained at current stable patch level.

9. **Anomaly Detection.** HackerOne shall install commercially reasonable anomaly detection software, to include anomaly / intrusion detections and deviations from standard system configuration, on all systems used to access, process or store Customer's Confidential Information as well as other information that HackerOne hosts. In addition, definition files shall be updated regularly.

10. **Incident Response.** HackerOne shall maintain formal processes to detect, identify, report, respond to, and resolve any event that compromises the confidentiality, availability, or integrity of Customer's data or service provider's systems ("Security Incidents") in a timely manner.

11. **Incident Notification.** HackerOne shall immediately provide Customer with notification of any known or reasonably suspected breach of security relating to Customer Systems or Customer's Confidential Information. HackerOne will notify Customer immediately following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Customer's Confidential Information. Written notification provided pursuant to this paragraph will include a brief summary of the available facts and the status of HackerOne's investigation.

12. **System Logs.** For all systems that access, transmit or store Customer's Confidential Information, system logs shall be in place to uniquely identify individual users and their access to associated systems and to identify the attempted or executed
activities of such users. All systems creating system logs shall be synchronized to a central time source. Reasonable processes shall be in place to review privileged access and identify, investigate and respond to suspicious or malicious activity. System log trails shall be secured in a manner to prevent unauthorized access, modification, and accidental or deliberate destruction. These logs shall be maintained in accordance with the retention requirements set forth in the Agreement or upon a mutual written agreement signed by both parties.

13. **Background Checks.** HackerOne shall maintain processes to determine whether a prospective member of HackerOne's workforce is sufficiently trustworthy to work in an environment which contains HackerOne information systems and Customer's Confidential Information.

14. **Change Control Process.** HackerOne shall maintain reasonable change control processes to approve and track all changes within HackerOne's computing environment. Substantive changes to the HackerOne production environment require a separate tracking and review process with additional authorizations.

15. **Protection of Storage Media.** HackerOne shall ensure that storage media containing Customer's Confidential Information is properly sanitized of all Customer's Confidential Information or is destroyed prior to disposal or re-use for non-HackerOne processing. All media on which Customer's Confidential Information is stored shall be protected against unauthorized access or modification. HackerOne shall maintain reasonable and appropriate processes and mechanisms to maintain accountability and tracking of the receipt, removal and transfer of storage media used for HackerOne information systems or on which Customer's Confidential Information is stored.

16. **System Accounts.** HackerOne shall maintain appropriate processes for requesting, approving, and administering accounts and access privileges for HackerOne information systems and Customer's Confidential Information. HackerOne personnel, who access systems that store, transmit or process Customer's Confidential Information shall be assigned individual system accounts to ensure accountability for access granted. This information is logged and stored in accordance with HackerOne’s Data Retention guidelines.

17. **Passwords.** HackerOne shall implement appropriate password parameters for systems that access, transmit or store Customer's Confidential Information ("Related Systems"). HackerOne shall implement strong authentication services, complex passwords ("Passwords"), and Multi-factor Authentication (where applicable) for all network and systems access to Related Systems. Default manufacturer passwords used in HackerOne's products shall be changed upon installation.

18. **Third Parties.** HackerOne shall ensure that any agent, including without limitation any third-party subprocessor or subcontractor, to whom HackerOne provides Customer's Confidential Information agrees to maintain reasonable and appropriate safeguards to protect such Customer's Confidential Information.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Haivision ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

HAIVISION NETWORK VIDEO

GS-35F-0511T  https://www.immixgroup.com/contract-vehicles/gsa-it-70/0511T/  Page 4
HAIVISION NETWORK VIDEO LICENSE, WARRANTY AND SUPPORT TERMS

1 DEFINITIONS

1.1. Entitlement. The collective set of applicable documents (e.g., warranty, support and maintenance documents, data sheets, etc.) authorized by Haivision Systems Inc. (or its affiliate Haivision Technology) to use, Support and Services, and the authorized scope of use of Product under the applicable Document.

1.2. License Fee. License Fee shall mean the consideration paid to Haivision for use of the Product. The License Fee is part of all of the price paid for the relevant Product in applicable Document.

1.3. Product. Product shall mean the executable version of Haivision’s computer software, program or code, in object code format (specifically excluding source code), together with any related materials including, but not limited to the hardware, Reference Manuals or database schemas provided for use in connection with the Product and including, without limitation, all Upgrades through the date of installation.

1.4. Reference Manuals. Reference Manuals shall mean the most current version of the documentation for use in connection with the Product provided by Haivision.

1.5. Third-Party Content. Services or materials, which are not proprietary to Haivision or may not be part of the materials of the company, entity or individual using the Product.

1.6. Updates. Updates shall mean any periodic software releases, additions, fixes, and enhancements thereto, release notes for the Product and related Reference Manuals, (other than those defined elsewhere in this section as Upgrades) which have no value apart from their operation as part of the Product and which add minor new functions to the Product, which are not significant, in Haivision’s sole discretion, to warrant classification as an Upgrade, which may be provided by Haivision to fix critical or non-critical problems in the Product on a scheduled, general release basis.

1.7. Upgrades. Upgrades shall mean any modification to the Product made by Haivision, which are so significant, in Haivision’s sole discretion, as to warrant their exclusion under the current license grant for the Product. Upgrades of Product are denoted by number changes to the right of the decimal point for a version and revision number (for example, going from 2.0.0 to 2.1.0).

1.8. You (or Your). The ordering activity specified in the Entitlement, or for evaluation purposes, the entity performing the evaluation.

2 RIGHTS AND RESTRICTIONS

2.1. License to Use. Subject to the terms and conditions set forth herein and subject to the terms of the applicable Ordering Document, Haivision hereby grants to You a non-exclusive, personal, limited and non-transferable right and license to use the Product in accordance with the terms of this Agreement. This license is granted to You and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours without Haivision’s specific prior written consent. This license is for the limited use of the Product by You for the purpose of creating, managing, distributing and viewing IP Video assets. This license does not grant any license for content whatsoever. All rights not expressly granted to You by this Agreement are reserved by Haivision.

2.2. Restrictions.

(a) Reproduction. You shall not copy, modify, distribute, use or allow access to any of the Product, except as explicitly permitted under this Agreement and only in the quantities designated in the Entitlement. However, You have the right to make copies of the Product solely for archival purposes, but only in quantities necessary and typical for your Organization. You shall not modify, adapt, translate, export, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, hardware designs or other proprietary information from the Product or any internal data files generated by the Product, or use the Product embedded in any third party hardware or software. You shall not use the Product in an attempt to, or in conjunction with, any device, program or service designed to circumvent technological measures employed to control access to, or the rights in other work protected by copyright laws.

(b) Ownership. The Product is conditionally licensed and not sold. As between the parties, Haivision and/or its licensors owns and shall retain all right, title and interest in and to all of the Product, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein, and nothing in this Agreement shall be deemed to transfer to You any ownership or title to the Product. You agree that you will not remove, alter or otherwise obscure any proprietary rights notices appearing in the Product. All Haivision technical data and computer software is commercial in nature and developed solely at private expense.

3 RESERVED.

4 REPRESENTATIONS, DISCLAIMER

4.1. Limited Warranty. Haivision warrants that: (i) the Product will operate substantially in accordance with the Reference Manuals provided and (ii) any media on which the Product is provided will be free of material damage and defects in materials and workmanship under normal use for a term of ninety (90) days (the “Warranty Period”) after its delivery date. As Your sole and exclusive remedy for any breach of this warranty, Haivision will use its commercially reasonable efforts to correct any failure of the Product to operate substantially in accordance with the Reference Manuals which is not the result of any improper or unauthorized operation of the Product and that is timely reported by You to Haivision in writing within the Warranty Period, provided that in lieu of initiating commercially reasonable efforts to correct such a breach, Haivision may, in its absolute discretion, either: (i) replace the Product with other software or technology which substantially conforms to the Reference Manuals or (ii) refund to You a portion of the fee paid for the relevant Product, whereupon this Agreement shall terminate. This warranty shall immediately terminate if You or any third party makes or attempts to make any modification of any kind whatsoever to the Product, engages in any improper or unauthorized operation of the Product, including uses prohibited by the Entitlement or installs or uses the Product on or in connection with any hardware or software not specified in the Entitlement or product data sheets.

4.2. Warranty Disclaimers. THE EXPRESS WARRANTIES SET FORTH IN SECTION 4.1 ABOVE IN RESPECT TO THE PRODUCT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING THE PRODUCT, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS (ALL OF WHICH ARE DISCLAIMED). HAIVISION DOES NOT WARRANT THAT ANY OF THE PRODUCT(S) WILL MEET ALL OF YOUR NEEDS OR REQUIREMENTS, OR THAT THE USE OF ANY OF THE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE DETECTED OR CORRECTED.

4.3. Reserved.

5 RESERVED.

6 OTHER PROVISIONS

6.1. Export and Other Restrictions. This Agreement, and all Your rights and Your obligations under this Agreement, are subject to all applicable U.S. Government laws and regulations relating to exports including, but not limited to, the U.S. Department of Commerce Export Administration
Act and its associated Regulations and all administrative acts of the U.S. Government thereunder. In the event the Product or the Hardware is exported from the United States or re-exported from a foreign destination, You shall ensure that the distribution and export/re-export of the Product or the Hardware is in compliance with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Act and its associated Regulations. You agree that neither you nor any of your Affiliates will export/re-export any Product, any hardware on which the Product is loaded or embedded, technical data, process, or service, directly or indirectly, to any country for which the United States government (or any agency thereof) requires an export license, other governmental approval, or letter of assurance, without first obtaining such license, approval or letter.

6.2. Content. Your data and/or your use of the Product may not: (i) interfere in any manner with the functionality or proper working of the Product; (ii) stream any material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permissions from the rightful owner to post the material; (iii) constitute, promote, facilitate or permit any illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive or otherwise malicious or harmful to any person or entity; (iv) distribute, share or facilitate unauthorized data, malware, viruses, Trojan horses, spyware, worms or other malicious or harmful distributions; or (v) otherwise violate, misappropriate or infringe the intellectual property, privacy, publicity, contractual or other proprietary rights of any third party.

6.3. Consent to Use Data. You agree that Haivision may collect and use technical data and related information, including but not limited to technical information about Your device, system and application software and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to You (if any) related to the Product. Haivision may use this information, as long as it is in a form that does not personally identify You, to improve its products or to provide services or technologies to You.

6.4. Reserved.

6.5. Reserved.

6.6. Reserved.

6.7. Third Party Content. Haivision is not responsible for examining or evaluating the data, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of any Third Party Content. Haivision does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any Third Party content.

6.8. Reserved.

6.9. Reserved.

6.10. Reserved.

6.11. Reserved.

6.12. Reserved.

6.13. Reserved.


6.15. US Government Rights. Some Products are commercial computer software, as such, term is defined in 48 C.F.R. §2.101. Accordingly, if You, as the Licensee, is the US Government or any contractor therefor, You shall receive only those rights with respect to the Product and Reference Materials as are granted to all other end users under license, in accordance with:

(a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors; or

(b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

6.16. Reserved.
HEWLETT PACKARD ENTERPRISES  
13600 EDS DRIVE  
HERNDON, VA

EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Hewlett Packard Enterprises (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific, license, warranty and software maintenance terms and conditions set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 12.212(a), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any rule because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
HPE CUSTOMER PASS THROUGH TERMS

HPE's obligations with respect to products or services supplied by HPE and procured by an end-user customer (hereinafter "Customer") from authorized HPE Business Partners are limited to the terms and conditions in these HPE CUSTOMER PASS THROUGH TERMS ("Terms") and the specific Supporting Material included with the HPE supplied products and services. HPE is not responsible for the acts or omissions of HPE Business Partners, for any obligations undertaken by them or representations that they may make, or for any other products or services that they supply to Customer.

Orders. "Order" means the accepted order issued by Customer under the GSA Schedule Contract, including any HPEbranded supporting material which is identified as incorporated either by attachment or reference ("Supporting Material"). Supporting Material may include (as examples) product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements and statements of work (SOWs), HPE Care Pack Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated HPE website, provided that in the event of inconsistency between the terms of any Supporting Material and the terms of the GSA Schedule Contract (including HPE’s GSA Addendum), the latter shall control to the extent of the inconsistency.

Installation. If HPE is providing installation with the product purchase, HPE’s site guidelines (available upon request) will describe Customer requirements. HPE will conduct its standard installation and test procedures to confirm completion.

Support Services. HPE's support services will be described in the applicable Supporting Material, which will cover the description of HPE’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported.

Software-as-a-Service. HPE’s online software-as-a-service solution that HPE provides to Customer, including support, and related professional services will be described in the Supporting Material ("SaaS"). If Customer previously purchased a perpetual license to the on-premise version of the HPE branded software product ("HPE Software"), the price of SaaS shall reflect such purchase and such pre-existing license shall be deemed to be used in relation to SaaS. During the SaaS term, Customer may not use such HPE Software installed on Customer infrastructure except in connection with receipt of SaaS.

SaaS Rescheduling. Customer has the one-time right to reschedule the Order start date without charge (for a date that is no more than three (3) months after the originally scheduled start date) upon no less than three (3) business days' written notice prior to the date that delivery is scheduled to begin.

Professional Services. - Reserved

Eligibility. HPE's service, support and warranty commitments do not cover claims resulting from: improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material; modifications or improper system maintenance or calibration not performed by HPE or authorized by HPE; failure or functional limitations of any non-HPE software or product impacting systems receiving HPE support or service; malware (e.g. virus, worm, etc.) not introduced by HPE; or abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HPE's control.

Dependencies. HPE's ability to deliver services will depend on Customer’s reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.

Change Orders. Reserved

Product Performance. All HPE-branded hardware products are covered by HPE’s limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of HPE installation, or (where Customer delays HPE installation) at the latest 30 days from the date of delivery. Non-HPE branded products receive warranty coverage as provided by the relevant third party supplier.

Software Performance. HPE warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. HPE warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. HPE does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in hardware and software combinations other than as authorized by HPE in Supporting Material.

Services Performance. Services are performed using generally recognized commercial practices and standards.

SaaS Performance. SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

Services with Deliverables. If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.
SaaS Performance. SaaS is provided consistent with generally recognized practices and standards for software-as-a-service. HPE does not warrant that SaaS will be uninterrupted or error free.

Services with Deliverables. If Supporting Material for services defines specific deliverables, HPE warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies HPE of such non-conformity during the 30 day period, HPE will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to HPE.

Product Warranty Claims. When we receive a valid warranty claim for an HPE hardware or software product, HPE will either repair the relevant defect or replace the product. If HPE is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. HPE will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE.

Remedies. This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE disclaims all other warranties.

Intellectual Property Rights. No transfer of ownership of any intellectual property will occur under these Terms. Customer grants HPE a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for HPE and its designees to perform the ordered support services. If deliverables are created by HPE specifically for Customer and identified as such in Supporting Material, HPE hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverable internally.

Intellectual Property Rights Infringement. For Federal government customers, the Government will control litigation or settlement of any patent infringement claims arising out of the performance of this contract and brought against the government notwithstanding anything to the contrary in a “Patent Indemnity” provision of this contract or other related transaction document. HPE reserves the right to intervene in the proceedings at its own expense through counsel of its choice.

License Grant. HPE grants Customer a non-exclusive license to use the version or release of the HPE-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material.

Updates. Customer may order new software versions, releases or maintenance updates (“Updates”), if available, separately or through an HPE software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that HPE makes them available to Customer.

License Restrictions. HPE may monitor use/license restrictions remotely and, if HPE makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer’s intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble decrypt, decompile or make derivative works of any software licensed to Customer under these Terms unless permitted by statute, in which case Customer will provide HPE with reasonably detailed information about those activities.

License Term and Termination. Unless otherwise specified, any license granted is perpetual in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to HPE, except that Customer may retain one copy for archival purposes only.

License Transfer. Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by HPE. HPE-branded software licenses are generally transferable subject to HPE’s prior written authorization, and payment to HPE of any applicable fees. Upon such transfer, Customer’s rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated hardware.

License Compliance. HPE may audit Customer compliance with the software license terms. Upon reasonable notice, HPE may conduct an audit during normal business hours (with the auditor’s costs being at HPE’s expense). If an audit reveals underpayments then Customer will pay to HPE such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse HPE for the auditor costs.

Confidentiality. Information exchanged under these Terms will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under these Terms, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

Personal Information. Each party shall comply with their respective obligations under applicable data protection legislation. HPE does not intend to have access to personally identifiable information (“PII”) of Customer in providing services. To the extent HPE has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII
at all times. HPE will use any PII to which it has access strictly for purposes of delivering the services ordered. For SaaS purposes, Customer acknowledges that HPE may route, process or store, and could access business contact information and the data that Customer enters into HPE’s SaaS infrastructure, from countries other than the country from which Customer entered such data.

US Federal Government Use. If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE’s standard commercial license.

Global Trade Compliance. Products and services provided under these Terms are for Customer’s internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. HPE may suspend its performance under these Terms to the extent required by laws applicable to either party.

Limitation of Liability. Reserved

Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

General. These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by HPE and Customer.

Aruba Networks, Inc. End-User Software License Agreement (“Agreement”)

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS BEFORE INSTALLATION OR USE OF ANY SOFTWARE PROGRAMS FROM ARUBA NETWORKS, INC. AND ITS AFFILIATES OR AIRWAVE WIRELESS (COLLECTIVELY, “ARUBA”). INSTALLATION OR USE OF SUCH SOFTWARE PROGRAMS SHALL BE DEEMED TO CONFIRM YOUR ACCEPTANCE OF THESE TERMS. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS. YOUR RIGHTS UNDER THIS AGREEMENT BEGIN WHEN YOU RECEIVE YOUR LICENSE KEY FROM ARUBA, AND NOT ON THE DATE THAT YOU INSTALL THE SOFTWARE. IT IS UP TO YOU TO INSTALL THE SOFTWARE PROMPTLY UPON RECEIPT OF A LICENSE KEY FROM ARUBA. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST PROMPTLY RETURN ALL SUCH SOFTWARE AND HARDWARE PRODUCTS TO ARUBA OR IF YOU PURCHASED SUCH PRODUCTS FROM A RESELLER, THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS) AND ANY FEES YOU HAVE PAID FOR SUCH PRODUCTS WILL BE REFUNDED.

1. LICENSE

Subject to your full compliance with all the terms and restrictions set forth in this agreement (“Agreement”), Aruba grants you a non-exclusive, non-transferable (except as expressly permitted below), non-sublicensable license to use the Aruba software programs (“Programs”). Any third party software programs obtained through the use of the Programs are exclusively subject to the terms and conditions accompanying those third party programs (“Third Party Programs”). The Programs may use certificates, provisioning profiles, keys, and other such authorization and management controls that you provide as part of your use of the Programs (“Controls”). Aruba disclaims any responsibility whatsoever for your usage of such Controls as part of the Program(s) and you agree not to hold Aruba responsible for such usage of such Controls.

2. PROPRIETARY RIGHTS

Aruba and its suppliers shall at all times retain title, all ownership rights, and all intellectual property rights in and to the Programs, including any and all rights to error corrections, enhancements, new releases, and other work product that may be created in connection with technical support services that Aruba provides (collectively, “Support Enhancements”). Support Enhancements will be considered Programs for purposes of this Agreement, subject to all of the rights, obligations and restrictions set forth herein. The Programs in source code form remain a confidential trade secret of Aruba and/or its suppliers. The Programs are protected by the copyright and other intellectual property laws of the United States and international treaties. You acknowledge that, in the course of using the Programs, you may obtain or learn information relating to the Programs, which may include, without limitation, information relating to the performance, reliability or stability of the Programs, operation of the Programs, knowhow, techniques, processes, ideas, algorithms, and software design and architecture (“Proprietary Information”). As between the parties, such Proprietary Information shall belong solely to Aruba. During and after the term of this Agreement, you shall hold in confidence and protect, and shall not use

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(except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

3. RESTRICTIONS ON USE AND TRANSFER

A. Programs from Aruba may be used solely for the internal use and operation of an Aruba network by you or your organization. All Programs may be copied solely for installation and back-up purposes in support of your licensed use. You may not modify the Programs in any manner without the prior written approval of Aruba. You may not perform interoperability testing on the Programs without the prior written approval of Aruba. You may physically transfer the base operating system Programs and this Agreement to another party only if (i) all related hardware products are transferred along with the Programs, (ii) the other party accepts the terms and restrictions of this Agreement, (iii) all copies of Programs and related documentation that are not transferred to the other party are
destroyed or returned to Aruba, and (iv) you comply with all applicable laws including any import/export control regulations.

Separately licensed Programs which have been loaded onto the hardware to add features or enable functions may not be transferred.

B. YOU MAY NOT ENGAGE A THIRD PARTY TO PERFORM SECURITY TESTING ON THE PROGRAMS UNLESS THAT THIRD PARTY ENTERS INTO A WRITTEN NON-DISCLOSURE AGREEMENT DIRECTLY WITH ARUBA.

C. ANY FAILURE TO PAY ANY LICENSE AND RELATED FEES DUE BY YOU IN FULL AND ANY DEFECT IN ANY SUCH MEDIA WHICH OCCURS DURING THIS 90-DAY PERIOD, THE MEDIA MAY BE RETURNED TO ARUBA (OR IF YOU RECEIVED SUCH PROGRAMS FROM A RESSELLER, TO SUCH RESSELLER) AND ARUBA OR THE RESSELLER, AS APPLICABLE, WILL REPLACE THE MEDIA WITHOUT CHARGE TO YOU. ARUBA SHALL HAVE NO RESPONSIBILITY TO REPLACE MEDIA IF THE FAILURE OF MEDIA RESULTS FROM ACCIDENT, ABUSE OR MISUSE OF THE MEDIA.

D. ARUBA WARRANTS TO YOU (AND ONLY YOU) THAT ANY MEDIA ON WHICH THE PROGRAMS ARE RECORDED WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE THE PROGRAMS ARE DELIVERED TO YOU. IF A DEFECT IN ANY SUCH MEDIA SHOULD OCCUR DURING THIS 90-DAY PERIOD, THE MEDIA MAY BE RETURNED TO ARUBA (OR IF YOU RECEIVED SUCH PROGRAMS FROM A RESSELLER, TO SUCH RESSELLER) AND ARUBA OR THE RESSELLER, AS APPLICABLE, WILL REPLACE THE MEDIA WITHOUT CHARGE TO YOU. ARUBA SHALL HAVE NO RESPONSIBILITY TO REPLACE MEDIA IF THE FAILURE OF MEDIA RESULTS FROM ACCIDENT, ABUSE OR MISUSE OF THE MEDIA.

E. ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE PROGRAMS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAMS WILL BE UNINTERRUPTED OR ERROR-FREE. ARUBA AND ITS SUPPLIERS DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PROGRAMS WILL MEET YOUR PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

5. LIMITATION OF LIABILITY

YOUR EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF ARUBA AND ITS SUPPLIERS RELATED TO THE PROGRAMS SHALL BE EXPRESSLY LIMITED TO REPLACEMENT OF MEDIA AS PROVIDED ABOVE. IN NO EVENT WILL ARUBA OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE PROGRAMS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. TERM

This Agreement is effective until terminated, and shall automatically apply to any future upgrades or updates to any Programs or any additional features of any Programs, except as otherwise specified by Aruba. You may terminate this Agreement at any time by destroying all copies of the Programs and related documentation. This Agreement will terminate automatically, with respect to any Program or feature of any Program, at the end of the applicable term of any limited-term license purchased by you, or if you fail to comply with any term or condition of this Agreement, including any failure to pay any associated license and related fees due by you in full and any attempt to transfer a copy of the Programs to another party except as provided in this Agreement. You agree that upon such termination, you will destroy all copies of the Programs and related documentation.

7. U.S. GOVERNMENT RESTRICTED RIGHTS

If you are acquiring the Programs on behalf of the U.S. Government, the following provisions apply: (i) if the Programs are supplied to the Department of Defense or any related agency of service, the Programs are subject to "restricted rights" as that term is defined in Defense Federal Acquisition Regulations ("DFAR") in Section 252.227-7013(c)(1); and (ii) if the Programs are supplied to any other unit or agency of the United States Government, the Programs are considered "restricted computer software" and the Government's rights in the Programs are set forth in the Federal Acquisition Regulations ("FAR") in Section 52.227-19(c)(2). Use, duplication or disclosure by the Government is subject to the restrictions set forth in such sections. You represent that you are not acquiring the Programs on behalf of a government other than the U.S. Government.

8. GENERAL

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and restrictions. You further agree that this license is the complete and exclusive statement of your agreement with Aruba and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this license. This Agreement may only be modified in writing. Any waivers and amendments of this Agreement or any of its terms shall be effective only if made by nonpreprinted agreements clearly understood by both parties to be an amendment or waiver. This Agreement shall be governed by and construed under the laws of the state of California, USA as if made and entered into in that state by two residents thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
If you are located in the People’s Republic of China, all disputes arising from or relating to the subject matter of this Agreement must be resolved in Hong Kong by the Hong Kong International Arbitration Centre pursuant to its rules of arbitration then in effect, and the arbitration shall be conducted in English. If you are located outside of the People’s Republic of China, all disputes arising from or relating to the subject matter of this Agreement shall be resolved by and you hereby consent to binding arbitration conducted in the English language in San Francisco, California, USA pursuant to California law and the rules of the Judicial Arbitration and Mediation Service (JAMS.) Judgment upon any award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

Notwithstanding the foregoing, each party shall have the right at any time to seek injunctive or other forms of equitable relief from any court of competent jurisdiction. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

IMPORTANT
MASTER LICENSE AGREEMENT FOR GOVERNMENT USE ONLY

All references to HCL America, Inc. (“HCL”) in this Master License Agreement should be read as “Contractor (EC America, Inc.), acting by and through its supplier, HCL.”

This Master License Agreement (“Agreement”) is by and between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Licensee” or “Ordering Activity”) and HCL America, Inc. (“Licensor” or “HCL”), and governs the receipt and use of HCL Programs and related Support (as defined below). HCL and Licensee are hereinafter referred to individually or collectively, as “Party” or “Parties.”

Definitions. In addition to the terms defined above and elsewhere in this Agreement, the following terms will have the meaning set forth below:

“Affiliate” means an entity that controls, is controlled by, or shares common control with HCL or Licensee, where such control arises from either (a) a direct or indirect ownership interest of more than fifty percent (50%) of the outstanding voting stock and/or equivalent interest, or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock and/or equivalent interest, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock and/or equivalent interest.

“Documentation” means guides, manuals, and other technical information in printed and machine-readable form that describes the functionality and use of the Program(s). Documentation may include “License Information”, which means a document that provides information and any additional licensing terms specific to a Program.

“Feedback” means (i) Licensee’s requirements, input, comments, responses, opinions, feedback and errata, concerning the definition, design or validation of the Program, Documentation and Packaged Service Offerings or (ii) Licensee’s technical system requirements for HCL to include in the Program specifications, design or validation.

“Fees” means license, Support, and other fees as specified in an Order in accordance with the GSA Schedule Pricelist or provided under this Agreement.

“Intellectual Property Rights” or “IPR” means any ideas, whether or not patentable, inventions, discoveries, processes, works of authorship, marks, names, know-how, and any and all rights in such materials on a worldwide basis, including any rights in patents, inventor’s certificates, utility models, copyrights, moral rights, trade secrets, mask works, and all related, similar or other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations with respect thereto.

“Licensed Capacity” means the quantity of each Program licensed as specified in an Order.

“Object Code” means software, including all computer programming code, entirely in binary form, which is directly executable by a computer and includes those help, message, overlay, and other files necessary for supporting the intended use of the executable code.

“Open Source Software” means an open source or other license that requires, as a condition of use, modification, or distribution, that any resulting software must be (i) disclosed or distributed in Source Code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

“Order” means an agreed written or electronic document, subject to the terms and conditions of this Agreement that identifies the Programs to be licensed, the Licensed Capacity thereof, applicable Fees, payment terms and the Support or Packaged Service Offerings to be purchased, and any other applicable
terms (including but not limited to a listing of any additional authorized users, which for avoidance of doubt Licensee shall be responsible for their agreement and compliance with the terms hereof).
“Packaged Service Offerings” means the prepaid service(s) to be performed by HCL as more fully described in the Packaged Service Offerings Addendum attached hereto as Exhibit A, to be performed within a specified term from the date of initial purchase and as specified in the Order.

“Prerequisite Materials” means any prerequisite software or materials (third party and/or HCL licensed) prescribed by the Licensee, which are required to ensure that the Program’s performance is in accordance with the Documentation and which are not part of the Program(s) and are identified in the system requirements for the Program(s).

“Problem” means a reproducible condition that causes the operation of a Program to deviate from its Documentation, when such Program is used with the prescribed Prerequisite Materials and/or Platform and so as to impact Licensee’s ability to use the Program in the manner described in the Documentation.

“Program(s)” means the Object Code of the software (including Third Party Software) and all accompanying Documentation delivered to Licensee, including all items delivered by HCL to Licensee under Support, but excluding Open Source Software.

“Source Code” means computer programming code in human readable form and related system level documentation, including all associated comments, symbols, and any procedural code such as job control language.

“Support” means the support services provided by HCL described in the Support Guide posted at https://hclpnpsupport.hcltech.com/csm, that is made available with the Program as further specified in an Order or provided under this Agreement. Support may consist of Standard Support, Premium Support or Extended Support, as the context requires.

“Standard Support” consists of access to self-help content as well as to technical support engineers available through support portal case submission requests.

“Premium Support” consists of specific additional benefits, such as a designated named contact that will assist Licensee in receiving proactive and responsive support beyond Standard Support. Premium Support is subject to a fee in accordance with the GSA Pricelist in addition to the fee for Standard Support, and is further described in the Support Guide at https://hclpnpsupport.hcltech.com/csm?id=kb_article&sysparm_article=KB0010420.

“Extended Support” consists of Standard Support for older versions of the Program. Extended Support is subject to an additional fee.

“Territory” means the country or countries where Licensee is licensed to install the Program(s) or receive the Packaged Service Offerings as further detailed in an Order.

“Third Party Software” means third party software, libraries, and components incorporated in or included with a Program, but excluding Open Source Software.

AGREEMENT STRUCTURE.

Licenses are granted and Support is obtained solely in connection with Orders. Each Order is subject to the terms of this Agreement, the EC America Rider to HCL Product Specific License Terms and Conditions, the GSA Schedule Contract and Schedule Pricelist and deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein. Orders may be entered into under this Agreement by and between (a) HCL or an Affiliate of HCL; and (b) the Licensee or an Affiliate of Licensee. With respect to an Order, the term HCL (or Licensor) or Licensee (or Customer) will be deemed to refer to the entities that execute such Order. Neither execution of this Agreement nor anything contained herein will obligate either Party to enter into any Orders. In the event an Order is proposed by HCL, and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Licensee proposes or accepts an Order by submitting a Licensee purchase order, order document, acknowledgment, or other Licensee communication, then HCL may object to and reject any additional or different terms in such document and none of such additional or different terms will become part of the agreement between the Parties unless accepted by HCL.

LICENSE GRANT
Subject to the terms, conditions, and other restrictions set forth in this Agreement and a valid, executed Order, HCL grants to Licensee a non-exclusive, non-transferable, limited, and revocable license, without the right to sublicense, under HCL IPR, to install, access, and use the Programs (i) up to the Licensed Capacity; (ii) for Licensee internal business purposes; and (iii) in accordance with the Documentation and the applicable Order. For avoidance of doubt, Licensee has no rights to create derivative works, assign, distribute, lease, rent, or otherwise transfer the Program(s).

Licensee Affiliates may install, access, and use the Programs and Support under the terms of this Agreement, and Licensee is fully responsible for ensuring its Affiliates’ agreement and compliance with the terms of this Agreement and the Order.

Licensee hereby acknowledges that the Program(s) may contain Open Source Software and may require Prerequisite Materials. In the event that Open Source Software is included in the Program(s), Licensee agrees that the terms of such Open Source Software shall govern with respect to use of such Open Source Software. In the event that the Program(s) rely on Prerequisite Materials and unless expressly provided otherwise in an Order Form, Licensee agrees that: (a) HCL and its Affiliates have not obtained or conveyed to Licensee any Intellectual Property Rights to use the applicable Prerequisite Materials; (b) it shall be solely responsible, at its cost and expense, for procuring the required rights/licenses in the Prerequisite Materials; (c) HCL does not provide any warranties or support for Prerequisite Material; and (d) any claims with respect to the Prerequisite Materials shall be made against the applicable third-party provider of such Prerequisite Material.

LICENSE RESTRICTIONS

Restrictions. Except for the limited licenses expressly granted in Section 3, Licensee has no further rights in the Program(s), whether express, implied, arising from estoppel or otherwise. Further restrictions regarding Licensee’s use of any and all Program(s) are set forth below. Except as expressly authorized herein, Licensee will not:

- prepare any derivative works, or otherwise use, copy, modify, distribute, assign, sublicense, lease, rent, or otherwise transfer the Program(s), except to the extent required by law;
- use the Programs in an outsourcing or service bureau environment on its behalf and/or on behalf of non-affiliated third parties or allow the Programs to be used by an outsourcing or service bureau provider on behalf of the Licensee;
- distribute the Program to end-users as on-premises distributions or offer the Program as a cloud service or software-as-a-service to any end-users;
- reverse engineer, reverse assemble, reverse compile, translate, or otherwise attempt to discover the Source Code form of any Program(s) that are provided in Object Code form, except as permitted by the national or regional law of the places where the Licensee does business (without the opportunity for contractual waiver), and then only with respect to the particular copy of Object Code incorporated into that particular Program.
- use any of the Program’s components, files, modules, audio-visual content, or related licensed materials separately from the Program;
- attempt to disable or circumvent any of the licensing mechanisms within the Program;
- alter or remove any copyright, trademark or patent notice(s) in the Programs; and
- use the Programs in a way that requires the Programs to be licensed as Open Source Software.

Feedback. Licensee is not obligated to provide Feedback to HCL. To the extent that Licensee provides Feedback to HCL, Licensee hereby grants to HCL a worldwide, non-exclusive, perpetual, irrevocable, royalty-free license, with the right to sublicense, under any and all Licensee IPR in and to the Feedback to make, use, sell, offer to sell, have made, import, reproduce, prepare derivative works, distribute, incorporate or otherwise utilize such Feedback. HCL acknowledges that the ability to use this Agreement
and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. **Ownership.** Licensee acknowledges that, as between Licensee and HCL, HCL has exclusive right, title and
interest in and to all of the IPR in and to the Program(s) and Packaged Service Offerings. Notwithstanding the use of the terms “purchase,” “sale”, or any similar terminology in connection with a transaction contemplated by this Agreement, the Program(s) are licensed, not sold.

**Delivery.** During the term of this Agreement, HCL will make Program(s) available to Licensee. For Programs that are delivered electronically, Licensee agrees upon request from HCL to provide HCL with documentation supporting that the designated items were received electronically.

**UPDATES**

When Licensee receives an Update (as defined in Section 9.5), fix, or patch to a Program, Licensee accepts any additional or different terms that are applicable to such Update, fix, or patch that are specified in its Documentation. If no additional or different terms are provided, then the Update, fix, or patch is subject to the terms and conditions of this Agreement.

If the Program is replaced by an Update (as defined in Section 9.5), Licensee agrees to promptly discontinue use of the replaced Program.

Based on industry directions and technology changes, HCL may discontinue further releases of the Programs. In such a situation, HCL may continue to ship released versions of Programs, and all shipped versions will be governed by this Agreement.

**SUPPORT AND PACKAGED SERVICES**

Upon purchase of a license for the Program(s), Licensee is enrolled in Standard Support for the Program(s) identified in an Order for the first 12 months thereof at no additional cost. HCL may offer and Licensee may purchase Standard Support for a renewal period, or Premium Support or Extended Support, via the execution of a separate contract or Order. A further description of Support is available in the HCL Support Guide (“Support Guide”) at https://hclpnpsupport.hcltech.com/csm (“Support Website”) and incorporated herein by reference.

HCL will provide Support only if a Program is used with: (a) Prerequisite Materials; and (b) third-party equipment, operating system, hardware, and third-party software, including database server systems, networks, application server systems, and Licensee systems (collectively, “Platforms”) which meet the standards set forth in the applicable Documentation. Licensee will allow HCL reasonable access (including remote access) to the Programs, Prerequisite Materials and the supporting Platforms, equipment, systems, documentation, and services, as necessary to perform Support services. Support does not include certain matters. For a list of what is excluded from Support, refer to the Support Guide.

Support for a particular version or release of a Program is available only until HCL withdraws Support for such version or release (an “End of Support Release”). When Support is withdrawn, Licensee must upgrade to a supported version or release of the Program to continue to receive Support. However, HCL may (in its sole discretion) continue to offer, for an additional Fee to be mutually agreed-upon, extended Support for End of Support Releases for so long as Licensee subscribes to extended Support for the Program by Licensee entering into a separate Order with HCL. However, in such cases, HCL will only provide existing code patches and fixes and will not develop or provide new patches or fixes for End of Support Releases.

HCL will use commercially reasonable efforts to provide resolution to each Problem (submitted by Licensee) in accordance with the Support Guide.

While HCL Support is in effect, HCL may make available defect corrections, restrictions, bypasses, new versions, releases, or updates available as part of Support (“Updates”). HCL will determine in its discretion the content and timing of all Updates. Updates will not be issued on any regular basis. If the solution to a Problem has already been made in a release later than the release Licensee is then using, then the solution to the Problem will require Licensee to migrate to the release in which the Problem has been resolved. Updates will be considered part of the Programs, as applicable, and subject to Section 8.2,
will be governed by and used under the terms and conditions set forth in this Agreement. Except as otherwise set forth in an Order, Statement of Work, or other written agreement by the Parties, Licensee
will be responsible for installing and implementing each Update. HCL will provide Licensee with documentation regarding any specific installation requirements for the Update. Once Support has been allowed to lapse, HCL will cease providing Updates (even Updates that were previously made available during Support which Licensee chose not to accept), provided however that Updates may be made available by HCL (in its sole discretion) as part of additional or extended Support.

Support does not cover Problems, failures, or defects in the Programs caused by any act or omission of Licensee or its representatives, or any other non-HCL person or entity, including but not limited to: (a) the misuse of or damage to the Program; (b) modifications to the Programs not made by or as authorized in writing in advance by HCL; (c) combination or use of the Programs with other software, hardware or cloud infrastructure not provided by HCL; or (d) use of the Program in an operating environment other than that described in the Documentation or system requirements. HCL reserves the right to charge at HCL’s then-current GSA hourly rates for any work performed by HCL that was found to be caused by the foregoing exclusions. To the extent a Problem (or other issue) arises out of any Prerequisite Materials, Platform, hardware, software cloud infrastructure or services not provided by HCL, Licensee will have the responsibility to contact the appropriate third party and obtain a resolution for the problem.

HCL may change its Support to be effective upon Licensee’s Support anniversary date. If the changes to the Support terms are material, HCL will provide notice of such changes on the Support Website. HCL reserves the rights to discontinue Support for a Program (including for prior releases or outdated versions of a Program) if HCL generally discontinues such services for all licensees of such Program, provided such discontinuance will be applicable from the next renewal term. If Licensee terminates Support (including allowing it to lapse), but then re-enrolls in Support, HCL reserves the right to charge a reinstatement Fee equal to the amount that would have been due during the lapse period.

HCL may make prepaid Packaged Service Offerings available for purchase from time to time in its sole discretion. Packaged Service Offerings are provided subject to the terms and conditions set forth on Exhibit A to this Agreement, which terms and conditions are incorporated herein by reference.

LICENSEE DATA AND DATABASES

To assist Licensee in isolating the cause of an error or Problem with the Program(s), HCL may request that Licensee (i) allow HCL to remotely or physically access Licensee’s system, or (ii) send Licensee information, License Data (as defined below) or system data to HCL. Licensee acknowledges that HCL uses information about errors and Problems to improve its products and services and to assist with its provision of related Support offerings. Licensee grants HCL the right to use such information and other Feedback regarding the Program(s) for these purposes, including the right to use by HCL Affiliates and subcontractors (including in one or more countries other than the one in which Licensee is located).

Licensee remains responsible for (i) any data and the content of any database Licensee makes available to HCL (“Licensee Data”); (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data); and (iii) backup and recovery of any database and any stored data, including all Licensee Data. Licensee will not send or provide HCL access to any personally identifiable information, whether as part of Licensee Data or in electronic or any other form, and will be responsible for reasonable costs and other amounts that HCL may incur relating to any such information intentionally or mistakenly provided to HCL or to the loss or disclosure of such information by HCL, including liabilities arising out of any third party claims.

Payments. Payment terms, fees and taxes are set forth in the GSA Schedule Contract and applicable Order.

License Compliance. Licensee agrees that HCL may, no more than one time per twelve (12) month period, and subject to Licensee’s reasonable security requirements, audit the software logs of Licensee, its Affiliates, consultants, service providers and contractors (collectively, “Licensee Entity(ies)”), relating to the Program in order to verify their use in compliance with this Agreement and/or the Order. HCL may make copies of any such software logs to the extent necessary to verify Licensee’s compliance with the
terms hereof. HCL may conduct the audit itself or at its option engage an independent third party to do such audit, provided that such
third party is subject to confidentiality obligations consistent with this Agreement. The audit may be conducted at any sites of Licensee Entities, where the Program is installed, used or accessed from, including remotely. HCL will bear its own costs in connection with an audit. HCL will provide fifteen (15) calendar days’ notice prior to an audit. Any such audit will be performed during Licensee Entity’s normal business hours and in a manner that minimizes the disruption to its business. Licensee Entities will provide all assistance reasonably necessary for HCL to carry out such audit. If the audit reveals underpayments, Licensee will promptly make such payments. If the audit reveals under-reporting of usage, Licensee will promptly pay for the differentials at HCL’s then GSA list price for the Program. As with all provisions of this Agreement, HCL’s rights and remedies in this Section will be without prejudice to other rights and remedies HCL has under this Agreement or in any Order, at law. HCL’s audit rights under this paragraph will survive any termination or expiry of an Order or this Agreement for two years.

RESERVED.

Reserved.

Warranties and Exclusions

For the greater of: (a) one year starting on the date the original Licensee is granted the Program license, or (b) the period that Support is in effect for Licensee ("Program Warranty Period"), HCL warrants that (i) the Program(s) will perform substantially in accordance with its Documentation, if used with the prescribed Prerequisite Materials and/or Platforms; (ii) HCL has used commercially reasonable efforts consistent with industry standards to scan for and remove any software viruses; and (iii) other than passwords or license keys that may be required for the operation of the Program(s) (or for HCL’s use in suspension/termination as authorized herein), there are no codes that are not addressed in the Documentation and that are designed to delete, interfere with, or disable the normal operation of the Program in accordance with the Documentation (the “Program Warranty”). For the greater of: (a) one year starting on the date the original Licensee is granted the Program license, or (b) the period that Support is in effect for Licensee ("Support Warranty Period"), HCL warrants that Support will perform substantially in accordance with the Support specifications herein or in applicable Order (the “Support Warranty”).

Program Warranty and Support Warranty do not cover Problems, failures, or defects in the Programs caused by any act or omission of Licensee or its representatives, or any other non-HCL person or entity, including but not limited to: (a) the misuse of or damage to the Program; (b) modifications to the Programs not made by or as authorized in writing in advance by HCL; (c) combination or use of the Programs with other software, hardware or cloud infrastructure not provided by HCL; or (d) use of the Program in an operating environment other than described in the Documentation or system requirements.

THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN SECTION 15.1 ARE LICENSEE’S EXCLUSIVE WARRANTIES. HCL DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THE WARRANTY PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

THE WARRANTIES IN THIS SECTION 15 ARE PROVIDED SOLELY BY THE HCL ENTITY LICENSING THE PROGRAM AND NOT BY A THIRD PARTY OR ANY OTHER HCL ENTITY. THE DISCLAIMERS IN THIS SECTION 15, HOWEVER, ALSO APPLY TO ALL HCL ENTITIES AND THEIR LICENSORS AND SUPPLIERS OF THIRD PARTY SOFTWARE. THOSE SUPPLIERS PROVIDE SUCH SOFTWARE WITHOUT WARRANTIES OR CONDITION OF ANY
KIND.

The exclusive remedy for any breach of the foregoing Program Warranty and Support Warranty will be that HCL, at its own expense, and in response to a written notice of a warranty claim during the Program Warranty Period or Support Warranty Period, as applicable, will at its option repair or replace the Program(s), or re-perform Support, to conform to the above standard.

For avoidance of doubt, if Licensee terminates Support (including allowing it to lapse), but then re-enrolls in Support, the Program Warranty and Support Warranty apply only during the period Support is in effect and not during the lapsed period.

INDEMNIFICATION

HCL will, at its election, settle or have the right to intervene to defend, any unaffiliated third party claim brought in any suit or proceeding against Licensee based upon an allegation that any Program(s) furnished hereunder constitutes a direct infringement of any patent, trade secret or copyright, and HCL will pay all damages and costs finally awarded against Licensee for the claim or agreed in settlement by HCL. In the event of any claim, allegation, or suit, HCL, in its sole discretion, may reengineer the Program(s) in a manner that removes the infringing material, replace the Program(s) with non-infringing software, or terminate the Agreement or applicable Order. HCL will not be liable for any costs or damages and will not indemnify or defend Licensee to the extent such action is based upon a claim arising from: modification of the Program(s) by a party other than HCL after delivery by HCL; use of the Program(s) in combination with hardware or software not provided by HCL, unless the Documentation refers to a combination with such hardware or software (without directing Licensee not to perform such a combination);

any unauthorized use of the Program(s); or

Licensee’s failure to incorporate updates or upgrades that would have avoided the alleged infringement.

The foregoing obligations are conditioned on the following: (i) HCL is notified promptly in writing of such claim; (ii) HCL controls the defense or settlement of the claim; and (iii) Licensee cooperates reasonably and gives all necessary authority, information and assistance. Nothing contained in this Agreement shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY (OR HCL’S AFFILIATES AND SUPPLIERS) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY (OTHER THAN AS PROVIDED FOR IN SECTION 17.3), FOR LOSS OF PRIVACY ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PROGRAM(S), OR OTHERWISE) IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EXCEPT FOR BREACHES OF LICENSE GRANTS IN SECTION 3, RESTRICTIONS IN SECTION 4, LICENSEE’S LIABILITY FOR THIRD PARTY CLAIMS AS PER SECTION 10.2, CONFIDENTIALITY IN SECTION 14, AND LICENSEE’S PAYMENT OBLIGATIONS, IN NO EVENT WILL EITHER PARTY’S (AND HCL’S AFFILIATES’ AND SUPPLIERS’) TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES (REGARDLESS OF BASIS FOR CLAIMS) EXCEED THE SUM PAID BY LICENSEE TO HCL, UNDER THE APPLICABLE ORDER FOR THE AFFECTED PRODUCT OR SERVICE.
The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Licensee's jurisdiction. Licensee may have additional rights that may not be waived or disclaimer. HCL does not seek to limit Licensee's warranty or remedies to any extent not permitted by law. The foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor's gross negligence or for any other matter for which liability cannot be excluded by law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.

OTHER TERMS

Conflict. In the event of a conflict between this Agreement and an Order to this Agreement, the terms of the Order will prevail solely with respect to such Order. If there is a conflict between this Agreement and License Information for a Program, such License Information will prevail solely with respect to such Program; otherwise the terms of this Agreement will prevail.

Business Contact Information. Licensee authorizes HCL and its Affiliates (and their successors and assigns and contractors) to store and use Licensee's business contact information wherever they do business, in connection with HCL products and services, or in furtherance of HCL's business relationship with Licensee.

Force Majeure. This Agreement is subject to FAR 52.212-4(f) Excusable delays. (JUN 2010).

Export. Licensee will comply with all applicable export and import laws and associated embargo and economic sanction regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services, or data, directly or indirectly, to certain countries, or for certain end uses or end users. Licensee acknowledges that the Program is subject to U.S. export laws and regulations. Licensee agrees that, unless authorized by the U.S. export license or regulation, it will not export or re-export the Program provided by HCL under this Agreement or an Order to (i) those countries (or nationals of countries) considered embargoed/terrorist countries under U.S. export laws and regulations or (ii) prohibited end users or end uses, including but not limited to: nuclear, space or missiles, and weapons systems (including chemical and biological). At the time of this Agreement, those countries considered embargoed/terrorist are: Cuba, Iran, North Korea, Sudan and Syria.

Anti-Corruption and Other Laws. Each Party will comply, at its own expense, with all applicable laws, including, without limitation, all laws prohibiting corruption and bribery (such as, if applicable, the U.S. Foreign Corrupt Practices Act of 1977), laws governing transactions with government and public entities, antitrust and competition laws, insider trading, securities, and financial reporting laws, and laws governing consumer transactions, where such compliance has any direct or indirect connection or relation to this Agreement or either Party’s exercise of rights or satisfaction of obligations under this Agreement.

Notices. Except as provided herein, all notices required or permitted by this Agreement will be in writing and will be valid and sufficient if sent by (i) registered or certified mail, return receipt requested, postage prepaid; (ii) by facsimile (provided the receipt of the facsimile is evidenced by a printed record of completion of transmission); or (iii) by express by express mail or courier service providing a receipt of delivery. Notices will be effective upon receipt as demonstrated by reliable confirmation. Notices will be addressed to the Parties using the contact information given in the applicable Order or this Agreement. Either Party may change its address or other contact information by a notice given to the other Party in the manner set forth above.

Limitation of Claims. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: (i) neither Party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than six (6) years after the cause of action arose; and (ii) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse. Any recourse against Licensee must be made under the terms of the Federal Tort Claims Act or as a dispute under the Contract Disputes Act as applicable.
Survival. All of the provisions in Sections 1, 4, 5, 6, 11, 17, and 18 will survive expiration or termination of this Agreement.

Assignment. Assignments are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986). In addition, neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C.§ 6305, and approval procedures set forth at FAR 42.1204.

Relationship of Parties. The relationship between the Parties is that of independent contractors. This Agreement does not constitute a partnership or joint venture between Licensee and HCL. Licensee is not the representative or agent of HCL and HCL is not the representative or agent of Licensee and neither will so hold itself out publicly or to any third party or incur any liability for the other Party. HCL is not responsible for the acts or omissions of HCL business partners and resellers.

Severability. All rights and remedies whether conferred hereunder, or by any other instrument or law will be cumulative and may be exercised singularly or concurrently. The failure of any Party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. The terms and conditions stated herein are declared to be severable. If any provision or provisions of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Governing Law. This Agreement shall be governed by the Federal law of the United States.

U.S. Government Restricted Rights. The Programs and Documentation provided with the products and services are “commercial items” as that term is defined at 48 C.F.R. 12.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and all U.S. Government end-users acquire the Programs and Documentation with only those rights set forth herein.

Public Announcement. Neither Party will publicly announce or create a press release referencing this Agreement, its contents or its related activities without the prior written consent of the other Party.

Entire Agreement. This Agreement, along with the EC America Rider to HCL Product Specific License Terms and Conditions, GSA Schedule Contract, Schedule Pricelist and Orders entered into pursuant to the Agreement, is the entire agreement between HCL and Licensee relating to the Program(s) and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Program(s) or any other subject matter covered by this Agreement and/or the Orders.
EXHIBIT A

PACKAGED SERVICE OFFERING ADDENDUM

If you have purchased Packaged Service Offerings, the terms and conditions of this Exhibit A to the Master License Agreement shall apply with respect to such Packaged Service Offerings. In the event of a conflict between or among the terms of this Exhibit A or the Master License Agreement, the terms of this Exhibit A shall govern. In the event of a conflict between a Negotiated Purchase Order and this Exhibit A, a Negotiated Purchase Order shall govern.

“Packaged Service Materials” means literary works or other works of authorship such as program listings, programming tools, Documentation, reports, drawings and similar works) that HCL may provide to you in connection with the Packaged Service Offerings indicated under an executed Order. Materials do not include Programs or commercially available software.

License Grant

Subject to the terms, conditions, and other restrictions set forth in this Exhibit A and a valid, executed Order (including timely payments of any Fees therein), HCL grants to Licensee a non-exclusive, non-transferable, limited, paid-up, and revocable license, without the right to sublicense, under HCL IPR, to reproduce, perform, display, and use the Packaged Service Materials solely by employees of Licensee. For avoidance of doubt, Licensee has no rights to create derivative works, assign, distribute, lease, rent, or otherwise transfer the Packaged Service Material(s).

Licensee Affiliates may install, access, and use the Packaged Service Materials under the terms of this Exhibit A, and Licensee is fully responsible for its Affiliates compliance with the terms of this Exhibit A, the Master License Agreement and the Order.

Party Obligations.

HCL shall perform the Packaged Service Offerings as specified in the relevant Order and Packaged Service Offering description. HCL's performance is conditional upon Licensee fulfilling its obligations. Licensee will cooperate with HCL and will provide, at no cost to HCL, safe and timely access to its premises and computer equipment, including remote access, adequate working space, facilities, and any other services, personnel, information, tools (including licenses), or materials that HCL may reasonably require to perform the services. HCL shall not be liable for any delay or defect resulting from Customer’s acts or omissions.

Acceptance.

3.1 All Packaged Service Offerings are provided without deliverables and are not subject to deliverable acceptance review and approval. All Materials provided through the Packaged Service Offerings defined in any Order will be deemed accepted by you upon delivery. HCL will make no additional revisions to the Packaged Service Materials after: (i) the Packaged Service Offering expiration date is reached; or (ii) HCL has provided the Maximum Service Effort as defined and specified for the Packaged Service Offering.

Payment and Delivery.

Charges for the Packaged Service Offerings shall be set forth in the relevant Order. Unless otherwise stated, travel and living expenses are included, subject to restrictions as specified in Packaged Service
Offering description.
Licensee is responsible for enabling HCL to deliver each Packaged Service Offering within the specified service term. In the event that any services specified in the Order for one or more Packaged Services Offerings are not completed within the specified service term, those incomplete services are forfeited, unless mutually agreed upon by both parties in writing prior to the expiration of the relevant Order term.

Warranties and Exclusions

HCL WARRANTS THAT THE PACKAGED SERVICE OFFERINGS WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER FOR SIXTY (60) DAYS AFTER THE SERVICES WERE PERFORMED (“WARRANTY PERIOD”).

THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN SECTION 5 ARE LICENSEE’S EXCLUSIVE WARRANTIES. HCL DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND ANY WARRANTY OR CONDITION OF NONINFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THE WARRANTY PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

The sole and exclusive remedy and HCL’s entire liability for breach of the above warranty will be to reperform the Packaged Service Offerings as applicable, provided Licensee notifies Licensor of any breach of warranty in writing within the Warranty Period.

Limitation of Liability

EXCEPT FOR BREACHES OF LICENSE GRANTS IN SECTION 1 OF THIS EXHIBIT A, CONFIDENTIALITY IN SECTION 14 OF THE MASTER LICENSE AGREEMENT, OR LICENSEE’S PAYMENT OblIGATIONS, IN NO EVENT WILL EITHER PARTY (OR HCL’S SUPPLIERS) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY (OTHER THAN AS PROVIDED FOR IN THIS SECTION) FOR LOSS OF PRIVACY ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PACKAGED SERVICE MATERIAL(S), OR OTHERWISE IN CONNECTION WITH ANY PROVISION OF THIS EXHIBIT A, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S GROSS NEGLIGENCE; OR (2) FOR FRAUD.

EXCEPT FOR BREACHES OF LICENSE GRANTS IN SECTION 1 OF THIS EXHIBIT A, CONFIDENTIALITY IN SECTION 14 OF THE MASTER LICENSE AGREEMENT, OR LICENSEE’S PAYMENT OblIGATIONS, IN NO EVENT WILL EITHER PARTY’S (OR HCL’S SUPPLIERS) TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES (REGARDLESS OF BASIS FOR CLAIMS) EXCEED THE SUM PAID BY LICENSEE TO HCL, UNDER THE APPLICABLE ORDER FOR THE AFFECTED PACKAGED SERVICE OFFERING.

The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Licensee’s jurisdiction. Licensee may have additional rights that may not be waived or claimed. HCL does not seek to limit Customer's warranty.
or remedies to any extent not permitted by law. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733.

Survival. All of the provisions in Sections 4, and 6 of this Exhibit A will survive expiration or termination of the Master License Agreement.
1. License Grant

Except as otherwise expressly provided, HDS FED grants Ordering Activity a non-transferable, nonexclusive license:

- to use the Operating Software solely on the HDS FED Equipment with which it is shipped, to enable the Equipment to function;
- and
to use the Programs solely for Ordering Activity’s internal needs subject to the restrictions specified on any Equipment used in connection with the Programs. For capacity-based Programs, Ordering Activity will use the Programs up to the specified capacity purchased, on the relevant equipment, network, device or CPU allowed. If Ordering Activity wishes to exceed capacity, Ordering Activity must first execute a new or modified GSA Customer Purchase Order.

Ordering Activity obtains no title or ownership in any Software nor does Ordering Activity obtain any right to sublicense the Software. The Software may be used only as provided in either machine-readable object code form or machine-compressed form, and the related documentation may be used only in printed or electronic form.

Open Source Software. Some Software licensed to Ordering Activity includes Open Source Software, and Ordering Activity can access a complete list of these licenses for the Open Source Software provided with HDS FED’s or Hitachi Ltd.’s proprietary Software from the Open Source License Website. HDS FED is required to notify the Ordering Activity of the foregoing and it is Ordering Activity’s responsibility to review and adhere to all licenses for Open Source Software. These Software License terms do not apply to the licenses for Open Source Software. If the Software licensed by HDS FED includes certain software licensed under the GNU General Public License or other similar Open Source Software with a license that requires the licensor to make the source code publicly available (“GPL Software”) and the applicable source code was not included in the Software, then Ordering Activity may obtain a copy of the applicable source code for the GPL Software by either (a) requesting the open source code be mailed to Ordering Activity by HDS FED or (b) downloading the open source code by following the links on the Open Source License Website.

Use Restrictions. Except to the extent these restrictions are prohibited by applicable federal law or prohibited by the terms of any open source license, Ordering Activity must not, and must not allow any other person to: (a) use the Software to conduct comparative or competitive analyses, including benchmarking; (b) reverse engineer, decompile, reverse compile, reduce in human readable form or otherwise access the source code of the Software; (c) sublicense, rent, lease, modify, enhance, supplement, create derivative works from the Software; (d) copy the Software other than as expressly allowed; (e) remove or otherwise tamper with any proprietary notices contained on or in the Software; or (f) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without our express written authorization.

Authorized Copies. HDS FED will provide Ordering Activity with one copy of the media and documentation for the Software. For Software licensed under an enterprise license, HDS FED grants Ordering Activity the right to make copies of the Software solely for Ordering Activity’s own internal use, within the scope of the enterprise license. Ordering Activity may also make one copy of back-up or archival copies of Software solely for Ordering Activity’s own internal use. Ordering Activity must reproduce on all copies made, all proprietary and copyright notices contained on or in the Software.

Software Transfers. Except to the extent otherwise provided in any applicable open source license, Ordering Activity must not transfer the Software to any other person or entity, without HDS FED’s prior written consent. Ordering Activity may, however, transfer the Operating Software to a third party (“transferee”) solely with the related HDS FED Equipment, but Ordering Activity must ensure that the transferee agrees to the terms of this Agreement. The Operating Software is provided to the transferee on “as is” basis, with no extension of any existing warranty or support arrangements. When the transfer is complete, Ordering Activity must remove and destroy all copies of the Operating Software in Ordering Activity’s possession or under Ordering Activity control. Ordering Activity must also permanently remove all Software from any media upon which it is stored prior to disposing of the media.

Location of Software. If the Equipment upon which Ordering Activity is authorized to Use the Software becomes temporarily inoperable, Ordering Activity may load and use the Software on another of Ordering Activity’s computer systems located at the same premises, until the original Equipment becomes operable. Otherwise, Ordering Activity must always get HDS FED’s prior written consent before changing the Equipment on which the Software is to be used, or its location.

Limited Warranty. Subject to this Section 7, HDS FED warrants to Ordering Activity that, during the Warranty Period, the Software will function in accordance with the published Specifications. To make a valid warranty claim, Ordering Activity must submit a claim to HDS FED under the procedures set out at http://www.hds.com/pdf/warranty_and_basic_maintenance_o_nline_terms.pdf.

EXCEPT AS SPECIFIED IN THESE SOFTWARE LICENSE TERMS, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY FEDERAL LAW. HDS FED DOES NOT WARRANT THAT ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE.

Ownership and Licenses. HDS FED and its licensors own all copyright, trademarks, designs, patents, circuit layout rights, know-how, trade secrets, trade, business or company names, domain names and related registration rights and all other intellectual property rights in the Software, including any modifications (“Hitachi IP”). Hitachi IP is protected by U.S. and other copyright laws and the laws protecting trade secret, other intellectual property rights and confidential information. Ordering Activity only gets license rights in Software, expressly stated in these Software License Terms. Except as otherwise expressly provided by any open source license,
Ordering Activity must not do anything to jeopardize HDS FED’s or our licensors’ rights in the Hitachi IP including to (i) copy, modify, merge, or transmit Hitachi IP; (ii) register or attempt to register any competing intellectual property rights to the Hitachi IP; (iii) delete or tamper with any proprietary notices on or in the Hitachi IP; (iv) take or use any action that diminishes the value of any trademarks included in the Hitachi IP; or (v) use the Software in violation of applicable law. These restrictions are in addition to those stated in Article 3.

**Intellectual Property Claims** Subject to Section 8 and the exceptions in this Section, if a third party makes a claim against Ordering Activity that the Software infringes that party’s patent rights or copyright (“IP Claim”), HDS FED will provide the following recourse (which, to the extent permitted by applicable law, comprises Ordering Activity’s sole and exclusive remedy against Us for IP Claims):

- HDS FED will indemnify Ordering Activity against liability and will pay the amount of damages, losses and costs finally awarded (or reasonably settled with our written consent), provided that Ordering Activity (i) promptly notifies HDS FED of the IP Claim and (ii) allows HDS FED to intervene in any litigation, at HDS FED’s expense and with counsel of our choice;
- HDS FED will, at its option and cost, do any of the following in relation to Software which is or HDS FED considers is likely to be the subject of an IP Claim: (i) work with the Government to secure the rights for Ordering Activity to continue to use the Software without infringement or (ii) modify the Software so that it is not infringing or replace it with something that has similar functionality to the Software. If neither option is reasonably possible, HDS FED will provide Ordering Activity with a refund, provided that Ordering Activity promptly returns the Software to HDS FED.

The above remedies will not apply to any Third Party Software (including without limitation any Open Source Software) or otherwise to any Software that Ordering Activity has, or any person on Ordering Activity’s behalf has: (i) modified or combined with any third party product not resold and authorized or approved by HDS FED, (ii) used outside the stated standard operating environment for the Software or for an unauthorized purpose, or (iii) failed to use a more recent version of the Software that was available to Ordering Activity and would have avoided the infringement or where the IP Claim arises due to any material or item that Ordering Activity owns or has sourced from a third party itself. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

**Liability Limitations**. HDS FED acknowledges the full extent of its liability arising from death or personal injury resulting from negligent acts or omissions; the nonexcludable statutory rights of consumers (for example, under laws providing for strict product liability), the breach of any obligation of confidence, and our breaches of these Software License Terms. Except for the immediately preceding sentence, indemnity obligations as described in Section 9 and to the extent not prohibited by applicable law:

- HDS FED’s and Ordering Activity’s maximum aggregate liability for all claims relating to all Software licensed to Ordering Activity under these Software License Terms, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the amount paid for the particular Software which is the subject matter of the claim, up to a maximum of two million US dollars (U.S. $2,000,000); and
- neither Ordering Activity nor HDS FED will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the Software License Terms (including, without limitation, loss of business, revenue, profits, goodwill, use, data, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by HDS FED’s negligence; (2) to HDS Fed violations that are finally decided by a court of competent jurisdiction as constituting a false claim pursuant to the False Claims Act at 31 U.S.C. §§ 3729 - 3733; or (3) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract (4) for any other matter for which liability cannot be excluded by law.

**Confidential Information**. Each party must keep each other’s Confidential Information confidential, using the same degree of care used to protect our own Confidential Information. Each party shall not disclose the other party’s Confidential Information to any third party, unless authorized in writing to do so. We can, however, disclose it to our employees and contractors who need to know the information in order to perform obligations under these Software License Terms. When the end user is an instrumentality of the U.S. Government, neither these Software License Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

**Export Compliance**. Ordering Activity acknowledges that United States laws and regulations regulate the export of computer products and technology and may prohibit, use, sale or re-export of such products or technology. If Ordering Activity sells or transfers to another person or entity or the right to use any Software, Ordering Activity will ensure that all applicable U.S. export restrictions are observed.

**Governing Law**. These Software License Terms will be governed by the Federal laws of the United States.

**Miscellaneous**. Pursuant to FAR 52.212-4(f), neither party will be responsible for any failure to meet any of our obligations due to matters beyond our reasonable control provided reasonable efforts have been made to perform them. Ordering activity must not assign, or otherwise transfer any of Ordering Activity’s rights under these Software License Terms without HDS FED’s prior written agreement. Assignment by HDS FED is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). Notices made under these Software License Terms must be in writing to a senior executive. Notices will be deemed given: where they are hand delivered, when a duly authorized employee or representative of the recipient gives written acknowledgement of receipt; for email communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch and for fax, on receipted transmission of the fax. If either party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be written and signed by the waiving party. Any such waiver shall not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so. If either party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be written and signed by the waiving party. Any such waiver shall not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so. These Software License Terms may not be modified except in writing signed by an authorized representative of each party. These Software License Terms, the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders constitute the entire agreement relating to its subject matter and supersede any prior written or oral communications.
Definitions.

Confidential Information: information that, at the time of disclosure, is clearly marked as confidential or in the circumstances would be considered to be confidential, and is exempt from disclosure under the Freedom of Information Act (FOIA), 5.U.S.C. §552(b), under one or more exemptions to that Act.

Equipment: hardware and spare parts manufactured by HDS FED or Hitachi Ltd., or that HDS FED has authorized Ordering Activity to use with the Software.

Open Source License Website: the licenses applicable to Open Source Software listed at www.hds.com/corporate/legal/index.html. [This reference is included for attribution purposes, as required by the applicable Open Source Software license(s)].

Open Source Software: third party software, which may be available without charge for use, modification or distribution, and generally licensed under the GNU GPL, Lesser General Public License, Apache or other open source software license.

Published Specifications: the published Software specifications existing at the time Ordering Activity ordered Software from HDS FED. These are located at hds.com and may also be included with the products.

Software: the object code format of (i) programming firmware embedded in the Equipment to enable it to perform its basic functions ("Operating Software") and (ii) software programs supplied by us ("Programs") and (iii) any updates, related documentation and specifications. Software may include Open Source Software.

Use: to use Software in live production for processing data.

Warranty Period: means the ninety-day period following delivery of the Software.

Ordering Activity: end user of the Software.

Agreed and Accepted:

Hitachi Data Systems Federal Corporation

Signature:

Name:

Title:

Date:

General Services Administration

Signature:

Name:

Title:

Date:
IDAPTIVE END USER LICENSE AND SERVICES AGREEMENT

THIS END USER LICENSE AND SERVICES AGREEMENT (this “Agreement”) constitutes a legal agreement between you, the undersigned Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”) and IDaptive, LLC, a Delaware limited liability company (“Idaptive”), with respect to the Cloud Service identified below. If Customer does not agree to the terms of this Agreement, Idaptive is unwilling to grant Customer any rights to use the Cloud Service. In such event, Customer may not use the Cloud Service, and Customer should promptly cease use of the Cloud Service and accompanying Documentation.

The terms and conditions set forth in this Agreement and in any Schedule issued under this Agreement shall control in the event that there are different, inconsistent or additional terms set forth in any other purchase order submitted by Customer or invoice issued by Idaptive. The terms and conditions of any Schedule shall incorporate the terms and conditions of this Agreement and shall have precedence over any conflicting terms and conditions contained in this Agreement. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

1. DEFINITIONS
1.1. “Affiliate” means any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party. Customer shall notify Idaptive in writing of the identity of its Affiliates and shall be jointly and severally liable for such Affiliate’s performance of its obligations under this Agreement.
1.2. “Claim” shall have the meaning given to such term in Section 5.1.
1.3. “Cloud Service” means any on-line software service operated by Idaptive and accessible to Customer via the internet, specified on a Schedule.
1.4. “Cloud Service Addendum” means the Cloud Service Addendum attached hereto as Exhibit A, initially as in effect on the Delivery Date and as such document may be modified from time to time thereafter in accordance with its terms.
1.5. “Compute Hour” means access to the Cloud Service for a period of one hour. Any partial hour will be rounded up to the next full hour.
1.6. “Confidential Information” shall have the meaning given to such term in Section 10.1.
1.7. “Consulting Fees” means the fees charged to Customer by Idaptive for Consulting Services.
1.8. “Consulting Materials” shall have the meaning given to such term in Section 3.1.
1.9. “Consulting Services” means installation, consulting, implementation or training services, if any, provided to Customer by Idaptive or its representative under this Agreement.
1.10. “Delivery Date” means the date on which the notification of the start of the Cloud Service ordered under a Schedule is electronically sent by Idaptive to Customer.
1.11. “Distributor” means any independent value added distributor (VAD) authorized by Idaptive to distribute Idaptive software and/or services to Resellers only, unless otherwise provided for in the applicable distribution agreement.
1.12. “Documentation” means Idaptive’s end user documentation made generally available by Idaptive for use with the Cloud Service, whether published on-line or provided in hard copy. Documentation shall include any revisions, enhancements and new versions of Documentation.
1.13. “Idaptive” means IDaptive, LLC, a Delaware limited liability company, or a subsidiary of IDaptive, LLC that provides the Cloud Service or Consulting Services to Customer under this Agreement, as the context requires.
1.14. “Jump Start Service” means a set of pre-packaged services offered by Idaptive that includes training, on-site fixed deliverables and travel costs for a fixed price. The details of these offerings will be provided in a Statement of Work, if applicable.
1.15. “Local Software Components” means the downloadable software components necessary to utilize certain functionality of the Cloud Service that Customer may install on devices such as phones, tablets, PCs or Macs and any revisions, enhancements and new versions of such software components, made generally available by Idaptive for use with the Cloud Service, in each case in its machine-readable object code form.
1.16. “Project Authorization” shall have the meaning given to such term in Section 3.1.
1.17. “Reseller” means any independent value added reseller (VAR) authorized by Idaptive to distribute Idaptive software and/or services to Customer.
1.18. “Schedule” means any addendum, exhibit, quote, schedule or Statement of Work to this Agreement in a form approved by Idaptive.
1.19. “Statement of Work” shall have the meaning given to such term in Section 3.1.
1.20. “Subscription Fee” means the fee charged to Customer by Idaptive for the Cloud Service (including Technical Support) either for the Subscription Term or for the number of Compute Hours purchased. If Customer purchases the Cloud Service from a Reseller, Customer may pay the Subscription Fee to the Reseller and not to Idaptive directly.
1.21. “Subscription Term” means the period during which Customer is subscribed to the Cloud Service as set forth on an applicable Schedule.
1.22. “Technical Support” means the services provided by Idaptive or its representative with each subscription at the level set forth on an applicable Schedule under the Idaptive Technical Support Policy posted at https://support.idaptive.com, as such document may be modified from time to time.

1.23. “Third Party Software” means any software that is not owned by Idaptive that is identified in the Documentation or on www.idaptive.com and related Idaptive websites and user portals.

1.24. “User” means an employee, contractor, client or customer of Customer to whom Customer provides access to the Cloud Service, the number or other limitations of which are set forth on an applicable Schedule.

1.25. “User Account” means electronic credentials a User uses to access to the Cloud Service.

**SUBSCRIPTION & LICENSE**

**Cloud Service.** Subject to the terms and conditions of this Agreement and the Cloud Service Addendum and Customer’s payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable right, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations to use the Cloud Service to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscribed use the Cloud Service in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer.

**SAP Online Marketplaces.** The terms of this paragraph shall apply to the Cloud Service purchased on SAP Online Marketplaces. Idaptive and Customer acknowledge that Idaptive is solely responsible for providing the Cloud Service and Technical Support services as set forth herein and SAP has no obligation to furnish any such services to Customer. To the maximum extent permitted by applicable law, SAP will have no warranty obligation to Customer with respect to the Cloud Service and any claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to the warranties set forth in this Agreement shall be Idaptive’s sole responsibility. Idaptive and Customer acknowledge that Idaptive, not SAP, is responsible for addressing any claims of Customer or any third party relating to the Cloud Service or Customer’s possession and/or use of the Cloud Service. In the event of any third party claim that the Cloud Service infringes the third party’s intellectual property rights, Idaptive and Customer acknowledge that Idaptive, not SAP, will be solely responsible for the investigation, defense, settlement and discharge of any such infringement claim subject to Section 5 of this Agreement.

**Local Software Components.** Subject to the terms and conditions of this Agreement and payment of the applicable Subscription Fee, Idaptive grants Customer a worldwide, non-exclusive, non-transferable license, without the right to sublicense and (except as otherwise provided on a Schedule) solely for its own business operations, to install on and use the Local Software Components to manage the number of devices for which Customer has subscribed, and have the number of Users for which Customer has subscribed use the Local Software Components in accordance with the terms of the Documentation and this Agreement. The term of such license shall be the Subscription Term or the number of Compute Hours purchased by Customer. Customer may reproduce the Local Software Components and Documentation only as necessary to use the Cloud Service. Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original. Customer shall implement all commercially reasonable measures to ensure that its Users comply with the restrictions and limitations of this Agreement.

**Evaluation Use License.** In the event that the Cloud Service is licensed only for evaluation use, the terms of this paragraph shall apply. Idaptive hereby grants Customer a personal, non-exclusive, non-transferable license, without right of sublicense, to use the Cloud Service commencing upon initial use of the Cloud Service and, unless Customer and Idaptive agree to a different period, will terminate after a period of thirty (30) days (the “Evaluation Period”). Customer may use the Cloud Service for an unlimited number of Users and devices during the Evaluation Period. Cloud Service licensed for evaluation use will automatically disable itself at the end of the Evaluation Period, as it employs a restriction mechanism which restricts the program to a limited working period of time. This restriction mechanism and the manner in which it enforces the restriction is maintained in confidence by Idaptive as a trade secret, and Customer may not publish, disclose or reveal it. Customer agrees not to do anything to circumvent or defeat the restriction mechanism. Notwithstanding anything to the contrary in this Agreement, Sections 5 (Intellectual Property Indemnity), 7.1 (Cloud Service Warranty) and 7.2 (Consulting Services Warranty) shall not apply to evaluation use.

**Restrictions.** The rights granted in Section 2.1 through 2.3 are subject to the following restrictions: (i) Customer shall not reverse engineer, disassemble, decompile or otherwise attempt to derive or discover the source code of the Local Software Components or the Cloud Service, in whole or in part, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation; (ii) Customer shall not sublicense or use the Cloud Service for commercial time-sharing, rental, outsourcing, application or managed service provision, or service bureau use, or to train persons other than Users, unless previously agreed to in writing by Idaptive; (iii) Customer may not remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Cloud Service, Local Software Components or Documentation, (iv) Customer shall not disclose the results of any performance, functional or other evaluation or benchmarking of the Cloud Service to any third party without the prior written permission of Idaptive; (v) Customer may not use the Cloud Service if Customer is a competitor of Idaptive; (vi) Customer shall not modify or create any derivative works of the Cloud Service, Local Software Components or Documentation; and (vii) Customer shall not attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Cloud Service or the data contained therein. In the event that any Third Party Software is required for Customer’s use of the Cloud Service, e.g., GoogleMaps for location services, Customer acknowledges that the terms of use applicable to such Third Party Software are different than those of this Agreement.
RetentionPolicyRights. Idaptive reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees (i) that Idaptive and its third party licensors retain all rights, title and interest in and to the Cloud Service, Local Software Components and Documentation and (ii) that it does not acquire any rights, express or implied, in or to the foregoing, except as specifically set forth in this Agreement. Any new features, functionality, corrections or enhancements for the Cloud Service or Local Software Components suggested by Customer shall be free from any confidentiality restrictions that might otherwise be imposed upon Idaptive pursuant to Section 10, and may be incorporated into the Cloud Service or Local Software Components by Idaptive. Customer acknowledges that the Cloud Service or Local Software Components incorporating any such new features, functionality, corrections or enhancements shall be the sole and exclusive property of Idaptive.

Compute Hour Usage Certification. The Cloud Service includes functionality that allows Customer to run a report to show the number of Compute Hours used by Customer during a specified period of time. If Customer has subscribed for Compute Hours, Customer will either permit the Cloud Service to automatically send a Compute Hour usage report or provide Idaptive with a Compute Hour usage report within fifteen (15) business days of the end of each calendar quarter. If the report reveals that Customer has used more Compute Hours than Customer has subscribed for, Idaptive shall invoice Customer for the excess Compute Hours used.

CONSULTING SERVICES

Consulting Services. From time to time, Customer may request, through provision of an executed project authorization in the form required by Idaptive, that Idaptive, or its duly authorized representative perform Consulting Services (a Government purchase order, “Statement of Work” or “Quotation” or, each and collectively, “Project Authorization”). Idaptive shall have no obligation to perform Consulting Services until and unless it accepts a Project Authorization. Customer shall be responsible for providing Idaptive’s representatives with access to qualified Customer employees and Customer-controlled software and hardware, and safe access to Customer’s premises, each as required to allow Idaptive to perform the Consulting Services. Idaptive’s representatives will comply with Government security requirements, including reasonable written rules and regulations of Customer with respect to Customer’s premises, provided that such rules and regulations are provided to Idaptive sufficiently in advance of the scheduled start date of the Consulting Services. All materials and information used or generated by Idaptive in the performance of Consulting Services (“Consulting Materials”), and all intellectual property rights therein, shall be the sole property of Idaptive. Idaptive grants to Customer a perpetual, worldwide, non-exclusive, non-transferable license, without the right to sublicense and solely for its own business operations, to use and have Users use the Consulting Materials provided to Customer under this Agreement, subject to all of the provisions of this Agreement governing Local Software Components and Documentation, as applicable, and any applicable Schedules. The rights to any Customer’s preexisting proprietary business information, or results of any compilation thereof, which are used in or result from Consulting Services and Consulting Materials, shall remain the sole property of Customer.

3.2. Cancellation. In the event that Idaptive notifies Customer of Customer’s failure to perform any of its obligations under a Statement of Work, which failure shall have prevented Idaptive from meeting any deadline, such deadline shall be extended by an amount of time equal to the length of such failure to perform on the part of Customer. Idaptive shall have the right to charge Customer at Idaptive’s then applicable daily rates, in accordance with the GSA Schedule pricelist, to the extent that such delays cause Idaptive to provide additional services or to spend additional time on the project. In the case of extended delays as to which Customer provides reasonable advance written notice regarding the expected duration of the delay, Idaptive shall make a good faith effort to redeploy its resources to other projects to mitigate such additional charges. Idaptive shall have the right to rely upon all decisions and approvals of Customer’s contracting officer.

TERM AND TERMINATION

Term. The term of this Agreement shall commence on the Delivery Date and shall continue until terminated in accordance with the provisions of this Section 4. Upon expiration or termination of the then-current Subscription Term, Customer’s subscription may be renewed for an additional year by issuing a new purchase order.

Reserved.

Reserved.

Reserved.

Effect of Termination. Except as otherwise set forth herein, termination of this Agreement, any subscription, any Schedule or any Project Authorization shall not limit either party from pursuing other remedies available to it, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under any Schedule. The parties’ rights and obligations under Sections 2.5 (Restrictions), 2.6 (Retention of Rights), 2.7 (Compute Hour Usage Certification), 4.5 (Effect of Termination), 4.6 (Handling of Software and Confidential Information Upon Termination), 7.3 (Disclaimers), 10 (Nondisclosure) and 11 (Miscellaneous), as well as any obligation to pay fees accrued prior to termination, shall survive termination of this Agreement.
Handling of Software and Confidential Information Upon Termination. Upon termination of this Agreement, any subscription, any Schedule or any Project Authorization, Customer shall (i) cease using the applicable Cloud Service, Local Software Components and Documentation and related Confidential Information of Idaptive, and (ii) certify to Idaptive within thirty (30) days after termination that Customer has destroyed, or has returned to Idaptive, the Local Software Components, Documentation, related Confidential Information of Idaptive, and all copies thereof, whether or not modified or merged into other materials. Following termination of this Agreement, and subject to the Cloud Service Addendum, each party will return or destroy the other party’s Confidential Information and within thirty (30) days following the other party’s written request, the other party shall certify to the requesting party that it has destroyed or returned to the requesting party all Confidential Information of the requesting party, and all copies thereof, whether or not modified or merged into other materials.

INTELLECTUAL PROPERTY INDEMNITY

5. Generally. Idaptive will defend, indemnify and hold Customer harmless against any claim brought by a third party to the extent it alleges that the Cloud Service directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret, of that third party (“Claim”), and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Idaptive arising out of such Claim; provided that: (i) Customer gives Idaptive prompt written notice upon learning of a Claim or potential Claim; (ii) Idaptive may assume control of the defense of such Claim and all related settlement negotiations; and (iii) Customer reasonably cooperates with Idaptive, at Idaptive’s request and expense, in the defense or settlement of the Claim, including the provision of all assistance, information and authority reasonably requested by Idaptive. In no event shall Idaptive enter into any settlement or agree to any disposition, without the prior written consent of Customer, that contains an admission of liability or wrongdoing on the part of Customer, or otherwise prejudices the rights of Customer. Notwithstanding the foregoing, Idaptive shall have no liability for any claim of infringement based on (a) the modification of the Cloud Service by anyone other than Idaptive or its agents, (b) the use of the Cloud Service other than in accordance with the Documentation and this Agreement, (c) the combination of the Cloud Service with other software or hardware not provided by Idaptive, where the combination causes the infringement and not the Cloud Service standing alone, or (d) subscriptions for no fee, including a trial, beta or evaluation license agreement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Additional Remedies. If the Cloud Service, or any material portion thereof, is held by a court of competent jurisdiction to infringe, or if Idaptive believes that the Cloud Service may be subject to a Claim or held to infringe, Idaptive shall in its commercially reasonable judgment and at its expense (a) replace or modify the Cloud Service so as to be non-infringing, provided that the replacement software or service contains substantially similar functionality; or (b) obtain for Customer the rights to continue using the Cloud Service; or (c) if non-infringing software or the rights to use the Cloud Service cannot be obtained upon commercially reasonable terms, terminate the then-current subscription. Upon any such termination of the then-current subscription, Idaptive shall refund any prepaid and unused amounts paid for the then-current subscription. This Section 5.2 shall not apply to subscriptions for no fee, including a trial, beta or evaluation license agreement.

Exclusive Remedy. This Section 5 sets forth Customer’s exclusive remedy, and Idaptive’s entire liability, with respect to infringement or misappropriation of intellectual property rights of any kind arising out of this Agreement.

6. RESERVED

7. WARRANTIES AND REMEDIES

7.1. Cloud Service Warranty. Idaptive warrants to Customer that, during the Subscription Term, the Cloud Service will perform in material conformity with the functions described in the applicable Documentation. Such warranty period shall not apply to subscriptions for no fee. Idaptive will use commercially reasonable efforts to remedy any material non-conformity with respect to the Cloud Service at no additional charge to Customer. In the event Idaptive is unable to remedy the non-conformity and such non-conformity materially affects the functionality of the Cloud Service, Customer may promptly terminate the applicable subscription. In the event Customer terminates its subscription pursuant to this Section 7.1, Customer will receive a refund of any prepaid and unused portion of the Subscription Fee. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive’s entire liability, with respect to any breach of this Section 7.1.

7.2. Consulting Services Warranty. Idaptive warrants to Customer that the Consulting Services provided by Idaptive will be performed in a professional manner and in accordance with generally prevailing industry standards. Customer must give notice of any breach of this warranty within thirty (30) days from the date that the Consulting Services are completed, as provided in the Project Authorization applicable to the Consulting Services engagement. In such event, at Idaptive’s option, Idaptive shall (a) use commercially reasonable efforts to re-perform the Consulting Services in a manner that conforms to the warranty, or (b) refund to Customer the fees paid by Customer to Idaptive for the non-conforming Consulting Services. The foregoing shall constitute the exclusive remedy of Customer, and Idaptive’s entire liability, with respect to any breach of this Section 7.2.
7.3. **Disclaimers.** Idaptive does not warrant that (i) the Cloud Service will meet Customer’s requirements, (ii) the Cloud Service will operate in combination with other hardware, software, systems or data not provided by Idaptive (except as expressly specified in the Documentation), (iii) the operation of the Cloud Service will be secure, timely, uninterrupted or error-free, or (iv) all errors in the Cloud Service will be corrected. **THE WARRANTIES STATED IN THIS SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE.**

8. RESERVED

9. RESERVED

10. NONDISCLOSURE

10.1. **Confidential Information.** Each party may have access to information of the other party that is confidential and/or proprietary (“Confidential Information”). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential (whether disclosed in writing, orally or by inspection of tangible objects). Idaptive’s Confidential Information shall include, but not be limited to, the Cloud Service, Local Software Components, Documentation, formulas, methods, know how, processes, designs, new products, development work, marketing requirements, marketing plans, customer names, prospective customer names, and the results of any comparative or other benchmarking tests with respect to the Cloud Service, in each case regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential.

10.2. **Exceptions.** A party’s Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party’s Confidential Information. In addition, Section 10 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, that the responding party shall first have given notice to the other party to enable the disclosing party to seek a protective order or take other appropriate action.

10.3. **Restrictions.** Unless otherwise required by applicable law, the parties shall not make each other’s Confidential Information available in any form to any third party (except third parties who are Users) or use each other’s Confidential Information for any purpose other than as authorized under this Agreement. Each party shall take all commercially reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. The receiving party shall notify the disclosing party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the receiving party, and will cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of the Confidential Information and prevent its further unauthorized use. Except as expressly stated in this Agreement, no license or intellectual property right to Confidential Information is granted due to the disclosure by either party to the other party, and each party retains ownership of its Confidential Information. The parties shall hold each other’s Confidential Information in confidence both during the term of this Agreement and for a period of five (5) years after any termination of this Agreement. Idaptive recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

11. MISCELLANEOUS

11.1. **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the Federal laws of the United States, excluding its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement.

11.2. **Notices.** All notices required to be sent under this Agreement shall be in writing, signed by or on behalf of the party giving it, and shall be deemed to have been given upon (i) the date delivered by recognized overnight courier or by hand delivery or (ii) if by certified mail return receipt requested, on the date received, to the addresses set forth on a purchase order by Customer or invoice from Idaptive and to the attention of “Legal Department” and the signatories of the relevant Schedule, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

11.3. **Assignment.** Neither party shall sell, lease, assign or otherwise transfer this Agreement or any rights or obligations under this Agreement in whole or in part, and any such attempted assignment shall be void and of no effect without the advance written consent of the other party, such consent not to be unreasonably withheld or delayed. Any permitted assignee will assume all obligations and rights of its assignor under this Agreement (or related to the assigned portion in case of a partial assignment).
11.4. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

11.5. **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of Idaptive’s proprietary rights in the Cloud Service, Local Software Components or Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

11.6. **Force Majeure.** This Agreement is subject to FAR 52.212-4 (f) Excusable delays.

11.7. **Successors and Assigns; Third Party Beneficiaries.** All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Idaptive and Customer. Except as expressly provided in this Agreement, there are no third party beneficiaries of any of the warranties, rights or benefits of this Agreement.

11.8. **Legal and Export Compliance.** Customer shall comply fully with all international and U.S. laws and regulations that apply to the Cloud Service, Local Software Components and Documentation and to Customer’s use thereof, including but not limited to the U.S. Export Administration Regulations and other end-user, end-use and destination restrictions issued by U.S. and other governments. Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and its representatives shall not, directly or indirectly, export, re-export, divert, or transfer the Cloud Service, Local Software Components or Documentation or any direct product or portion thereof, including via remote access, (i) to any country or region so restricted by the U.S. economic sanctions or export controls, including but not limited to applicable regulations of the U.S. Commerce Department, the U.S. Treasury Department, and the U.S. Department of State, to any person or entity controlled by any such country or region, or to any national or resident of any such country or region, other than nationals who are lawfully admitted permanent residents of countries not subject to such restrictions, (ii) to any person or entity on the U.S. Treasury Department’s Specially Designated Nationals and Blocked Persons List, (iii) to any person or entity on the U.S. Commerce Department’s Denied Persons List, or (iv) to any person or entity to which sale is prohibited under the Enhanced Proliferation Control Initiative (“EPCI”). Idaptive shall be entitled to take all actions it deems necessary to ensure compliance with this Section, including but not limited to developing internal compliance practices such as performing checks and implementing use restrictions with respect to the Cloud Service, Local Software Components and Documentation. Customer agrees to the foregoing and represents that Customer is not located in, under the control of, a national or resident of any such country or region, on any such list, or subject to prohibition under EPCI.

11.9. **U.S. Government License Rights.** The Local Software Components and Documentation covered by this Subscription Agreement are “Commercial Item(s),” consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as these terms are defined in 48 C.F.R. §2.101 and used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212, if such Local Software Components or Documentation are being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), such Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users for use by such government, or to any such US Government prime contractors or subcontractors for use by such prime contractors or subcontractors in the performance of work under a US Government prime contract or subcontract or for any other use, (a) only as Commercial Items and (b) with only those rights customarily provided to the public and as are granted to all other, non-government-related, end-users, as such commercial license rights are delineated in the terms and conditions of this Agreement. All rights relating to unpublished materials are hereby reserved under the copyright laws of the United States.

11.10. **Relationship Between the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between the parties.

11.11. **Entire Agreement.** This Agreement, together with the attached Cloud Service Addendum, the underlying GSA Schedule Contract, GSA Schedule Pricelist and any Schedule referring to this Agreement, each of which is incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such Cloud Service Addendum and Schedules.

**Exhibit A – Cloud Service Addendum**

This Cloud Service Addendum (this “Addendum”) is an addendum to the End User License and Services Agreement (the “Agreement”) between Idaptive, LLC (“Idaptive”) and the Customer as defined in the Agreement. Capitalized terms used in this Addendum and not otherwise defined below shall have the meanings given to such terms in the Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall control. Customer and Idaptive hereby agree to the following:

**Idaptive Obligations**
Availability of Service. Idaptive uses an industry-leading cloud service provider that provides a monthly uptime availability of at least 99.9% to host the Cloud Service. Idaptive will provide 99.9% availability for the Cloud Service during the cloud service provider's service availability. Idaptive measures the availability of the Cloud Service, monthly. For purposes of the foregoing, “availability” means that the Cloud Service returned the correct, expected data when queried. Idaptive agrees to use its commercially reasonable efforts to make the Cloud Service generally available 99.9% of the time, 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Idaptive shall give at least two weeks online or e-mail notice to Customer and which Idaptive shall schedule to the extent reasonably practicable during the weekend hours from 11:00 p.m. PT Friday to 12:00 p.m. PT Sunday); or (b) any unavailability caused by circumstances beyond Idaptive’s reasonable control, including the force majeure provisions identified in Section 11.6 of the Agreement and computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Idaptive’s possession or control, and network intrusions or denial of service attacks. Service availability is documented monthly at www.idaptive.com/trust.

Security. Idaptive shall maintain commercially reasonable administrative, physical and technical safeguards to maintain and protect Customer’s data that is submitted to the Cloud Service by Customer. Idaptive shall not be responsible for loss of data transmitted on networks not owned or operated by Idaptive, including the Internet. Idaptive shall produce an SSAE 16 (SOC 2) report (or similar alternative report as reasonably selected by Idaptive) on an annual basis, and Customer may request a copy of such report and agrees that such report shall be deemed Idaptive’s Confidential Information under the Agreement.

Ownership of Customer Data. Except for software that Idaptive licenses to Customer, as between the parties, Customer retains all right, title, and interest in and to Customer Data, as defined in Section 2.4 of this Addendum. Idaptive acquires no rights in Customer Data other than the right to host Customer Data within the Cloud Service, including the right to use and reproduce Customer Data solely as necessary to provide the Cloud Service.

Use of Customer Data. Idaptive will use Customer Data (other than in aggregate and anonymized form) only to provide Customer with the Cloud Service. This use may include troubleshooting to prevent, find, and fix problems with the operation of the Cloud Service. It may also include improving features for finding and protecting against threats to Users. Idaptive may share aggregated and anonymized Customer Data with business partners for use for their business purposes, but Idaptive de-identifies and aggregates such data so that the data cannot be traced to an individual, a customer, or a device. Idaptive will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer’s consent.

Third-party requests. Idaptive will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant, but excluding Idaptive’s subcontractors) except as Customer directs or unless required by law. Should a third party contact Idaptive with a demand for Customer Data, Idaptive will attempt to redirect the third party to request that data directly from Customer. As part of this effort, Idaptive may provide Customer’s basic contact information to the third party. If compelled to disclose Customer Data to a third party, Idaptive will promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. Customer is responsible for responding to requests by third parties regarding Customer’s use of the Cloud Service, such as requests to take down content under the Digital Millennium Copyright Act.

Customer Obligations

Internet Access. Customer must have a high speed Internet connection in order to use the Cloud Service. Customer shall procure and maintain the hardware, software and systems that connect Customer’s network to the Cloud Service, and shall implement all reasonable communication and security protocols necessary to use the Cloud Service.

Customer Information. Customer shall provide and maintain with Idaptive accurate and complete information on Customer’s legal business name, address, phone number, email address(es) and other information reasonably requested by Idaptive. Customer agrees that Idaptive may provide any and all communications, reports, statements and notices (other than legal notices under the Agreement) to such email address(es), and may rely on any communications, directions or statements received from such email address(es).

Security. Customer shall maintain commercially reasonable administrative, physical and technical safeguards to prevent unauthorized access to or use of the Cloud Service. Customer is responsible for all activity occurring under its User Accounts, including, but not limited to those that access the Cloud Service, www.idaptive.com and related Idaptive websites and user portals, and for abiding by all applicable local, national and international laws. Customer shall promptly notify Idaptive of any unauthorized access to or use of the Cloud Service and any loss or theft of any User’s username or password of which Customer becomes aware.

Customer Data. Customer is responsible for the legality, quality, accuracy and integrity of any data and other information that Customer submits to Idaptive in the course of using the Cloud Service (“Customer Data”). Idaptive will not be responsible for any corrections, deletions or damage to Customer Data. Customer Data may include documents, images and other digital information that Customer chooses to transmit to and store in the Cloud Service. Customer is solely responsible for ensuring that Customer Data is not offensive, obscene, inappropriate or unlawful and that it
does not contain any viruses or harmful content. Any Customer Data that Idaptive determines, in its sole discretion, may be offensive, obscene, inappropriate or unlawful or that may contain viruses or harmful content may be removed from the Cloud Service.

Changes

Changes to the Cloud Service. Idaptive may make changes to the functionality, user interface, usability of the Cloud Service and related Documentation from time to time. In the event of any material change to the functionality, user interface, usability of the Cloud Service, as Customer’s sole remedy in the event of such change, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of fees paid by Customer for the Cloud Service for the terminated portion of the term.

Changes to this Addendum. Idaptive may make changes to this Addendum from time to time, but will not reduce the level of service for which Customer has paid. In the event of any material change to this Addendum, Idaptive will notify Customer by either sending an email to the email address(es) provided by Customer pursuant to this Addendum, or will post a notice in Customer’s administrator’s account. If Customer does not agree to such change, Customer must notify Idaptive within thirty (30) days of Customer’s receipt of such change, in which case the change will not take effect until the end of the then current Subscription Term.

Suspension and Termination

Reserved.

Suspension for Inappropriate Use. Idaptive reserves the right to temporarily suspend Customer’s access of the Cloud Service if Idaptive determines that Customer’s use is contrary to law or causing material harm to Idaptive or others. Idaptive will provide reasonable notice of such suspension. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any temporary suspension under this Section.

Handling of Data on Termination. In the event of any expiration or termination of Customer’s use of the Cloud Service, upon Customer’s request, Idaptive will export Customer’s data that is stored on the Cloud Service to a mobile storage medium and will return such data to Customer. Alternatively, Customer may request that Idaptive delete all such data. Idaptive may delete all of Customer’s data that is stored on the Cloud Service thirty (30) days following any expiration or termination of Customer’s use of the Cloud Service. Customer agrees that Idaptive will not be liable to Customer, any Affiliate or any third party for any data deleted under this Section 4.3.
Infinidat End User License Agreement

IMPORTANT – PLEASE READ CAREFULLY: THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN INFINIDAT WHICH MEANS (I) INFINIDAT, INC. IF YOU ARE LOCATED IN THE UNITED STATES; (II) INFINIDAT LTD. IF YOU ARE LOCATED OUTSIDE OF THE UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. DOES NOT HAVE A SUBSIDIARY; (III) THE LOCAL INFINIDAT LTD. SUBSIDIARY IF YOU ARE LOCATED OUTSIDE OF UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. HAS A LOCAL SUBSIDIARY ("INFINIDAT", "OUR", "US" OR "WE") AND YOU, AS AN AUTHORIZED REPRESENTATIVE OF AN ENTITY ("YOU" OR "YOUR"), THAT HAS OBTAINED THE PRODUCT, AS DEFINED BELOW, DIRECTLY FROM INFINIDAT OR FROM AN AUTHORIZED INFINIDAT PARTNER.

BY EXECUTING THE PURCHASE ORDER, YOU ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.

THIS AGREEMENT SHALL GOVERN YOUR USE OF THE PRODUCT UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT IN EFFECT WITH INFINIDAT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF AND IS EXPLICITLY STATED TO TAKE PRIORITY.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO DO SO AND BIND SUCH ENTITY TO THIS AGREEMENT, AND IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY.

1. Definitions

“Affiliate” means any corporation, company or other business entity that directly or indirectly, controls, is controlled by, or is under common control with Infinidat.

"Documentation" means our user manuals, instructions and similar materials that are delivered with the Product, including any updates or supplements thereto.

"Enhancement" means an update (such as a fix or patch), modification, improvement, addition and/or customization to a Product, including those resulting in new features and functionality.

"Intellectual Property Rights" means all rights, titles and interests in, to and under patents, inventions, discoveries, copyrights, trademarks, trade names, trade dress, technical information, data, know-how, trade secrets, designs, drawings, models, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual and industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

"Laws" means any applicable laws, statutes, ordinances, rules and regulations of any jurisdiction (including for the avoidance of doubt any Federal, state, provincial or local laws).

"Product" means, collectively, the hardware and Software, and any Enhancement thereto provided by Infinidat at any time. "Proprietary Legends" means any copyright, trademark, patent, or other proprietary legend, notice or designation.

"Software" means the Infinidat proprietary software product licensed and provided at any time, including firmware embedded in the, software programs provided by Infinidat and any Enhancement thereto.
2. **License.** Subject to the terms and conditions of this Agreement, Infinidat hereby grants you a limited, nonexclusive, nontransferable, non-sublicensable, revocable (solely in accordance with the termination provisions below) license, to (i) use, in object code only, the Software for your internal business purposes only; and (ii) use the Documentation solely in connection with your use of the Product (collectively, the "License").

3. **Limited License Capacity.** If the Products are subject to a specified capacity limit, you are only authorized to use the Software at or below the limit you paid for. Infinidat or its authorized partner, may invoice you, and you shall pay, for the additional capacity in the Product after your usage exceeds the specified capacity limit three times in a 30-day period, even if usage subsequently falls below that limit. You shall enable the Product’s phone home feature to allow us to monitor capacity usage. We reserve the right to inspect or otherwise verify compliance with this Section.

4. **License Restrictions.** Except to the extent expressly permitted otherwise in this Agreement, or expressly mandated otherwise by applicable Law, you shall not, and shall not permit or encourage any third party (including, without limitation, your personnel) to, do any of the following without obtaining the prior express written consent of Infinidat: (i) copy or reproduce the Software; (ii) sell, assign, lease, lend, rent, distribute, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in, or as, a time-sharing, outsourcing, or service bureau environment; (iii) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code (or the underlying structure, sequence or organization) of the Software; (iv) reverse engineer or disassemble the Product's hardware; (v) integrate, incorporate, include, or bundle the Software into or with any other hardware or software; (vi) remove, alter, or conceal, in whole or in part, any Proprietary Legends displayed or contained on/in the Product; (vii) circumvent, disable or otherwise interfere with security-related features of the Software, or with features that are intended to prevent or restrict the use thereof; (viii) make a derivative work of the Software, or use the Software to develop any service or product that is the same as, or substantially similar to, the Software; (ix) use the Software to perform comparisons or other "benchmarking" activities, either alone or in connection with any other software or hardware, or disclose or publish the results thereof or other performance information; x) use the Software for any inappropriate purpose (as Infinidat shall determine in its sole and absolute discretion), or contrary to any Law.

5. **Ownership.** **INFINIDAT DOES NOT SELL OR TRANSFER TITLE, AND SHALL NOT BE DEEMED TO HAVE SOLD OR TRANSFERRED TITLE, IN ANY SOFTWARE TO YOU.** As between you and Infinidat, Infinidat is and shall remain the sole and exclusive owner of all Intellectual Property Rights in, to and under the Product and the Documentation. Infinidat reserves all rights not expressly granted hereunder, and nothing in this Agreement constitutes a waiver of Infinidat’s Intellectual Property Rights under any Law.

6. **Limited Software Warranty**

6.1. **Software Warranty.** Infinidat warrants that for a period of ninety (90) days, commencing on the date that the Product is delivered to you, and subject to the terms and conditions of this Section 5, the Software components included in the Product will substantially comply with the applicable specifications set out in the Documentation (the “Software Warranty”).

6.2. **Warranty Service.** If you notify us in writing within the applicable Software Warranty periods as specified above (the “Warranty Period”), of a warranty claim, we will make commercially reasonable efforts to provide a fix, patch or workaround, which may be included in a future Software release, at no additional charge to you. No services provided by us under this Section shall be deemed to re-commence any Warranty Period, and any repairs, fixes or replacement parts provided as part of the foregoing warranty service are warranted for the remainder of the applicable Warranty Period, as then in effect.

6.3. **Warranty Service Exclusions.** Warranty services described herein above exclude, and Infinidat shall have no responsibility hereunder to repair, replace, fix or provide any support or any other remedial services for, any and all of the following: (a) Products that have been altered, reconfigured or modified by you or any third party other than Infinidat’s authorized customer support personnel; (b) Software that has been incorporated or bundled with other software or hardware not provided or approved in writing by Infinidat; (c) Products not installed by Infinidat’s authorized customer support personnel, and which have not been operated, repaired or maintained in accordance with Infinidat’s instructions; (d) Products which have been operated outside of the environmental specifications for the Product; (d) damage to the hardware or Software caused by your negligence, abuse or use other than as specified in the Documentation, or by natural disasters or other factors beyond the control of Infinidat; or (e) Software problems not reproducible by Infinidat.

6.4. **Your Warranty Responsibilities.** As a condition to Infinidat’s obligations under this Section, you agree that if Infinidat determines that in order to perform its Product Warranty services it must do so at your premises on which the Product is located and/or remotely, you must provide free, safe and sufficient access to your facilities and the Product and any associated computer equipment on which the Product is installed. For the avoidance of any doubt, the License referenced herein, together with the warranty remain valid only on the basis of Infinidat’s ability to remotely control/ access and/or control the Product as may be required at any time. As part of this remote access the Product will send to Infinidat monitoring data information on a regular basis.

6.5. **High Risk Activities.** You acknowledge that the Product is not specifically designed or intended for use in environments in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage, including, without limitation, any nuclear, chemical or weapons production facility or activity, aircraft control devices, aerospace equipment, or medical life support equipment (collectively, “High Risk Activities”). Without limiting the generality of the Warranty Disclaimer referenced below, Infinidat expressly disclaims any express or implied warranty of fitness for High Risk Activities, and any liability for any damage arising as a result of the use of the Product in any High Risk Activity.
6.6. INFINIDAT MAKES NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION (a) THAT THE
SOFTWARE WILL OPERATE IN THE COMBINATIONS WHICH YOU MAY SELECT FOR USE; (b) THAT YOUR
USE OF THE PRODUCT WILL MEET YOUR EXPECTATIONSBE ERROR-FREE AND THAT ANY ERROR
CONDITIONS WILL BE CORRECTED.

6.7. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA
SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S.
GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL

7. **Third Party Software.** The Software may contain third party, including open source, software ("Third Party Software") and you acknowledge there may be third party terms and conditions ("Third Party Terms"). In such a case, upon receipt of a written request from you, we will make available a list of any such Third Party Software and related Third Party Terms in the Documentation, and will use commercially reasonable efforts to comply with any reasonable request you submit to us for exercising your rights under such Third Party Terms. Notwithstanding anything in this Agreement to the contrary, Infinidat does not make any representation, warranty, guarantee, condition, and does not undertake any defense or indemnification, with respect to any Third Party Software.

8. **Indemnification**

8.1. In the event of any claim, action, proceeding or suit by a third party against you claiming that the Product infringes such third party’s U.S. patent or copyright (an “Infringement Claim”), Infinidat shall defend and hold you harmless against the Infringement Claim, and will pay
(a) the amounts awarded (and then-currently payable) against you in such Infringement Claim (to the extent of such infringement); or
(b) the amounts agreed to settle such Infringement Claim.

8.2. Our obligations under this Section shall only apply if you (a) promptly notify us in writing of the Infringement Claim; (b) fully cooperate with us in, but permit us to assume control of, the defense and/or settlement of the Infringement Claim; and (c) refrain from admitting any liability, or otherwise compromising the defense of any part of the Infringement Claim, without our prior express written consent. Infinidat agrees not to settle any Infringement Claim without your prior express written consent, not to be unreasonably withheld, conditioned or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.3. Should the Product (or any part thereof) become, or in our opinion be likely to become, the subject of any Infringement Claim, then you hereby permit us, at our option and expense, to either (a) procure for you the right to continue using the Product or such part (as the case may be); or (b) replace or modify the Product (or affected part thereof) so that it becomes non-infringing, while maintaining substantially the same functionality. If neither (a) nor (b) is commercially practicable, then we may, in our sole and absolute discretion, terminate your rights under this Agreement with respect to the Product, and: (x) refund to you on a pro rata basis the Fees paid by you to Infinidat or its authorized reseller or distributor (as the case may be) with respect to the Product, subject to a 2 year straight-line depreciation schedule; and (y) in the case of Support Services purchased directly from Infinidat, provide a refund of any periodic fees paid to Infinidat for any portion of such Support Services not yet received with respect to the affected portion of the Product.

8.4. Infinidat shall have no obligation or liability with respect to an Infringement Claim that is based upon or results from: (a) the combination of the Product (or part thereof) with any equipment, hardware, firmware, or software not furnished or approved in writing by Infinidat, if such would have been no infringement but for such combination; (b) any modification to/of the Product (or part thereof) not performed by Infinidat; (c) unauthorized use of the Product (or part thereof); (d) your failure to install or have installed any Enhancements to the Product provided by Infinidat, if installation of such Enhancement would have avoided the infringement; and/or (e) our compliance with your specifications, designs and/or instructions. This (Indemnification) states the entire obligation and liability of Infinidat, and your sole and exclusive remedy, with respect to an Infringement Claim.

9. **Limitation of Liability.** IN NO EVENT WILL INFINIDAT OR ITS AFFILIATES OR BE LIABLE FOR: (I) ANY
CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (II) ANY LOSS OF PROFITS,
LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS;
(III) ANY LOSS OR CORRUPTION OF, OR DAMAGE TO, DATA, REPUTATION, OR GOODWILL; AND/OR (IV) THE
COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES. THE TOTAL CUMULATIVE LIABILITY OF
INFINIDAT AND ITS AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL
NOT EXCEED AND (A) THE AMOUNT PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN
AUTHORIZED PARTNER FOR THE PRODUCT IN WHICH THE LIABILITY WAS INCURRED, OR (B) IF NO SINGLE
QUOTE IS SO APPLICABLE, THE AMOUNT OF FEES (IF ANY) PAID BY YOU, AND ACTUALLY RECEIVED BY,
INFINIDAT OR AN AUTHORIZED PARTNER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY
PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (x) EVEN IF INFINIDAT OR ITS AFFILIATES HAVE BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES OR DAMAGES; (y) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; and (z) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR TORT). SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR THE PRODUCTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU WHERE, AND TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10. **Confidentiality.** During the Term, each party may have access to certain information of the other party, whether furnished before or after your entering into this Agreement, and in any form or media and regardless of the manner in which furnished (collectively, "Confidential Information"). The receiving party agrees: (x) not to disclose the disclosing party’s Confidential Information to any third parties other than to its employees, consultants or Affiliates on a strict “need to know” basis only; (y) not to use or reproduce any of the disclosing party’s Confidential Information for any purposes except to exercise its rights and perform its obligations under this Agreement; (z) use at least reasonable care to keep and protect the disclosing party’s Confidential Information confidential. Notwithstanding the foregoing, the disclosing party may disclose Confidential Information if required by law provided that the receiving party has given the disclosing party prompt notice. Infinidat recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

11. **Term and Termination.** This EULA shall be applicable for the entire duration of the License period granted to you under the purchase documents and as applicable, those clauses that inherently apply post termination, shall accordingly be valid for a period of seven years, following the termination of any License.

12. **Export Controls.** You shall comply with all, and shall be solely responsible for obtaining all required authorizations and licenses from applicable government authorities under, Export Control Laws, in connection with your use of the Product and Documentation.

13. **US Government Rights.** To the extent applicable it is confirmed that the Software is "commercial computer software" and the Documentation is "commercial computer software documentation," pursuant FAR Section 12.212, as applicable. If you are an agency, department, employee or other entity of the United States Government, then your access to and use of any part of the Software and/or the Documentation shall be subject solely to the terms and conditions of this Agreement.

14. **Assignment.** This License Agreement and any rights or obligations hereunder: (a) may not be assigned, sublicensed or otherwise transferred by you without the express prior written consent of Infinidat. Subject to the foregoing, this Agreement shall bind and benefit and be enforceable by each party and its respective successors and permitted assigns. Any prohibited assignment shall be null and void.

15. **Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed exclusively in accordance with (i) the Federal laws of the United States. The U.N. Convention on Contracts for International Sale of Goods shall not apply to the Agreement.

16. **General**

16.1. **Entire Agreement.** This License, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) (i) constitutes the entire agreement between the parties with respect to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties.

16.2. **Notice.** You agree that Infinidat may send you notices by email, by regular mail, and/or via postings on or through the Infinidat Website. You agree to send all notices to Infinidat General Counsel, Infinidat Ltd, Hemnofim 9, Herziliya, Israel

16.3. **Waiver.** No failure or delay by either party in exercising or enforcing any right, power or remedy under this Agreement (or otherwise at law or in equity) will operate as a waiver thereof. Waivers shall apply only in the specific instance in which given. Any waiver by Infinidat of any provision of this Agreement shall only be valid if in writing, duly signed, and sent to you via regular mail.
16.4. Severability. If any court of law that has jurisdiction rules that any provision of this Agreement is invalid, then such invalid provision will not affect any of the remaining provisions of this Agreement, which shall remain in full force and effect.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached HireVue, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it
HIREVUE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

MASTER SERVICE AGREEMENT

HireVue, Inc. ("HireVue") a Delaware corporation located at 10876 S. River Front Parkway, Suite 600, South Jordan, UT 84095, offers Services (defined below) through its proprietary Platform (defined below). HireVue hereby agrees to provide its Services to the Buyer identified on a Service Order (defined below) executed in connection with this Master Service Agreement, who desires to subscribe to and use HireVue Services in accordance with the terms and conditions set forth in this Master Service Agreement ("Agreement"). Buyer and HireVue are referred to herein each individually as a "Party" and collectively as the "Parties".

Definitions.
“Authorized Users” means those individuals designated by or invited by Buyer, in accordance with this agreement, to use the Services.
“Buyer Content” means all content created by or provided by Buyer or its Authorized Users and submitted to the Platform.
“End User” means a user of the Platform that responds to requests from Buyer or its Authorized Users through the Platform.
“Platform” means the HireVue team acceleration platform including any related mobile applications, used to deliver the Services, features and functionality described in the Documentation.
“Responses” means all responses to Buyer Content submitted to the Platform by End User.
“Scheduled Downtime” means the following Scheduled Downtime periods ("Maintenance Windows") currently reserved by HireVue, which may be changed from time to time on notice to Buyer: A maximum of four (4) hours per semi-monthly period between the hours of Midnight (12:00 A.M.) and 4:00 A.M. Mountain Time. "Services” means, collectively, the Platform and related services provided hereunder, including the Subscription Services, the features and functionality described in the Documentation, and any other professional services and customer support.
“Service Order” means the document that specifies the Services to which the Buyer has subscribed, the applicable subscription term(s), and applicable fees. This document may also be referred to as a "Purchase Order", the form and substance of which must be approved by both Parties in writing.
“Site Availability” means the percentage calculated by dividing (a) the Site Uptime by (b) the difference between the total amount of clock time and the Scheduled Downtime actually used by HireVue, in a given Month.
“Site Uptime” shall mean the total time in a month during which all material parts of the HireVue website are operating properly and available for access and use by Authorized Users.
“Subscription Services” are defined as the HireVue hosted software services to which the Buyer purchases a subscription pursuant to a Service Order.
“Unscheduled Downtime” means the number of seconds the Services are unavailable in a particular month which are due to (i) force majeure events beyond the reasonable control of HireVue or HireVue’s service providers, or (ii) a general failure of the Internet.
“Usage Data” means entirely anonymized data not attributable to any Authorized User, End User or Buyer which reflects data points such as volume of interviews and general patterns of use.

Ordering, Services and Data.
Buyer shall order Services by mutual execution of a Service Order which provides, at a minimum, the specific Subscription Services ordered and the price and term for such Subscription Services. The Service Order shall be incorporated into this Agreement by reference and in the event of a conflict between the terms of a Service Order and this Master Service Agreement, the terms of the Service Order shall prevail. Additional Services ordered in any subsequent Service Orders shall be governed by, and incorporated by reference into this Agreement.
HireVue hereby grants to Buyer permission during the applicable subscription term identified in the applicable Service Order to allow Authorized Users to access and use the features and functions of the HireVue Services for which Buyer has paid all applicable fees via a browser or the HireVue mobile application ("Mobile App") for Buyer’s internal business use.
Buyer hereby grants HireVue permission during the Term to (i) reproduce, distribute, display and perform Buyer Content to Authorized Users and End User in connection with providing the Subscription Services on behalf of Buyer, and (ii) to access and use the Responses ("Buyer Data") to provide the Subscription Services to and on behalf of Buyer.

EC America, Inc.
a subsidiary of immixGroup
Buyer and HireVue acknowledge and agree that, as between Buyer and HireVue, Buyer Data is the property of Buyer. Buyer shall be responsible to ensure the End User has given legally sufficient consent for Buyer’s collection, retention and use of their Responses. HireVue shall provide a mechanism in the Platform to collect such consent.

HireVue collects and uses Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Buyer or any particular Authorized User or End User.

Except for the rights expressly granted herein, no other rights, are granted to Buyer under this Agreement, whether expressly, by implication, estoppel, or otherwise, and all rights not expressly granted herein are reserved by HireVue. All right, title and interest in and to the Services, any software used by HireVue in connection with the Services, and related documentation are and shall remain the exclusive property of HireVue and/or its licensors, and nothing herein grants to Buyer any right to access copies of any such software, whether in source or object code form. Buyer acknowledges and agrees that: (i) the Platform, any software used in connection with the Services and related documentation are protected under U.S. foreign copyright and other intellectual property laws; (ii) HireVue and its licensors retain all copyrights and other intellectual property rights in the Platform, any software used in connecting with the Platform and related documentation; and (iii) Buyer acquires no ownership in or to the Platform, software, data, or related documentation.

**Fees and Payment.**

Fees for Subscription Services are invoiced annually in advance, net thirty, or as otherwise expressly agreed and set forth in terms of the GSA Schedule Contract and Service Order or Purchase Order, and payments are due thirty (30) days from date of invoice. If all undisputed invoices are not paid when due, HireVue reserves the right to suspend access to the Services until payment is current. Such suspension will continue until such time as the full amount of fees due, together with any accrued late charges, interest, and any other sums due hereunder, is paid to HireVue.

**Term, Termination, and Expiration of Agreement and Renewal.**

The term of this Agreement shall commence upon execution of this Agreement (“Effective Date”) and shall continue until the sooner to occur of: (i) expiration of all Service Orders; or (ii) termination per Section 4.2 (“Term”). When the licensee is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, HireVue shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Upon any expiration or termination of the Agreement, Buyer will cease all use of the Services and destroy all copies Documentation (if any) that are in Buyer’s possession or under Buyer’s control. Upon termination or expiration of the Agreement or a specific Service Order, Buyer shall have the following options with regard to Buyer Content and Buyer Data related to each of the terminated or expired Services: 1) if Buyer requests in writing, on or prior to the date of such termination or expiration, HireVue shall provide Buyer with a copy of the Buyer Data stored on HireVue servers, and HireVue shall then delete all such Buyer Data from HireVue servers; 2) Buyer may purchase a read-only subscription to the Platform for an annual fee equal to 15% of the last annualized subscription fee for up to three years or as otherwise mutually agreed by Parties; or 3) HireVue shall purge remaining Buyer Content and Buyer Data from the HireVue servers, and HireVue shall have no further responsibility to retain copies of Buyer Data. The parties agree and acknowledge that the foregoing requirement does not apply to Analytical Data to the extent it does not contain or embody Buyer Data in a form that can be attributed to Buyer.

**Restrictions on Use.**

Buyer shall not, and shall prevent its Authorized Users from using the Platform to: (i) resell, rent, lend, lease, distribute, or timeshare the Platform or otherwise use the Platform on behalf of any third party (including on a “service bureau” or similar basis), or otherwise provide third parties with access to or grant third parties rights to the Platform other than as expressly permitted by HireVue, (ii) alter or remove any marks or proprietary legends contained in the Platform; (iii) circumvent or otherwise interfere with any authentication or security measures of the Platform; (iv) hinder, restrict, interfere with or disrupt the operation or performance of the Platform; (v) send SPAM or any other form of duplicative and unsolicited messages, other than marketing and promotional messages to End Users as enabled by the intended features of the Platform; (vi) access all or any portion of the Platform by means of any crawler, scraper, bot, spider, or any other similar script or automated process; (vii) transmit through or post on the Platform unlawful, immoral, libelous, tortious, infringing, or defamatory material; or (viii) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs. Buyer shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Platform, and shall not modify, translate, or create derivative works based on any element of the Platform.

**Buyer’s Responsibilities.**

Buyer understands and acknowledges that HireVue is solely a technology platform provider and does not participate in the interview, selection, or hiring of candidates, which is Buyer’s sole responsibility, notwithstanding use of the Service as a part of and in connection with such activities. Accordingly, it is Buyer’s sole responsibility to comply with all applicable laws regarding its use of the Service and with the Buyer Content it presents to its Authorized Users and End Users, including without limitation all applicable employment and hiring laws and regulations and all record keeping and data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of personally identifiable data under the laws of the country and any other local jurisdiction in which Buyer is operating or collecting and transferring personal data. HireVue shall have no liability related to the Buyer Content presented to Buyer’s Authorized Users or End Users, or for record keeping requirements and data protection obligations applicable to Buyer unless expressly assumed by HireVue pursuant to this Agreement.

Buyer is responsible for providing and maintaining adequate facilities, computer equipment, internet connections, connectivity and firewall access required for the use of the Services. Such technical requirements can be viewed at http://hir.vu/15S5OOH.
Buyer agrees not to ask Respondents for, and to instruct Respondents not to provide, any PHI or SPI in any Responses. Should Buyer become aware that any PHI or SPI is provided by an End User in any Response, Buyer agrees to promptly notify HireVue and request redaction of such information from the interview or deletion of the interview where redaction is not feasible. As used herein PHI means Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). SPI means Sensitive Personal Information consisting of date of birth, social security number, driver’s license or other state-issued identification number, or financial account information.

Buyer shall notify HireVue in the event of a subject access request (or equivalent request from Respondents) and provide HireVue direction with regard to correcting or deleting personal data in response to such requests made to Buyer. HireVue shall notify Buyer within five (5) business days if it receives any such subject access requests related to End Users and both parties shall cooperate to provide a response and take action in compliance with applicable legal requirements.

**Warranty**

HireVue shall provide the Services in a professional and workmanlike manner and in compliance with the Documentation in all material respects. During the subscription term set forth in an applicable Service Order, in the event that Buyer notifies HireVue that the Services do not materially conform to the specifications set forth in such Service Order and the product documentation provided by HireVue, HireVue shall use commercially reasonable efforts to provide Buyer with support to address such non-conformity. EXCEPT AS EXPRESSLY SETFORTH HEREIN, THE SERVICES ARE PROVIDED “AS-IS” AND “WHERE-IS”, AND HIREVUE MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY, TO BUYER OR ANY OTHER PERSON OR ENTITY AND EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL SUCH IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE RESPONSES, METRICS, SCORES, AND ANALYTICS, INCLUDING BUT NOT LIMITED TO THOSE AS TO THE ACCURACY, SECURITY, RELIABILITY, PERFORMANCE, RESULTS, TIMELINESS, CONTENT, FITNESS, TITLE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES, DELIVERABLES OR ANY INFORMATION PROVIDED IN CONNECTION THEREWITH, OR ANY SELECTIONS OR HIRING DECISIONS MADE BY BUYER IN CONNECTION WITH THE USE OF THE SERVICES OR OTHERWISE. HIREVUE DOES NOT WARRANT THAT THE SERVICES WILL ALWAYS BE AVAILABLE OR ERROR-FREE, AND MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY RESULTS OBTAINED FROM USE OF THE SERVICES. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

2. HireVue shall provide Buyer and the Authorized Users access to the Subscription Services at all times outside of Scheduled Downtime periods. Excluding Scheduled Downtime, HireVue guarantees a minimum Site Availability of ninety-nine percent (99.0%) during each month. Excluded from this Site Availability calculation shall be Unscheduled Downtime. However, HireVue and its service providers will use commercially reasonable efforts to provide and maintain the Services in accordance with the terms of the Agreement during such Unscheduled Downtime.

3. Buyer understands and agrees that Buyer’s download and/or use of any third party software or services (e.g. web browser or video plug ins) made available or required in conjunction with or through the Services is at Buyer’s own discretion and risk and that Buyer will be solely responsible for any damages to Buyer’s computer system or loss of data that results from the download or use of such third party software and services.

4. HireVue shall not be liable to Buyer under any circumstances in which a third party mobile application host (i.e. Apple, Google, RIM, etc.) or a third party service provider (i.e. Verizon, ATT, Sprint, etc.) fails to provide continuous connectivity or other service required for download, communication, or other functionality of the Platform.

5. Some states or other jurisdictions do not allow the exclusion of implied warranties, so the above exclusions may not apply to Buyer. Buyer may also have other rights that vary from state to state and jurisdiction to jurisdiction.

**Optional Features**

The following terms apply if Buyer enters a subscription for, uses or enables the following HireVue products, features or functionality.

If Buyer subscribes to use Coordinate (formerly known as Reschedge), Buyer hereby grants to HireVue the right to collect and store credentials for and to access Buyer’s email and calendar application solely for the purpose of enabling functionality of Coordinate. Such information shall be considered Buyer’s Confidential Information pursuant to section 14 below.

Public Share Links. If Buyer uses HireVue’s Public Share Links feature to publish links to Buyer Content or Buyer Data on social media or other public mediums, Buyer agrees: a) Buyer has all the rights and licenses necessary to publicly share any content made accessible through the Public Share Links (including consent from the End User as applicable); b) Buyer shall not publicly share any content through the Public Share Links which is inappropriate, defamatory, profane, libelous, tortuous or in any way illegal; and c) HireVue shall have the right to remove any Public Share Links to content that violate (a) or (b) as solely determined by HireVue.

Direct Access Links. Buyer shall not be permitted to activate Direct Access Links functionality. Integrations. HireVue and/or Buyer may partner with certain third party applicant tracking and other service providers (each, an “Integration Partner”) to provide for integration of certain features of the Subscription Services (each, an “Integration”). If Buyer accesses HireVue’s Services through the use of an Integration HireVue hereby authorizes Buyer to access and use the Subscription Services that Buyer has purchased hereunder through such Integrations. Buyer understands that Integration Partners may apply separate terms and charge.
HireVue Service to Buyer and HireVue’s other customers, provided that HireVue may not disclose Buyer Data to any third party in raw form.

Buyer Data and associated meta data and derivatives thereof (such as text transcripts of audio and audiovisual components, subsequent actions and results, etc.), alone and together with Usage Data, to derive certain mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data therefrom (the “Analytical Data”). Unless otherwise stated in the Service Order, HireVue may use Analytical Data in connection with developing, enhancing, maintaining, supporting, and providing the HireVue Service to Buyer and HireVue’s other customers, provided that HireVue may not disclose Buyer Data to any third party in raw form, or disclose any personal information regarding Authorized Users or End Users, or identify Buyer, Authorized Users or End Users on an individual basis as the source of such Analytical Data. In the event that the applicable Service Order excludes the foregoing rights and the Service Order includes the Insights Service, (a) Analytical Data will only be used to provide the Insights Service to Buyer, and (b) the Insights Service will NOT provide any analytical data derived from any other HireVue customers’ use of the HireVue Service.

Publicity. During the term of this Agreement, Buyer hereby grants to HireVue permission during the Term to perform (or have a third-party service provider perform) certain processing, transcription, transformation, and analytics on the non-personally identifiable information included in Buyer Data and associated meta data and derivatives thereof (such as text transcripts of audio and audiovisual components, subsequent actions and results, etc.), alone and together with Usage Data, to derive certain mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data therefrom (the “Analytical Data”).

Assignment. This Agreement may not be assigned by either party without the other party’s prior written approval, except that either party may assign this Agreement in connection with any merger, or reorganization or any sale or transfer of all or substantially all of its assets or stock. If the assigning party is Buyer and the merger or acquisition results in the size of the surviving or successor entity being materially larger than the size of Buyer prior to the merger or acquisition, Buyer and HireVue will meet in good faith to determine a commensurate increase in price for the remaining subscription period for any unlimited use subscriptions which will be executed in a new written Service Order and/or Purchase Order. Subject to the foregoing, this Agreement shall be binding upon the parties, and upon their heirs, acquirers, executors, personal representatives, administrators, and assignees.

Indemnification and Limitation of Liability
HireVue shall indemnify, defend and hold harmless Buyer and its affiliates and their respective officers, directors, employees, agents and contractors, from and against, and pay any costs, expenses and amounts finally awarded or agreed to in settlement of, any and all third party claims to the extent such claims are based upon (i) the negligence and/or willful misconduct of HireVue in performing this Agreement, (ii) any allegation that the software underlying the Platform, when used as provided and in accordance with the terms and conditions of this Agreement, infringes such third party’s intellectual property rights, or (iii) HireVue’s violation of applicable laws.

In all requests for indemnification under Section 12.1 above (i) Buyer shall promptly provide HireVue with written notice thereof and, at HireVue’s request and expense, reasonable cooperation, information, and assistance in connection therewith; and (ii) HireVue shall have control and authority with respect to the defense, settlement, or compromise thereof, provided that it shall not settle any such claim without prior written consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned, or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12.1 ABOVE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY’S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF (1) AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY BUYER FOR THE SERVICE ORDER(S) THE CLAIMS ARE BASED ON OR (2) $50,000. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO BUYER. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from HireVue’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Independent Contractors. HireVue and Buyer are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither Party is an
agent or representative of the other nor is either Party authorized to, and shall not, make any warranties or representations or assume or create any other obligations on behalf of the other.

Confidentiality. 14.1. Each party (each a “Discloser”) agrees that, in the course of performing its obligations hereunder, either might provide to the other (the “Recipient”) or develop information identified as confidential or that reasonably could be construed as confidential (“Confidential Information”). HireVue’s Confidential Information shall include, but shall not be limited to, HireVue’s trade secrets, know-how, user manuals and screens, service development plans, service specifications, computer programs, marketing plans, financial data, and Buyer’s Confidential Information shall include, but shall not be limited to raw Buyer Data (excluding Analytical Data to the extent not embodying raw Buyer data), billing information, software, and systems. During the Term of this Agreement and at all times thereafter, the Recipient and its employees and agents shall maintain the confidentiality of the Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available the Confidential Information to any third party nor use such Confidential Information except, in either case, as authorized by this Agreement or in connection with the performance or enforcement of this Agreement. The Recipient shall not disclose any such Confidential Information to persons not an employee or agent of Recipient nor to its Affiliates without the prior written consent of the Discloser. Any misuse or breach hereof must be reported promptly. Nevertheless and notwithstanding the foregoing statement, each party will attempt to comply with legally executed subpoena served upon such party.

The non-use and non-disclosure obligations of this Section 14 shall not apply to any information that (a) was already known to the Recipient at the time of disclosure, (b) was already in the public domain at the time of disclosure, or (c) was received or developed by the Recipient independent of any information received from the Discloser. Recipient may disclose information pursuant to a request under applicable law. Unless prohibited by law, if the information is disclosed, it is hereinafter referred to as “Discloser Confidential information. Recipient shall notify Discloser of the request and give Discloser a reasonable opportunity to establish that the Discloser Confidential Information is exempt from disclosure under one or more exemptions under applicable law.

HireVue recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor. Notwithstanding the foregoing, the Parties will utilize best efforts to obtain the maximum protection available for HireVue Confidential Information.

Compliance with Laws. The parties shall, in the performance of all obligations hereunder, fully comply with all applicable international, Federal, State and local laws, ordinances, treaties, rules, regulations, orders and policies applicable to or binding upon them.

E-Business Activities. Either party may use a third party service provider in connection with ebusiness activities (e.g., to route or translate EDI or XML messages, or to host web based services). The party contracting with a service provider must require that such service provider (a) use information disclosed to or learned by such service provider in connection with providing services solely for the purpose of providing the applicable services, and (b) not disclose such information to any third party. Each party will be liable for the acts or omissions of its service provider in connection with activities contemplated by this Agreement.

Survival. The provisions of this Agreement that are intended to survive termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement will survive termination or expiration.

Entirety of Agreement. The parties agree that this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist Service Order and/or Purchase Order(s), is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter of this Agreement. In no event will contractual terms inserted in a Buyer’s purchase order be incorporated into or made a part of this Agreement.

Force Majeure. Except for any obligation to pay amounts due, either Party hereto will be temporarily excused from performance hereunder, in whole or in part, for any period of time that the Party is prevented from performing its obligations as a result of an act of God, government regulation, natural catastrophe, civil insurrection, court order, or other cause beyond the Party’s reasonable control. Such non-performance will not constitute grounds for default.

Governing Law. This Agreement is made in accordance with and is governed and construed under The Federal Laws of The United States, without reference to conflicts of laws principles.

Legal Advice. Buyer acknowledges and agrees that HireVue has not and will not provide Buyer with any legal advice and specifically HireVue has not given legal advice regarding compliance with employment, data privacy, or other relevant laws, rules, or regulations in the jurisdictions in which Buyer uses the Services nor will Buyer construe any HireVue communications as legal advice. Buyer agrees that it is solely responsible for drafting and approving its own Buyer Content, including legal review as necessary.

Reserved.

Acknowledgement. Each party acknowledges that it has read and understands this Agreement, expressly agrees the signatory hereto has full power and authority to execute this Agreement, and agrees to be bound by its terms and conditions. Further, it represents that it has consulted, or has had the opportunity to consult with its legal, tax, and financial advisors in connection with the execution and performance of the Agreement. Buyer understands and agrees that except as expressly set forth in Section 4.2 HireVue offers no buy-backs, money back guarantees, or refunds. Buyer acknowledges and agrees that Buyer is not relying upon any verbal or written representations whatsoever, except as expressly set forth in this Agreement. This Agreement can only be modified in writing, signed by the parties, or their duly authorized representatives. Buyer acknowledges and agrees that HireVue does not guarantee or represent that any software or services conveyed or provided hereunder, when or where accessed, used, provided, or installed, will guarantee any results.

By signing below, the signatory expressly acknowledges and agrees he/she has all requisite power and authority to bind HireVue or Buyer, as applicable, to the terms of this Agreement.

HireVue, Inc. Buyer:

By: ______________________________ By: ______________________________
Name: ____________________________ Name: ____________________________
INFOCYTE

Infocyte HUNT™ End User License Agreement

This End User License Agreement ("EULA") is between Infocyte and the Ordering Activity that has placed an order for the Infocyte HUNT Platform (the "Ordering Activity"). Ordering Activity may not use the Platform unless and until Ordering Activity have consented to be bound by all of the terms, conditions and restrictions of, and have become a party to, this EULA, by signing this EULA if Infocyte or its authorized reseller has presented the EULA for signature. The Platform license stated below extends only to the entity that is a party to this EULA and not to that entity’s affiliates.

Capitalized terms used in this EULA are defined in the Section where they are first used or are defined in Section 21 (Definitions) below.

Platform. The “Platform” is Infocyte’s generally available commercial release of Infocyte HUNT comprised of: (i) the on-premises HUNT and survey module software to be deployed on the Ordering Activity’s network, (ii) the Infocyte-hosted Incyte Cloud Service, and (iii) Documentation, collectively, as it may be updated by Infocyte. Ordering Activity may use the Platform for the Subscription Term defined in Ordering Activity’s Order, subject to the terms, conditions, and restrictions stated in this EULA. Ordering Activity’s “Subscription” includes the rights (i) to use the Platform for the Subscription Term and (ii) to receive Support.

Subscription Term. Ordering Activity may use the Platform for the Subscription Term. The initial Subscription Term is stated in the Order. The Subscription Term begins on the day that Infocyte makes the Platform accessible to Ordering Activity by providing Ordering Activity with access codes and other information that enables Ordering Activity to download the HUNT software and remotely access the Incyte Cloud service. Orders do not automatically renew. If Ordering Activity has not purchased a Subscription renewal before the expiration of a Subscription Term, the Order expires and Infocyte has no further obligation to provide the Subscription. If Ordering Activity adds Endpoints to Ordering Activity’s Subscription during a Subscription Term, the Subscription Term for the additional Endpoints is coterminous with the then-current initial or renewal Subscription Term of the original Subscription Order.

Payment. In consideration for the rights granted under Ordering Activity Subscription, Ordering Activity agree to pay all fees specified in Ordering Activity’s Order within 30 days of invoice, or as otherwise specified in the applicable Purchase Order.

Support. Support includes assistance to Ordering Activity in connection with Ordering Activity’s use of the Platform, and updates to the Platform software to fix bugs, correct errors, or enhance functionality that Infocyte releases on a generally available commercial basis to all subscribers of a Platform product without additional charge. Infocyte Support plans are limited to correcting errors, bugs or other issues with the Platform and do not extend to any Third Party Products or technologies Ordering Activity use with the Platform, any issues arising from modifications to the Platform not made or authorized by Infocyte, or the use of the Platform other than as authorized by this EULA. If Ordering Activity requests Support that is not covered by Ordering Activity’s Support plan, Infocyte may invoice Ordering Activity at its then-current GSA Schedule time and materials rates in connection with the request, provided that Infocyte informs Ordering Activity that Ordering Activity will incur charges promptly on learning that the request is not covered by Ordering Activity’s Support plan.

Incyte Cloud Service. The Incyte Cloud Service element of the Platform will generally be available to Ordering Activity 24 hours per day, 7 days per week, except that Infocyte may disable access to the Incyte Cloud Service as necessary to perform maintenance. Infocyte will use commercially reasonable efforts to perform maintenance after 5:00 p.m. and before 6:00 a.m. or after 5:00 p.m. Friday and before 6:00 a.m. Monday, United States Central time (GMT-6). Infocyte will provide Ordering Activity with notice of maintenance start and completion via the customer portal or an email.

Contact Person. Ordering Activity must designate an employee or agent to act as the contact person for receiving and managing all communications between us related to Ordering Activity’s use of the Platform. Ordering Activity may change Ordering Activity’s contact person upon written notice to Infoocyte.

Security. Infoocyte will provide Ordering Activity with information necessary to access and use the Platform. Ordering Activity must use reasonable care to protect the confidentiality of Ordering Activity’s access information, and Ordering Activity is solely responsible for any use
of the Platform that is enabled by means of Ordering Activity’s access information, even if the use is unauthorized. Ordering Activity must notify Infocyte immediately if Ordering Activity believes the confidentiality of Ordering Activity’s access information has been compromised. Infocyte will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Platform. On Ordering Activity’s request, Infocyte will provide Ordering Activity with a description of its security measures for the Platform (the “Security Documentation”). Ordering Activity acknowledges that the Security Documentation is sensitive confidential information of Infocyte and agrees that Ordering Activity will not disclose the Security Documentation to any third party or use the Security Documentation for any purpose other than evaluating the security of the Platform. Ordering Activity, and not Infocyte, is responsible for deciding if Infocyte’s security measures meet Ordering Activity’s requirements in light of Ordering Activity’s business goals and any laws or regulations applicable to Ordering Activity’s business. Ordering Activity agrees that Infocyte is not responsible for any harm Ordering Activity may suffer as a result of a security incident arising from Ordering Activity’s use of the Platform unless the incident resulted from Infocyte’s failure to properly implement and maintain the security measures described in its Security Documentation.

Platform License and Restrictions. Ordering Activity may use the Platform to assess the number of Endpoints for which Ordering Activity has purchased a Subscription. Ordering Activity may use the Platform only for Ordering Activity’s internal business purposes and not as part of a services offering to any third parties. Ordering Activity may use software provided to Ordering Activity as part of the Platform only in its executable form. Ordering Activity may not transfer or sublicense the Platform to, or make the Platform available for use by, any person except Ordering Activity’s employees and Ordering Activity’s permitted contractors as described in Section 17 (Assignment, Contractors). Ordering Activity may deploy as many survey modules as reasonably incident to Ordering Activity’s licensed use, and Ordering Activity may make a reasonable number of backup or archival copies of the analytics engine, but Ordering Activity may not otherwise copy the Platform. The survey modules are designed to be self-deleting, but in the event a surveymodule does not self-delete, Ordering Activity must delete the module on completion of the assessment for which the module was deployed. Ordering Activity may not use the Platform in connection with any activity where the failure of the Platform might result in death, personal injury or severe physical or environmental damage, such as controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, and weaponry systems. Ordering Activity’s license is worldwide, subject to applicable export laws. Ordering Activity’s license is nonexclusive. Ordering Activity may not modify the Platform or create any derivative works of the Platform. Ordering Activity may not reverse engineer, disassemble or decompile the Platform except as permitted by applicable law notwithstanding this restriction, and then on advance written notice to Infocyte of at least 30 days. Ordering Activity may not publish any benchmark or other performance test results regarding the Platform. Ordering Activity may not remove any copyright, trademark, or other proprietary notices that appear on or with the Platform. The Platform may include software that is licensed under open source licenses. License terms, notices, attributions and other information about the open source elements of the Platform are available in the licensing file distributed with the Platform. If there is a conflict between this EULA and any open source license for software included in the Platform, the open source license will control.

Third Party Products. Any Third Party Products provided by Infocyte are subject to the terms of the license and other agreement terms of the third party provided to Ordering Activity by Infocyte or accompanying the Third Party Product. Specifically, but without limitation, all operating system, virtualization and other general systems software is a Third Party Product subject to separate licensing terms, conditions and restrictions of the third party providers. For example, Ordering Activity’s use of Windows Server software or other Microsoft software is subject to the Microsoft Corporation’s license terms. Ordering Activity may be required to accept the end user license and other terms of the third party providers as a condition to Ordering Activity’s use of the Third Party Products.

Records and Verification. Ordering Activity must keep complete and accurate records regarding Ordering Activity’s use of the Platform, and Ordering Activity may not delete or obscure any information regarding the use of the Platform that is generated by the Platform. On Infocyte’s request, Ordering Activity will provide reasonable information to evidence Ordering Activity’s use of the Services in compliance with this EULA and each Order, certified as “true, complete and correct” by Ordering Activity’s chief financial officer. In addition, Infocyte may perform an audit of Ordering Activity’s records, either onsite, or by means of remote access, on ten days advance written notice, provided that the audit must be conducted during normal business hours and may not unreasonably interfere with Ordering Activity’s normal business operations. Such audit shall also be in accordance with the applicable Government security requirements.

Reserved.

Malware Risk. Ordering Activity’s use of the Platform may reveal Malware on Ordering Activity’s systems, and the Platform may recover and retain a copy in an inert state for evidence retention. The removal or transfer of Malware may introduce additional risks to Ordering Activity’s network. Ordering Activity assumes all risk and responsibility for the possession, handling and use of Malware identified by, or exported from, the Platform.

Termination. On termination of the EULA, Ordering Activity must uninstall all Platform elements from Ordering Activity systems and destroy or render them unusable. On Infocyte’s request, Ordering Activity will certify in writing that Ordering Activity has complied with this Section. Those terms of this EULA that are intended by their nature to survive expiration or termination of this EULA shall survive expiration or termination.
Warranty and Warranty Disclaimers.

Warranties. Infocyte warrants that (i) the Incyte Cloud Service elements of the Platform will be available to Ordering Activity without material interruption, except for scheduled or emergency maintenance; (ii) it will use commercially reasonable efforts to update the Incyte Cloud Service with new threat information as it becomes available; and (iii) its support personnel will use commercially reasonable efforts to resolve any Support issue within the target resolution times stated in the Support plan. If the Platform or Services fail to conform to the applicable warranty, Infocyte’s sole obligation, and Ordering Activity’s sole and exclusive remedy, is: (i) if the failure is curable, Infocyte’s cure of the failure in a commercially prompt manner, or (ii) if the failure is not curable, Infocyte’s refund of the fees paid for the non-conforming part of the Services, or for Ordering Activity’s use of the Platform during the period of nonconformance.

Warranty Exclusions. Infocyte’s warranty is void as to Ordering Activity’s use of the Platform other than as permitted by this EULA or in a manner not contemplated by the Documentation. The warranty is void as to any version of the Platform if Ordering Activity has not implemented each Infocyte maintenance release for the analytics engine within 45 days of the date that the release is made available to Ordering Activity. Ordering Activity acknowledges that Infocyte is not responsible for the security of Ordering Activity’s network generally, and that Infocyte does not represent or warrant that the Platform meets Ordering Activity’s particular security requirements or the requirements of any laws or regulations governing Ordering Activity’s operations.

Warranty Disclaimer. Except as expressly stated in this Section, Infocyte makes no representation or warranty whatsoever regarding the Platform, and the Platform is provided AS IS. Infocyte makes no representation or warranty whatsoever regarding any Third Party Products, and as between Ordering Activity and Infocyte any Third Party Products are provided AS IS. Infocyte does not warrant that the Platform will be error free or uninterrupted, or that the Platform will identify all threats present on Ordering Activity’s network. Infocyte disclaims any implied or statutory warranties, such as a warranty of merchantability, fitness for a particular purpose, and noninfringement, and disclaims any warranty that may arise from a course of dealing. Any warranty that cannot be excluded under applicable law is limited in duration to 30 days from the event giving rise to the warranty.

Reserved.

Indemnification. Infocyte shall defend and hold Ordering Activity harmless from any claim by a third party that the Platform infringes any United States patent, trade secret or copyright of that third party, provided that Ordering Activity (i) notify Infocyte promptly in writing of any such allegation or claim, (ii) reasonably cooperate with Infocyte to settle or defend such allegation or claim, and (iii) grant Infocyte authority and control of the defense or settlement of such allegation or claim to the extent permitted under 28 U.S.C. 516. Notwithstanding the foregoing, Infocyte shall have no obligations under this Section to the extent any infringement allegation or claim is based upon or arises out of (i) any modification or alteration to the Platform not approved in writing by Infocyte, (ii) any combination or use of the Platform with products or services not supplied by Infocyte or approved in writing by Infocyte in advance of such combination, or (iii) use of the Platform not in accordance with applicable Documentation provided by Infocyte or outside the scope of the rights granted under this EULA.

Assignment, Contractors. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld). Ordering Activity may not allow any person to use the Platform other than: (i) Ordering Activity’s employees and individual contractors acting under Ordering Activity’s direct supervision, and (ii) the personnel of outsourcers who are performing an internal business function for Ordering Activity and on the condition that the outsourcer has expressly agreed that its use of the Platform is subject to this EULA. Ordering Activity remains responsible for Ordering Activity’s contractors and outsourcers’ use of the Platform in violation of the terms of this EULA. Infocyte may use subcontractors to perform its obligations under this EULA.

Rights in Data. Ordering Activity retains all right, title and interest in and to Ordering Activity’s Data. Infocyte will use Ordering Activity’s Data solely for the purpose of providing the Services. Ordering Activity acknowledges that the Platform collects a broad range of system information. The Platform does not target the collection of data stored on or processed by means of the systems assessed, but may unavoidably capture this type of data. Infocyte will not use this data for any purpose and will use reasonable means to protect the security of this data. If Infocyte discovers that it has captured more than an incidental amount of this type of data, Infocyte will inform Ordering Activity and will destroy the data.

Rights in Intellectual Property. Except for the license rights expressly stated in this EULA, Infocyte and its licensors retain all right, title and interest in and to the Platform and all related intellectual property, including all Infocyte trademarks. Ordering Activity’s license confers no title or ownership in the Platform and is not a sale of any rights in the Platform. If you provide any feedback, comments, or suggestions for the improvement of the Platform or any other Infocyte products or services (“Suggestions”), you hereby license the Suggestions and all related intellectual property to Infocyte on a non-exclusive, worldwide, fully paid, perpetual, irrevocable basis for Infocyte to use, disclose, modify, reproduce, license, distribute, commercialize and otherwise freely exploit without restriction of any kind, without right of accounting except for as limited in advertising under GSAR 552.203-71. Ordering Activity acknowledges that data generated by Ordering Activity’s use of the Services is not Ordering Activity’s Data, and that Infocyte may use this data for the purpose of improving its Platform and operations.
generally and as indicated in Section 18, so long as such use does not entail the disclosure of any information that would identify Ordering Activity or any individual in relation to the data.

**Export Compliance.** The Platform may be subject to export laws and regulations of the United States and other jurisdictions. Ordering Activity may not permit users to access or use the Platform in a U.S. embargoed country or in violation of any U.S. export law or regulation, or in a manner that causes Infocyte to be in violation of U.S. export laws, even if the use is permitted under the laws applicable to Ordering Activity or the user. Each party represents that it is not on any restricted persons list maintained by the U.S., Canada, or any member of the European Union. “Export laws” include the U.S. Export Administration Regulations (Title 15 of the U.S. Code of Federal Regulations Part 730 et seq.), International Traffic in Arms Regulations (Title 22 of the U.S. Code of Federal Regulations Parts 120-130), the economic sanctions rules and regulations implemented under statutory authority and/or President's Executive Orders and administered by the U.S. Treasury Department’s Office of Foreign Assets Control (Title 31 of the U.S. Code of Federal Regulations Part 500 et seq.), the EU’s restrictive measures as published on the website of the European External Action Service, and the applicable export laws of any other jurisdiction.

**Definitions.** Infocyte means Infocyte, Inc., a Delaware corporation; Documentation means the commercially available, general release version of materials describing the Platform or its use, whether in print or digital form. Examples of Documentation are user manuals, administration guides, installation guides, training manuals, white papers, specifications, designs, test plans and test results, configuration guides, reference architectures, FAQs, and issues documentation. Documentation does not include any advertising or marketing materials; Endpoint means a network endpoint, such as a workstation or server. Virtual servers, virtual desktops and other logically distinct endpoints are each an “Endpoint;” Malware means any virus, malware, spyware, ransomware, adware, or other code or information that is designed to interrupt the normal use of an information system, or destroy or corrupt any data, or covertly transmit information; Order means the written order signed and submitted by Ordering Activity to the Infocyte authorized reseller (or to Infocyte as applicable) and accepted by the reseller (or Infocyte as applicable) that lists the Platform subscription products and Support plan, fees, use limitations, and other transaction terms (which, in the event of any conflict with any term of this EULA, shall prevail over this EULA); Results means information or output that results from the use of the Platform, such as scan results, reports, and raw data, in any form, and on any media that they may be captured, recorded or communicated; Services means any services that Infocyte has agreed to provide under this EULA; Support has the meaning given in Section 4 (Support); Third Party Product(s) means any software, services, goods or other products or technology that are provided to Ordering Activity by a third party, or that are provided by Infocyte but are: (i) covered by an open source license, or (ii) identified by Infocyte with a brand name or logo that is not an Infocyte brand name or logo, or (iii) provided subject to Ordering Activity’s agreement to the third party’s legal terms and conditions; Ordering Activity’s Data means the data stored on or processed by or through Ordering Activity’s information technology systems that are assessed by Infocyte as part of the Services, including (i) personally identifiable information, health information, financial data or other information regarding Ordering Activity’s customers, suppliers, insureds, and end users, (ii) Ordering Activity’s financial data, and (ii) Ordering Activity’s other business use data.

**Government Customers.** If Ordering Activity is a government agency, Ordering Activity acknowledges that the Platform and related software has been developed at private expense and is provided with RESTRICTED RIGHTS.

**Law.** This agreement shall be governed by the Federal laws of the United States. This EULA, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) is the complete and exclusive agreement between Ordering Activity and Infocyte and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding, written or oral.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Intercede Group ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**INTERCEDE GROUP**

**INTERCEDE GROUP LICENSE, WARRANTY AND SUPPORT TERMS**

1. **Definitions.**

   (A) Reserved.

   (B) “Documentation” means the manuals, handbooks and other written materials related to the use of the MyID Products, whether in hard copy or soft copy form, that Intercede provides and that customarily accompany the MyID Products.

   (C) “MyID Products” mean the MyID Software and Documentation provided to Customer under this Agreement.

   (D) “MyID Software” means the software licensed by Customer under this Agreement, consisting of a series of instructions or statements in machine-readable, object code form only.

2. **License.**

   (A) License for MyID Software. Intercede hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable license to use the MyID Software in accordance with the instructions contained in the Documentation. Customer may make a reasonable number of copies of (1) the MyID Software for backup, testing, disaster recovery or archival purposes only and (2) the Documentation for its internal use only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the MyID Software and Documentation and does not remove any such marks from the original.

   (B) Restrictions on License for MyID Software.

     (1) Incorporation of Restrictions in Invoice and Other Documents. Customer’s purchase order, sales quotation or invoice, or user license certificate for the MyID Products may contain limitations with respect to the number of users, servers, asserting and relying parties, functionality options and/or other restrictions. In such a case, such limitations and restrictions are incorporated herein by reference.

     (2) Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a “need to know” who are bound in writing by non-disclosure obligations suitable to protect Intercede’s interests in the MyID Software but no less restrictive than Customer’s obligations herein), (b) copying (except as set forth in Section 2(A) above), (c) disclosure to any third party of the results of any benchmarking or competitive analysis of the MyID Software that Customer may perform, or (d) sublicensing or other dissemination of the MyID Software, in whole or in part, to any third party without Intercede’s prior written consent.

     (3) Third Party Software. If the MyID Software contains or is bundled with third party software, then Customer may use such third party software solely (a) for the purpose such software is included with the MyID Software and (b) for use with the particular MyID Software that Customer has licensed from Intercede as set forth in the Documentation. Customer shall not use any third-party software embedded in or bundled with the MyID Software as a standalone program or in any way independently from the MyID Software.

     (4) No Modification of MyID Software. Customer shall not modify, enhance, translate, supplement, create derivative works from, reverse engineer, reverse compile or otherwise reduce the MyID Software to human readable form without Intercede’s prior written consent.

3. **Ownership and Intellectual Property Rights.**

   (A) Ownership of MyID Products. Intercede is the exclusive owner of the MyID Software and Documentation (including revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other intellectual property that Intercede may develop, conceive or deliver under this Agreement, including all patents, copyrights and other intellectual property rights thereto.

   (B) Ownership of Trademarks. By this Agreement, Customer acquires no rights of any kind in or to any Intercede trademark, service mark, trade name, logo or product designation and shall not make any use of the same for any reason except as expressly authorized by this Agreement or otherwise authorized in writing by Intercede. Customer shall cease to use in any manner such markings or any similar markings upon the expiration or termination of this Agreement.
4. Reserved.

5. Warranty.

(A) MyID Software Warranty. Intercede warrants that the MyID Software will operate in material conformance to the Documentation for such MyID Software during the first 90 days after Customer’s initial receipt of the MyID Software (the “Warranty Period”). Intercede does not warrant, however, that the MyID Software or any portion thereof is error-free. If Customer discovers a non-conformity in the MyID Software during the Warranty Period, then Customer shall submit to Intercede a written report describing the non-conformity in sufficient detail to permit Intercede to reproduce such non-conformity. If Intercede successfully reproduces the reported non-conformity and confirms that it is a non-conformity, then Intercede shall use reasonable efforts, at its option, to (1) correct the non-conformity, (2) provide a work around or software patch (a “Fix”), or (3) replace the MyID Software. If Intercede determines that none of these alternatives is reasonably available, then, upon Customer’s request, Intercede shall refund any payments that Customer has made for the affected MyID Software and accept its return. This warranty applies only to the initial delivery of the MyID Software. All Fixes provided by Intercede constitute MyID Software hereunder and are governed by the terms hereof. Intercede warrants that each Fix will operate in material conformance to the Documentation for the applicable MyID Software during the first 30 days after Customer’s initial receipt of such Fix or during the remainder of the initial Warranty Period, whichever is greater.

(B) Limitations of Warranty. The foregoing warranties do not apply if (1) repair or replacement is required as a result of causes other than normal use, including, without limitation, repair, maintenance or modification of the MyID Products by persons other than Intercede authorized personnel; Customer’s accident, fault or negligence; operator error; Customer’s failure to incorporate any Fixes that Intercede makes available to Customer; use of the MyID Products other than as set forth in the Documentation; or causes external to the MyID Products such as, but not limited to, failure of electrical power or fire or water damage; or (2) the MyID Products are used with software or equipment other than that for which they were designed as set forth in the Documentation.

(C) WARRANTY DISCLAIMER. OTHER THAN INTERCEDE’S EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, INTERCEDE AND ITS LICENSORS DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER’S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS A CORRECTION, FIX OR REFUND AS SET FORTH IN THIS SECTION 5.

6. Reserved.

7. Reserved.

8. Reserved.

9. Reserved.

1 INTRODUCTION

1.1 Purpose of the Service Level Agreement

This Service Level Agreement (SLA) provides an understanding of the service level expectation and defines a benchmark for measuring the performance of the service.

1.2 Service Level Agreement Period

This SLA will remain valid for a period specified on an ordering document.

2 Incident Reporting

All incidents must be reported through to the Help/Support Desk. Support will only be available between 9.00 am and 5.00 pm EST during normal US working hours, excluding US public holidays. Support will only be given using the English language.

Any support required outside this agreement must be agreed separately and Intercede reserve the right to make a time and materials based charge for this support.
The help desk can be contacted via support@intercede.com. All requests for support must be made by agreed nominated contacts (NC) from within the ordering activity. There will be 2 valid nominated contacts that have appropriate knowledge of the Intercede product set. Ordering Activity can purchase the right to nominate more than 2 nominated contacts on a separate ordering document.

Prior to any call to the help desk, it is the nominated contacts responsibility to check all basic system pre-requisites as defined in the manual, including troubleshooting. Intercede reserve the right to make a charge for support calls that fall into this category, by not being fully pre-checked.

All requests for support must provide details of the Company Name, Product Name and version, System details and a description of the issue, and where appropriate system and product log files.

All support calls will be registered in a call logging system, assigned a severity code, and allocated a unique reference number. Nominated contacts will be advised of the unique reference number on receipt of the support call. This severity code would be determined by agreement between Intercede Ltd and the nominated contact. The call would then be managed to resolution by Intercede

Any activities relating to each incident will be logged in the call logging system for monitoring and management reporting.

Once reported, all incidents will remain active, until ordering activity agrees to the successful resolution of the issue. At this stage the incident will be closed.

In the unlikely event that an on-site visit is required to resolve the support issue, Intercede reserve the right to make a charge for support and/or expenses dependent on the source of the issue.

### 2.1 Severity Codes

- **Severity - High**
  - Critical part of system unavailable or major (or potentially major) impact on business.
  - Target response: 4hrs (and regular updates every hour) unless the call is placed after 4pm EST during the working day, in which case during the next working morning.

- **Severity - Medium**
  - Part of system unavailable but non critical as the users can adapt business practices to get around the problem in the short term.
  - Target response: Same day unless call is placed after 10am EST, in which case next day.

- **Severity - Low**
  - No immediate impact on business, inconvenient errors.
  - Target response: Next working day or as agreed with the caller requesting support

### 2.2 Incident Progressing

Each incident will remain with the support department who will update the status of the incident as each action is taken. Responsibility for the incident will remain with the Intercede Ltd support department to manage through to resolution to sign off by ordering activity.

Should further information be required the Intercede support department will contact the originator of the incident. If the originator contacts the Help/Support Desk with regard to a specific incident, the incident reference number must be quoted.

### 2.3 Escalation Procedures

Best endeavours will be made to answer calls effectively and it is expected that the customer will provide all such details as are requested by Intercede to help to resolve the given issue.

Intercede will process each call log to a completion agreed with the customer.

If the incident is not responded to within the agreed times specified against severity (as in 2.1), ordering activity may initiate the relevant escalation procedure.

The levels of escalation would be agreed and will typically be:

<table>
<thead>
<tr>
<th>Level</th>
<th>Intercede</th>
<th>Ordering Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>Help/Support Desk</td>
<td>Nominated Contact</td>
</tr>
<tr>
<td>Level 2</td>
<td>Support Manager</td>
<td>IT / Project Manager</td>
</tr>
<tr>
<td>Level 3</td>
<td>Product Manager</td>
<td>Director</td>
</tr>
</tbody>
</table>

The levels assigned to the functions above are used in the escalation procedures shown below:
Severity - High
Level 2 Level 3
When incident reported Within 4 hours

Severity - Medium
Level 2 Level 3
Within 1 day Within 5 days

Severity - Low
Level 2
Within 5 days or As agreed

NOTE: Both Intercede and ordering activity will be responsible for communicating to the appropriate personnel within their respective organisations should escalation be necessary.

3 Problem Management

The Intercede Help/Support Desk would monitor incidents using response and resolution targets.

Response means the support team acknowledging receipt of the incident to the ordering activity nominated contact, agreeing the severity of the call, requesting further information as necessary, and conducting an initial investigation into the incident.

Resolution means providing an agreed solution to the problem. This could take the form of a short-term work around to meet the immediate need, or an agreement that the problem will be resolved in the next product release.

Intercede can 'stop the clock' while awaiting action or information (such as log file) from ordering activity.

4 Reserved.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

Scope. This Rider and the attached iStorage Limited (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing
equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer.
unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
These Terms were last updated on: 10th March 2020

GENERAL TERMS AND CONDITIONS

This page tells you information about us and the legal terms and conditions (“Terms”) which govern the use of our site and on which we sell any of the products (“Products”) listed on our website (“our site”) to Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“you” or “Ordering Activity”).

WHO ARE WE?

We operate the website www.istorage-uk.com. We are iStorage Limited, a company registered in England under company no. 6951286, and with our registered office at C/O Arnold Hill & Co, Craven House, 16 Northumberland Avenue, London, WC2N 5AP. Our VAT registration number is GB978989214.

If you have any questions, comments or complaints about these Terms, please get in touch with us by email at: info@istorage-uk.com, by post to: iStorage Limited, iStorage House, 13 Alperton Lane, Perivale, Middlesex, UB6 8DH, or by calling: +44(0)20 8991 6260.

These Conditions shall apply to every agreement between us under which we supply Products to you (“Contract”).

We may amend the non-material terms and conditions of these Terms from time to time. Every time you wish to use our site or order Products, please check these Terms to ensure you understand the terms which will apply at that time. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

These Conditions shall take precedence over any conditions which you supply to us.

Please read these terms carefully and make sure that you understand them before ordering Products from us.

If you refuse to accept these Terms, you are not permitted to order any Products from our site.

GENERAL

All quotations are made and all orders are accepted by us subject to these Terms. The placing of an order following any quotation or other (e.g. website) indication of price and delivery shall not be binding on us unless and until accepted by us in writing. We reserve the right to accept or refuse orders without ascribing any reason.

HOW WE USE YOUR PERSONAL INFORMATION
We only use your personal information in accordance our Privacy Policy. For details, please see our attached Privacy Policy. Please take the time to read these, as they include important terms which apply to you.

IF YOU ARE A CONSUMER

This clause 4 only applies if you are a consumer.

If you are a consumer, you may only purchase Products from our site if you are at least 18 years old.

As a consumer, you have legal rights in relation to Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens’ Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

IF YOU ARE A BUSINESS CUSTOMER

This clause 5 only applies if you are a business.

If you are not a consumer, you confirm that you have authority to bind any business on whose behalf you use our site to purchase Products.

These Terms and any document expressly referred to in them constitute the entire agreement between you and us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in these Terms or any document expressly referred to in them.

HOW THE CONTRACT IS FORMED BETWEEN YOU AND US

Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each page of the order process.

After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described below.

We will confirm our acceptance to you by sending you an e-mail that confirms that your order has been accepted and which will include our estimated date of delivery (Order Confirmation). The Contract between us will only be formed when we send you the Order Confirmation.

If we are unable to supply you with a Product, for example because of export control restrictions (see clause 10.1) or
because that Product is not in stock or no longer available or because of an error in the price on our site, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount as soon as possible.

OUR RIGHT TO VARY THESE TERMS

Every time you order Products from us, the Terms in force at that time will apply to the Contract between you and us.

We may revise the nonmaterial Terms of this Agreement from time to time. Changes made to these Terms in accordance with this clause 7.2 will not affect any previous orders made under earlier versions of the Terms. Any material changes will not go into affect until both parties agree to them in writing.

Whenever we revise these Terms in accordance with this clause 7, we will update the date stated at the top of these Terms and we will explain on our site any material changes which have been made to the Terms.

YOUR CONSUMER RIGHT OF RETURN AND REFUND

This clause 8 only applies if you are a consumer.

If you are a consumer, you have a legal right to cancel a Contract under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 during the period set out below in clause 8.3. This means that during the relevant period if you change your mind or for any other reason you decide you do not want to keep a Product, you can notify us of your decision to cancel the Contract and receive a refund. Advice about your legal right to cancel the Contract under these regulations is available from your local Citizens’ Advice Bureau or Trading Standards office.

However, this cancellation right does not apply in the case of:

any made-to-measure or custom-made products;

software, DVDs or CDs which have a security seal which you have opened or unsealed.

Your legal right to cancel a Contract starts from the date of the Order Confirmation. If the Products have already been delivered to you, you have a period of 14 (fourteen) days in which you may cancel, starting from the day you receive the Products.

To cancel a Contract, please contact us in writing to tell us by sending an e-mail to: info@istorage-uk.com, or by sending a letter to: iStorage Limited, iStorage House, 13 Alperton Lane, Perivale, Middlesex, UB6 8DH, or by calling +44(0)20 8991 6260 to tell us. You may wish to keep a copy of your cancellation notification for your own records. If you send us your cancellation notice by e-mail or by post, then your cancellation is effective from the date you sent us
the e-mail or posted the letter to us. If you call us to notify us of your cancellation, then your cancellation is effective from the date you telephone us.

Providing you return the goods to us in a good and saleable condition, you will receive a full refund of the price you paid for the Products and any applicable delivery charges you paid for. However, if the goods have been damaged by you or are returned in an unsaleable state, we will be entitled to deduct from your refund such reasonable amount to account for the loss or damage. We will process any refund due to you as soon as possible and, in any case, within 14 days of the day we receive the Products back from you. If you returned the Products to us because they were faulty or mis-described, please see clause 8.6.

If you have returned the Products to us under this clause 8 because they are faulty or mis-described, we will refund the price of a defective Product in full together with any reasonable delivery charges incurred by you in returning the items to us.

We refund you on the credit card or debit card used by you to pay.

If the Products were delivered to you:

you must return the Products to us as soon as reasonably practicable.

unless the Products are faulty or not as described (in this case, see clause 8.6), you will be responsible for the cost of returning the Products to us;

you have a legal obligation to keep the Products in your possession and to take reasonable care of the Products while they are in your possession.

Details of your legal right to cancel and an explanation of how to exercise it are provided in the Order Confirmation.

As a consumer, you will always have legal rights in relation to Products that are faulty or not as described. These legal rights are not affected by the returns policy in this clause 8 or these Terms. Advice about your legal rights is available from your local Citizens’ Advice Bureau or Trading Standards office.

YOUR RIGHT OF RETURN AND REFUND FOR BUSINESS CUSTOMERS
This clause 9 applies if you are a business customer.

If you receive Products which are faulty or mis-described, we will refund the price of a defective Product in full together with any reasonable delivery charges incurred by you in returning the items to us.

We refund you on the credit card or debit card used by you to pay.

If the Products were delivered to you:

you must return the Products to us as soon as reasonably practicable.

you have a legal obligation to keep the Products in your possession and to take reasonable care of the Products while they are in your possession.

Details of your legal right to cancel and an explanation of how to exercise it are provided in the Order Confirmation.

We are unable to accept the cancellation of any orders or the return of any Products other than as set out in this clause 9.

DELIVERY

We will use our reasonable endeavours to fulfil your order by the estimated delivery date set out in the Order Confirmation, unless there is an Event Outside Our Control. If we are unable to meet the estimated delivery date because of an Event Outside Our Control, we will contact you with a revised estimated delivery date.

If we are unable to fulfil your order by the estimated delivery date in accordance with clause 10.1, we shall notify you of a revised delivery date. If the revised delivery date is not acceptable to you, we shall at your request cancel your order and refund to you the price of the Product(s) which you have ordered.

Delivery of the Products to your address or any other place stipulated by you shall constitute delivery.

The Products will be your responsibility from the completion of delivery.

We shall be entitled to make partial deliveries by instalments and these Terms shall apply to each partial delivery.

Title in the Products will pass to you once we have received payment in full, including all applicable delivery charges.

INTERNATIONAL DELIVERY

We deliver to various countries around the world and we have distributors as listed on this page where to buy (International Delivery Destinations). However, we reserve the right not to supply any Product if its delivery to
the requested International Delivery Destination may breach any export control restrictions, or where the costs of us having to comply with applicable export laws or regulations have not already been factored into our prices or delivery charges. If this happens, we will inform you by email that your order has been cancelled and, if you have already paid for the Product, we will refund you the full amount as soon as possible.

You and we shall comply fully with applicable laws and regulations governing the export of technical data, encryption technologies and other export laws and regulations of the US, EU and other states. You shall cooperate with us in our efforts to ensure that the Products comply with all applicable export laws and regulations. However, this clause does not affect our ability to cancel an order as described in clause 11.1.

If you order Products from our site for delivery to one of the International Delivery Destinations, your order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.

Vendor shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

You must comply with all applicable laws and regulations of the country for which the Products are destined. We will not be liable or responsible if you break any such law.

PRICE OF PRODUCTS AND DELIVERY CHARGES

The prices of the Products will be as quoted on our site in accordance with the GSA Schedule Pricelist from time to time. We take all reasonable care to ensure that the prices of Products are correct at the time when the relevant information was entered onto the system. However if we discover an error in the price of Product(s) you ordered, please see clause 12.5 for what happens in this event.

Prices for our Products may change from time to time in accordance with the GSA Schedule Contract and Pricelist, but changes will not affect any order which we have confirmed with an Order Confirmation.

Reserved.

Reserved

Our site contains a variety of Products. It is always possible that, despite our best efforts, some of the Products on our site may be incorrectly priced. If we discover an error in the price of the Products you have ordered we will inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. Please note that if the pricing error is obvious and unmistakeable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Products to you at the incorrect (lower) price.

HOW TO PAY
You can only pay for Products using a debit or credit card or Pay Pal, or other method allowed pursuant to the GSA Schedule Contract. We accept all major debit or credit cards

We will not charge your debit card or credit card until we dispatch your order.

PRESENTATION OF PRODUCTS

The images of the Products on our site are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that your computer’s display of the colours accurately reflect the colour of the Products. Your Products may vary slightly from those images.

Although we have made every effort to be as accurate as possible, all sizes, weights, capacities, dimensions and measurements indicated on our site have a 2% tolerance.

The packaging of the Products may vary from that shown on images on our site.

All Products shown on our site are subject to availability. We will inform you by e-mail as soon as possible if the Product you have ordered is not available and we will not process your order if made.

We shall not be responsible for adapting or modifying any Products to conform to statutory requirements not current at the time of our acceptance of your order.

We reserve the right without prior approval from or notice to you to make changes to the Products which do not affect physical or functional interchangeability or performance or are required for purposes of safety or to meet the Products’ specification.

You must not rely on the Products we supply to you under these Terms as your primary method of storing any data, you must back-up any data which you store on the Products on another device.

WARRANTY

We warrant that on delivery and for a period of 36 months from delivery, the products shall be free from material defects. However, this warranty does not apply in the circumstances described in clause 15.3.

We warrant that the Products comply with the standards listed in the relevant data sheet on our website at the time you place your order.

The warranty in clause 15.1 does not apply to any defect in the Products arising from:

- fair wear and tear;
- wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
- if you or a third party fail(s) to operate or use the Products in accordance with the user instructions;
any alteration or repair by you or by a third party who is not one of our authorised repairers; or

any specification provided by you.

Under these warranties we will, at our option, either repair, replace, or refund you for, any Products found to have material defects provided that upon delivery:

you inspect the Products to check whether they have any material defects; and

you test the encryption mechanism in the Products.

We shall not be liable for any material defects or defects in the encryption mechanism of the Products ascertainable upon inspection on delivery unless you notify such defects to us within 30 days of delivery. We shall not be liable for any material defects or defects in the encryption mechanism of the Products which are not ascertainable upon inspection on delivery unless you notify such defects to us within 7 days of the time when you discover or ought to have become aware of such defects.

We shall not be liable for a breach of any of the warranties in this clause 15 if you make or anyone else makes any further use of the Products after discovering a defect.

Upon notification of any defect, you should return the defective product to us. If you are a business, we will be responsible for the transportation costs incurred by you in sending any Products or parts of the Products to us under the warranty, and we will be responsible for any transportation costs we incur in sending you a repaired or replacement Product. If you are a consumer, please see clause 8.

Products returned must be in the original packaging and in clean condition. Products returned otherwise will, at the Company’s discretion, either be refused or a further additional fee charged to cover the additional costs involved. Products returned for repair under warranty must be accompanied by a copy of the original invoice, or must quote the original invoice number and date of purchase.

If you are a consumer, this warranty is in addition to your legal rights in relation to Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens’ Advice Bureau or Trading Standards office.

The warranties set out in this clause apply only to the original purchaser of a Product from iStorage or an iStorage authorized reseller or distributor. These warranties are non-transferable.

OUR LIABILITY

So far as legally possible, we are not liable if there are any defects in the Products you purchase from us. For example, if you lose any data or if someone hacks into your Product. If we are liable, it is only up to the price you paid for the Product. You should therefore always make sure you have a back-up of your content. You must not rely on the products we supply to you under these Terms as your primary method of storing your data. We are not liable to you for any data loss whatsoever.

Nothing in these Terms limit or exclude our liability for:
death or personal injury caused by our negligence;

fraud or fraudulent misrepresentation;

breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or


Subject to clause 16.3, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

any loss of profits, sales, business, or revenue;

loss or corruption of data, information or software, including by malicious hacking;

loss of business opportunity;

loss of anticipated savings;

loss of goodwill; or

any indirect or consequential loss.

Subject to clause 16.3 and clause 16.4, our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort, breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products.

Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Products. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Products are suitable for your purposes.

COPYRIGHT, PATENTS, TRADE MARKS AND INTELLECTUAL PROPERTY

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You are granted a licence to use the material contained in this website subject to the restrictions described in these Terms.

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You are not permitted to:
republish material from this Website (including republication on another Website, except in the case of publishing extracts from the Website on social media, such as Facebook or Twitter, for the purpose of directing users to the Website);
sell, rent, license, sublicense, lease, distribute, copy, duplicate, publish or reproduce material from the Website and any material or any part thereof for use by any third party;
exploit material on our Website for a commercial purpose;
use any material in any way that is unlawful or in breach of any person’s legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable.

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, we shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

All material contained in this website is and shall remain at all times the copyright of the Company or its licensors. You acknowledge that rights in respect of trademarks, trade names, copyrights, patents and other intellectual property rights connected with the Products do not pass to you. You shall not acquire any intellectual property rights in the Products. You are not permitted to use our trademarks or trade or product names without our prior written permission.

You must retain, and must not delete or remove all copyright notices and other proprietary notices placed by us on any material.

EVENTS OUTSIDE OUR CONTROL

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 18.2.

Excusable delays shall be governed by FAR 52.212-4(f).

If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

we will contact you as soon as reasonably possible to notify you; and

our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

OTHER IMPORTANT TERMS

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204. We reserve the right to subcontract any part of any work or supply of any Products. We shall remain liable for the actions and services provided by such subcontractors at all times.
You may only transfer your rights or your obligations under these Terms to another person if we agree in writing. However if you are a consumer and you have purchased a Product as a gift, you may transfer the benefit of our warranty in clause 15 to the recipient of the gift without needing to ask our consent.

This contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties Act) 1999 or otherwise. However, if you are a consumer, the recipient of your gift of a Product will have the benefit of our warranty at clause 15, but we and you will not need their consent to cancel or make any changes to these Terms.

Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

These Terms are governed by the Federal law of the United States.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Keysight Technologies, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (see FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

### 3. Order of Precedence/Conflict

To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
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Version 2, June 1991

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For How Long: The Hardware Warranty is effective for twelve (12) months from the date on which Keysight first ships the corresponding product or any part or portion thereof (such time period is referred to herein as the “Initial Hardware Warranty Term”). Further, for each item that is repaired or replaced by Keysight pursuant to the Hardware Warranty, the Hardware Warranty will remain effective for the longer of (i) the remainder of the Initial Hardware Warranty Term and (ii) three (3) months following the date on which Keysight first ships the repaired or replaced item. If you purchase additional hardware functionality during the Hardware Warranty Term, including but not limited to adding or changing the configuration of ports, such purchase shall not extend the Hardware Warranty Term for the underlying hardware base unit.

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What You Must Do: If, during the applicable Hardware Warranty Term, you believe you have discovered a Defect, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:

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- Serial number of the hardware.
- Software version.
- Software license key number or registration information.
- Detailed problem description.
- Customer name and telephone number, and an address to where any repaired or replaced hardware is requested to be shipped.

If Customer Support believes that there is a Defect in the hardware or software media that is covered by the Hardware Warranty and Customer Support cannot resolve that Defect remotely, then Customer Support will issue you a Return of Material Authorization ("RMA") number. Any item that is returned without an RMA number may be refused by Keysight and returned to you at your sole cost and expense.

All defective hardware and software media that is returned to Keysight must be shipped in its original packaging (including any antistatic bags) to the shipping address specified by Customer Support. Hardware packaged incorrectly may be damaged in shipping, which will invalidate the Hardware Warranty with respect to that item and may cause you to incur a repair or replacement charge. THE ASSIGNED RMA NUMBER MUST BE CLEARLY POSTED ON THE OUTSIDE OF THE BOX. Keysight is responsible for all packing, shipping, insurance costs, taxes, tariffs, and duties (collectively, "Shipping Costs") due in connection with your return of any item, and you assume the risk of loss and damage for all such items in transit to the shipping address specified by Customer Support. Except as otherwise provided below, Keysight is solely responsible for all Shipping Costs due in connection with Keysight's return of any repaired or replacement item under the Hardware Warranty, and Keysight assumes the risk of loss and damage for all such items in transit to your return address. If Keysight must return any repaired or replacement item to a location outside of the United States of America, then the foregoing sentence will not apply and, instead, the transportation terms will be the same as those of the initial product sale. Title to any replacement items will transfer to you when risk of loss transfers from Keysight to you pursuant to the foregoing. If Keysight is requested to return any repaired or replacement item to a country that is different from the country in which the item was originally purchased, then Keysight may, at its sole option, either return the item to the country in which it was originally purchased or charge you for any additional costs incurred by Keysight as a result of that change. If a returned item is determined by Keysight to not contain a Defect or otherwise not be covered by the Hardware Warranty, then Keysight may, at its sole option, charge you for any related costs incurred by Keysight, and you will be responsible for the return of that item to you and for all related Shipping Costs.

IMPORTANT: Before returning any hardware or software in accordance with the instructions above, you must (1) back up the data on any hard drive(s) or on any other storage device(s) in that hardware, (2) remove any confidential, proprietary, or personal information (collectively, "Confidential Information"), (3) remove any removable media, such as DVDs, and (4) de-register all Ixia branded software licenses that are registered to that hardware. Keysight will not be responsible for any loss of or damage to your data or your removable media. Further, except as expressly set forth in a written agreement that has been signed by Keysight, and to the extent permitted by applicable law, Keysight will have no liability for any use or disclosure of your Confidential Information.

Advanced Replacement: Ixia branded hardware covered by the Hardware Warranty will be entitled to Advanced Replacement if (i) within the ninety (90) day period immediately following the date on which Keysight first ships such hardware, you notify Customer Support in the manner specified above that such hardware contains a potential Defect, and (ii) Customer Support issues an RMA number for such hardware. “Advanced Replacement” means that, at your request, Keysight will use commercially reasonable efforts to initiate shipment of replacement hardware within two (2) business days following Keysight’s issuance of such RMA. If you make use of Advanced Replacement, you must return the hardware that contains the potential Defect (the “Defective Hardware”) to Keysight as instructed above within fifteen (15) days following your receipt of the replacement hardware, or you will be charged Keysight’s then-current, applicable list price for the replacement hardware. Ownership of the Defective Hardware will transfer to Keysight upon Keysight’s receipt thereof. You acknowledge that the replacement hardware may be refurbished hardware and/or may be a different model than the Defective Hardware (so long as it is a substantially similar model).

2. Limited Software Warranty
Subject to the exceptions in Section VII below, Keysight provides a limited warranty with respect to its Software (the “Software Warranty”). The term “Software” refers to Ixia branded software and firmware programs that are provided by Keysight, but excludes any Third Party Software. The term “Third Party Software” refers to third party software programs that are provided by Keysight but that are separate and distinct from Keysight’s proprietary software (e.g., a third party operating system or antivirus program).

What Is Covered: The Software Warranty only covers the most current General Availability (GA) version of the Software and the most current Early Adopter (EA) version of the Software. Further, the Software Warranty only covers programming defects and errors in the Software that materially and adversely affect the operation of the Software in accordance with its documentation (each, an "Error"). The Software Warranty does not cover Third Party Software.

For How Long: The Software Warranty is effective for twelve (12) months from the Delivery Date (such time period is referred to herein as the “Initial Software Warranty Term”). The term “Delivery Date,” as used herein, means the first date on which Keysight (i) shipped the media containing the corresponding Software or has made it available for electronic download and (ii) has provided you with any required license key needed to download, install, and/or activate such Software.

What Keysight Will Do: Keysight’s sole obligation under the Software Warranty is to use commercially reasonable efforts to correct or provide a work around for each Error.
What You Must Do: If, during the applicable Software Warranty term, you believe you have discovered an Error, please contact Customer Support using one of the methods listed online at support.ixiacom.com. Customer Support may require some or all of the following information in order to assist in resolving your problem:
- Software version
- Software license key number or registration information
- Model number of corresponding hardware
- Serial number of corresponding hardware
- Detailed problem description
- Customer name, address, and telephone number.

Third Party Software: All Third Party Software is provided by Keysight “AS IS” and with no warranty. However, Third Party Software may be covered by a separate warranty provided by the third party licensor of that software. Further, if any Ixia branded hardware or Software product fails to operate substantially in accordance with its documentation as the result of any defect in any Third Party Software, then Keysight will use commercially reasonable efforts to obtain a remedy for that defect, provided that such Ixia branded hardware or Software product (i) is covered under the Hardware Warranty or Software Warranty (as applicable), and (ii) is designated by Keysight as compatible with that Third Party Software. For assistance with any such defect, please contact Customer Support using one of the methods listed at support.ixiacom.com.

3. Professional Services Warranty
Keysight warrants that all Professional Services will be performed in a good and workmanlike manner, consistent with applicable industry standards (the “Professional Services Warranty”). As used herein, the term “Professional Services” refers to services provided by Keysight for a fee that are separate and distinct from the warranty, maintenance, and support services described elsewhere in this Warranty Agreement. The Professional Services Warranty will be in effect for thirty (30) days following completion of the corresponding services (the “Warranty Period”). Customer’s sole and exclusive remedy for any breach of the Professional Services Warranty will be for Keysight, at its option, to either re-perform the non-conforming services or refund the corresponding fees paid by Customer hereunder, and Keysight will have no obligation with respect to any such breach that is first reported to Keysight after the Warranty Period.

4. Technical Support
Subject to the product-specific exceptions in Section VII below, Keysight will provide you with technical support services to assist you with the installation, operation, and/or configuration of each Ixia branded product that you have purchased or licensed, and to assist you with any Defects or Errors that you believe you have identified (“Technical Support”). Technical Support will only be provided for so long as that product is covered under the Hardware Warranty or Software Warranty (as applicable), and you must be registered with Keysight as the original owner/licensee of that product to receive Technical Support. Except as otherwise determined by Keysight in its sole discretion, all Technical Support will be provided remotely (e.g., via telephone and/or email, or through support.ixiacom.com). Further, except as expressly set forth in Section VI below or as otherwise determined by Keysight in its sole discretion, Technical Support will only be provided during the hours specified on our website at support.ixiacom.com (“Business Hours”) for the region in which the applicable Support Center is located. To locate the applicable contact information for Customer Support, or to access any online Technical Support resources available with respect to the Ixia branded product that you have purchased or licensed, please visit that website.

5. Software Updates
Subject to the exceptions in Section VII below, Keysight will make available to you all Updates for Software that you have licensed for so long as that Software is covered under the Software Warranty. The term “Updates” refers to modifications, enhancements, and upgrades to Software that Keysight makes generally available, at no additional fee, to its other customers who are covered by the same Software Warranty. For the avoidance of doubt, the term “Updates” does not include any modifications, enhancements, or upgrades to Software that are licensed separately for an additional fee. All Updates and Error corrections provided for Software pursuant to this Warranty Agreement will constitute part of that Software and are provided to you under the terms of the applicable software end user license agreement for that Software.

6. Additional Services
You may purchase, for an additional fee, the services described below in this Section VI (individually and collectively, the “Additional Services”) to supplement the warranties, support, and services described above. Keysight may, in its sole discretion, not offer or cease offering any of the Additional Services for any products. Notwithstanding anything in this Warranty Agreement to the contrary, for so long as a product is covered by the Additional Services, that product shall also be covered by, as applicable, the Hardware Warranty, the Software Warranty, Technical Support, and Updates.

Essential Support. For each Ixia branded product covered by Essential Support, Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) Business Hours following Keysight’s initial receipt of that request. For so long as an Ixia branded hardware product is covered by Essential Support, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

Enterprise 24x7 Support: For each Ixia branded product covered by Enterprise 24x7 Support, (i) Keysight will use commercially reasonable efforts to respond to each of your requests for Technical Support regarding that product within two (2) hours following Keysight’s initial receipt of that request, and (ii) a senior Support Advocate (either Director level or above and designated by Keysight) will, at your request and up to once per calendar quarter, meet with you at the time and location agreed upon by you and Keysight (a “Support Advocate Meeting”) to discuss your existing and closed Technical Support cases with respect to that product, any proposals you may have for Keysight to improve its support services, and any recent or anticipated improvements to Keysight’s support services that may benefit you. Support Advocate Meeting rights for a particular calendar quarter expire at the end of that calendar quarter and may not be accrued or rolled over to subsequent quarters. For so long as an Ixia branded hardware product is covered by Enterprise 24x7 Support, that product...
will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that product by Customer Support.

7. Exceptions

**BreakingPoint Software Products:** You will only be entitled to Technical Support and Updates for the BreakingPoint Software that you have licensed if, and for so long as, that Software is covered by an Application Threat Intelligence ("ATI") subscription. An ATI subscription also entitles you to StrikePack Updates. StrikePack Updates contain new security attacks and application protocols for BreakingPoint Software. You must pay an additional fee for an ATI subscription.

**BreakingPoint Hardware Products:** For so long as your BreakingPoint hardware product is covered by the Hardware Warranty, that product will be eligible for Advanced Replacement. Use of Advanced Replacement is conditioned upon the issuance of an RMA number for that hardware by Customer Support.

**IxCatapult Products:** For all IxCatapult products that are delivered to you outside of Japan, both the Initial Hardware Warranty Term and the Initial Software Warranty Term shall be three (3) months in length.

**ThreatARMOR Products:** ThreatARMOR products are not covered by either the Hardware Warranty or the Software Warranty unless such products are also covered by either Essential Support or Enterprise 24x7 Support. Further, Essential Support and Enterprise 24x7 Support for a ThreatARMOR product must be purchased together with an ATI subscription. You must pay additional fees for Essential Support, Enterprise 24x7 Support, and the bundled ATI subscriptions.

**TradeView Products:** You will not receive any Updates to the Market Data Feeds Decoder for any TradeView products that you have purchased unless you have an active Feed Decoder subscription. You must pay an additional fee for a Feed Decoder subscription.

**Mobile Applications:** From time to time, Keysight may make one or more mobile software applications ("Apps") available for use in conjunction with one or more of the Ixia branded products. Apps may be made available through the Apple App Store, the Google Play Store, or otherwise. All Apps are provided “AS IS,” and you shall not be entitled to any warranty, support, or software updates of any kind with respect thereto.

**Professional Services:** You will not be entitled to the Hardware Warranty, the Software Warranty, or Technical Support in connection with any goods or services provided to you as part of the Professional Services.

8. Coverage Limitations

**WHAT IS NOT COVERED:** NOTWITHSTANDING ANYTHING IN THIS WARRANTY AGREEMENT TO THE CONTRARY and in addition to all other limitations set forth in this Warranty Agreement, the Hardware Warranty, Software Warranty, the Professional Services Warranty, Technical Support, Updates, any Additional Services that you have purchased, and any other services identified herein that you have purchased (collectively, the “Services”) do not cover:

- Products with missing or altered serial numbers.
- Hardware products that have been opened, or for which any of the security screws have been removed without Keysight’s prior authorization.
- Products for which Keysight (or Keysight’s authorized reseller, if applicable) has not received full payment in accordance with the applicable payment terms.
- Lost or stolen products.
- Non-serialized accessories, such as cables, baffles, and mounting brackets (unless the corresponding Ixia branded hardware base unit for such item is covered under the Hardware Warranty, in which case Keysight’s sole obligation shall be to use commercially reasonable efforts to provide the Services for such item).
- Problems that result from: external causes such as accident, abuse, misuse, or problems with electrical power; servicing not authorized by Keysight; installation or usage that is not in accordance with the corresponding documentation provided by Keysight; failure to perform commercially reasonable preventative maintenance; or use of accessories, parts, components, or software not supplied by Keysight.
- Problems that are first reported after the effective period of the applicable Services.
- The physical installation or physical deployment of any products (except if and to the extent that such services were to be provided as part of the corresponding Professional Services).

**Repairs Do Not Extend Warranty Periods:** Except as otherwise expressly provided above with respect to hardware products, the effective periods of the Services will not be extended as the result of any repairs, replacements, Error corrections, or Software updates provided hereunder.

**Not Transferable:** Only the original end user authorized by Keysight to use the Ixia branded product(s) may receive the corresponding Services. None of the Services may be assigned or transferred, directly or indirectly, by operation of law or otherwise. Any such termination will not affect any amounts due from you hereunder, and you will not be entitled to any refund of any pre-paid amounts as a result of any such termination.

**Services Provided in English:** Except as otherwise determined by Keysight in its sole discretion, all Services shall be provided in the English language only.
9. Other Limitations

DISCLAIMER OF WARRANTIES: Keysight warrants that ALL HARDWARE, SOFTWARE, SOFTWARE MEDIA, THIRD PARTY HARDWARE INTEGRATED INTO A KEYSIGHT SOLUTION, AND THIRD PARTY SOFTWARE INTEGRATED INTO A KEYSIGHT SOLUTION PROVIDED BY KEYSIGHT OR ITS AUTHORIZED RESELLERS AS PART OF OR IN CONNECTION WITH ANY IXIA BRANDED PRODUCT, OR IN CONNECTION WITH THIS WARRANTY AGREEMENT (COLLECTIVELY, THE “KEYSIGHT DELIVERABLES”) will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Keysight’s published specifications for the KEYSIGHT DELIVERABLES, EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE “KEYSIGHT DELIVERABLES, THIRD PARTY HARDWARE OR THIRD PARTY SOFTWARE THAT IS NOT INTEGRATED INTO A KEYSIGHT SOLUTION, PROFESSIONAL SERVICES, AND OTHER SERVICES ARE PROVIDED “AS IS”, AND KEYSIGHT AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE KEYSIGHT DELIVERABLES AND/OR USE OF THE KEYSIGHT DELIVERABLES (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE KEYSIGHT DELIVERABLES (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT OR WILL BE UNINTERRUPTED OR ERROR-FREE.

LIMITATIONS ON LIABILITY: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KEYSIGHT BE LIABLE UNDER ANY THEORY OF LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF PROFITS, REVENUE, DATA, OR USE, OR FROM INTERRUPTED COMMUNICATIONS OR DAMAGED DATA, OR IN CONNECTION WITH CUSTOMERS ACQUISITION OF SUBSTITUTE GOODS OR SERVICES, OR ANY SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR STRICT LIABILITY, EVEN IF KEYSIGHT OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, KEYSIGHT’S MAXIMUM AGGREGATE LIABILITY IN CONNECTION WITH THIS WARRANTY AGREEMENT AND/OR IN CONNECTION WITH ANY DELIVERABLES (OR YOUR LICENSING, PURCHASE, OR USE THEREOF) WILL NOT EXCEED THE CONTRACT PRICE. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM KEYSIGHT’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

Unauthorized Persons Cannot Change Terms: Additional statements by agents, employees, or resellers of Keysight do not constitute warranties by Keysight, do not bind Keysight, and may not be relied upon. This Warranty Agreement may only be amended by a written agreement signed by both parties.

Export Restrictions: You expressly agree that you assume full responsibility for obtaining any and all required export authorizations from all applicable government authorities prior to exporting, re-exporting or transferring any items, technology or technical data and for complying with all applicable laws and regulations relating to any such transfer or transaction. You shall not sell or transfer any items, technology or technical data to any entity designated or identified by the U.S. Government as a restricted person or included on any U.S. Government-maintained restricted person list, including, but not limited to, (i) the Specially Designated Nationals and Blocked Persons List, (ii) the Foreign Sanctions Evaders List, (iii) the Sectoral Sanctions Identification List, (iv) the Entity List, (v) the Denied Persons List, and (vi) the Unverified List (collectively, “US Restricted Lists”). Further information on these and other applicable lists can be found at www.treasury.gov or www.bis.doc.gov. Keysight may, in its sole discretion, suspend performance or cancel all or part of the order if you are designated on US Restricted Lists or you do not comply with the provisions of this section and may, in its sole discretion, refuse to perform any post-sale services with respect to the items (including, but not limited to, any repair or replacement under warranty) if such activities would involve in any way, an entity on any US Restricted Lists. Keysight may, in its sole discretion, require you to provide an end user certificate and/or an export license prior to Keysight’s delivery of any item to you.

Governing Law and Jurisdiction: This Warranty Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the Federal laws of the United States without giving effect to principles of conflicts of law. THIS WARRANTY AGREEMENT WILL NOT BE GOVERNED OR INTERPRETED IN ANY WAY BY REFERRING TO ANY LAW BASED ON THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXCLUDED.

Termination: Any such termination will not affect any amounts due from you hereunder. For subscription licenses, this Warranty Agreement will terminate when your subscription expires or is terminated.

Severability: If any provision of this Warranty Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Warranty Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by applicable law.

Survival: This Section IX of this Warranty Agreement will survive any expiration or termination of this Warranty Agreement for any reason and continue in full force and effect in perpetuity.

10. Renewals
You may renew the Services for one or more additional, successive terms, subject to your issuance of a purchase order and subject to the following conditions and limitations:

The renewal agreement be in writing and signed by both parties.

Renewal fees and renewal term lengths will be as determined by Keysight in accordance with the GSA pricelist and as set forth in the applicable purchase order.

Renewal terms must be continuous with no gaps in coverage. Any reinstatement of coverage after a gap in coverage is to Keysight’s approval.

Except as otherwise set forth in a written agreement signed by Keysight, all of the terms, conditions, and limitations set forth in this Warranty Agreement will apply with respect to each such renewal order.

Certain Services may only be renewed together with certain other Services. Please contact the Support Renewals team at renewals@ixiacom.com or your account representative for an explanation of these dependencies.

Notwithstanding anything in this Warranty Agreement to the contrary, on and after the End-of-Development Date for an Ixia branded product, Keysight may refuse to provide code changes to correct Errors in that product. Such End-of-Development Dates are set forth in Keysight’s End of Life Policy for Ixia branded products, which is posted at support.ixiacom.com.

Keysight may, at any time and in its sole discretion, cease offering renewal terms for any of the Services, refuse to renew any of the Services, or condition any such renewal upon your acceptance of terms and conditions that are in addition to, or different than, the terms and conditions set forth in this Warranty Agreement which must be agreed to in writing by both parties.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached KBZ Communications, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibits such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

KBZ COMMUNICATIONS, INC.

KBZ COMMUNICATIONS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Warranty Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS ATTACHMENT A, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW AND SPECIFICALLY DISCLAIMS LIABILITY IN CONNECTION WITH SUCH WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM A COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

SERVICE SUMMARY

This document describes the services offerings of the KBZ ZCare Technical Support Program ("ZCare"). It outlines the deliverables by Contractor through KBZ ZCare Technical Support Services to an Ordering Activity of Contractor ("Ordering Activity"). An "Ordering Activity" is defined as either an End User customer who has purchased ZCare from Contractor for Cisco TelePresence equipment and/or systems.

Service definitions herein will focus on three core deliverables by Contractor through ZCare Technical Support Services:

- SoftCare Software Support
- Advanced Replacement Service
- RMA Process in Support of Advanced Equipment Replacement
- Delivery and Collection RMA
- End of Life Statement
- Help Desk Telephone Technical Support
- Help Desk Call Flow
- ZCare Service Level Commitment
- Escalation Procedure

This document additionally addresses Call Flow and Escalation Management for critical situations.

1. SOFTCARE SOFTWARE SUPPORT

SoftCare support is a maintenance component of the ZCare Technical Support program that makes available to the Ordering Activity, all applicable software releases. To ensure better communication and awareness of this software notification program, ZCare Technical Support Services will automatically alert the Ordering Activity when new releases are available.

The SoftCare it e-mail notification will contain, at minimum, the following key information:

- Feature list (a brief explanation of the contents and benefits of the software release)
- Download instructions
- Release Key information
- WEB Release Key Generator

2. ADVANCED REPLACEMENT SERVICE

The ZCare Advanced Replacement Service provides for replacement equipment, return paperwork, and arrangement for collection of faulty equipment.

Next-day support for advanced parts exchange is available until 5:00 EST within the United States. It is the responsibility of the Ordering Activity to (1) ensure that faulty equipment is returned in original packaging provided with delivery of the replacement parts, and (2) to return and ship faulty equipment within 15 working days of receipt of the replacement equipment (unless special conditions are agreed to in advance; reviewed on a case-by-case basis).

Disclaimer: ZCare technical Support Service endeavors to deliver replacement equipment within 24 hours in the United States. However, neither Contractor nor ZCare Technical Support Services can be held liable for delays caused by events outside of our direct control.

RMA Process in Support of Advanced Parts Replacement

ZCare Technical Support Services will open a Work Order on an existing trouble ticket. ZCare will complete an RMA with Ordering Activity shipping information, product information (serial number, part number, software version, installed options) and a fault description. ZCare will forward the RMA to Cisco for processing and product shipment.

Replacement equipment will be dispatched from Cisco's warehouse the next business day after receipt of a correctly completed RMA. * Once replacement equipment has been shipped, the warehouse will forward tracking information to ZCare Technical Support Services. Contractor through a KBZ representative will then forward this information to the Ordering Activity. This policy applies Monday through Friday, local holidays excluded; regional delivery lead times apply; shipped the same day, up to 5:00 local time, for next day delivery.

Larger equipment shipped as freight may take 3 to 5 days for delivery.

Note: Due to the weight and dimensions of plasmas and monitors delivery time may vary for these items.

Delivery & Collection RMA

Contractor through Cisco will send replacement parts together with return paperwork. * In this case, The Ordering Activity must:
Return all faulty units in the factory–supplied packaging delivered and containing the replacement parts
Sign and return shipping invoice and shipping documents
Schedule pick-up/collection of failed/replaced equipment
Cisco will pay shipping costs in both directions*

It is the responsibility of the Ordering Activity to ensure that faulty parts (1) returned in original packaging provided with delivery of the replacement parts, and (2) return shipped within 15 working days of receipt of the replacement parts (unless special conditions are agreed to in advance. This will be reviewed on a case-by-case basis).

END OF LIFE STATEMENT
The ZCare Technical Support Services commits to providing technical support and development on all components manufactured by Cisco for a period of five years beyond the announced en-of-sale-date. This support will include the following items:

Spare or replacement parts in accordance with the KBZ Return Materials Authorization (RMA) process.
Access to ZCare Help Desk availability 20 hours a day, 7 days a week.
SoftCare email notifications of related Cisco software maintenance releases.

TELEPHONE TECHNICAL SUPPORT
The Ordering Activity may report product problems and failures to Contractor through ZCare Technical Support Services via the designated toll free number: 1-888-492-2734. All calls are entered into the call tracking system.

Help Desk Call Flow and Escalation Process
When a call or email comes into the Help Desk, the problem tracking and resolution process proceeds as follows:
Technical support representative assigns a unique Trouble Ticket Number.
Technical support representative requests the system serial number from the Ordering Activity. If the serial number is not available, representative will still open a ticket, but shipping and troubleshooting delays may result.
Technical support representative assess problem, and then assigns a Case Priority Level based on criteria explained in Table 1: Case Priority Levels and Response Time Targets.
Technical support representative dispatches technician in accordance with priority level response time.
As deployments or milestones occur within the troubleshooting process, the ZCare Online Ticketing System is updated.
ZCare Service level offering is based on the criteria explained in Table 1: Case Priority Levels and Response Time Targets. If escalation is required outside of this regular process, the Ordering Activity should use the escalation procedure defined under ‘ZCare Service Level Commitment’ on page 4.

Table 1: Case Priority Levels and Response Time Targets

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Definition of Need</th>
<th>Response Time Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Urgent</td>
<td>An event or combination of events causing 100% loss of system availability</td>
<td>30 Minutes</td>
</tr>
<tr>
<td>2. Critical</td>
<td>An event or multiple events causing a continuous or chronic impact to operation</td>
<td>1 Hour</td>
</tr>
<tr>
<td>3. High</td>
<td>An event or multiple events with the potential to cause an impact to operation</td>
<td>4 Hours</td>
</tr>
<tr>
<td>4. Normal</td>
<td>A condition having no immediate impact on operation but requiring maintenance action</td>
<td>8 Hours/ Next Business Day aid</td>
</tr>
</tbody>
</table>

ZCARE SERVICE LEVEL COMMITMENT
In addition to problem solving related to Cisco TelePresence equipment, Contractor through ZCare Technical Support Services will work with the Ordering Activity to collaborate in solving network issues impacting equipment used and deployment. Table 2 describes the ZCare Service level commitment by the priority level assigned to the case.

Table 2: ZCare Service Level Commitment by Priority Level

<table>
<thead>
<tr>
<th>Priority Level</th>
<th>Service Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Urgent</td>
<td>An existing network is down or there is a critical impact to the Ordering Activity’s business operation. Cisco, Partner and End User will commit full-time resources to resolve the situation.</td>
</tr>
<tr>
<td>2. Critical</td>
<td>Operation of an existing network is severely degraded, or significant aspects of the Ordering Activity’s business operation are being negatively impacted by unacceptable product performance. Cisco, KBZ, and Contractor will commit full-time resources during Standard Business Hours to resolve the situation.</td>
</tr>
<tr>
<td>3. High</td>
<td>Operational performance of the network is impaired while most business operations remain functional. Cisco, Partner, and Ordering Activity are willing to commit resources during Standard Business Hours to restore services to satisfactory levels.</td>
</tr>
<tr>
<td>4. Normal</td>
<td>Information or assistance is required on Cisco product capabilities, installation, or configuration. There is clearly little or no impact to the Ordering Activity’s business operation. Cisco, Partner, and Ordering Activity are willing to provide resources during Standard Business Hours to provide information or assistance as requested.</td>
</tr>
</tbody>
</table>

ESCALATION OVERVIEW
The ZCare Technical Support Services 24/7 Help Desk provides services escalation resulting from support that is not meeting the actual service levels outlined herein, or in a service emergency where support requirements dictate a response outside of the scope outlined herein. In this event, all escalations are to be directed to Shamus Doyle, KBZ Technical Services Manager by any of the following means:
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Kony, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA MAS order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.231-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any applicable, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1. **Definitions:**

1.1 “Ordering Activity Application” means a Platform-enabled mobile application developed by or for Ordering Activity or the pre-configured mobile application included in the Kony Pre-Packaged Application that is configured for its use.

1.2 “Hosting Services” means the Program hosting services provided by Kony, if applicable, pursuant to an executed hosting agreement (“Hosting Agreement”).

1.3 “Kony Studio” or “IDE” means the Kony Studio software, which is an integrated development environment that enables the development modification and deployment of a Ordering Activity Application or configuration of a Kony Pre-Packaged Application by or on behalf of Ordering Activity.

1.4 “Kony Development Cloud” or “Platform” means Kony’s standard (non-Ordering Activity-specific) unified application platform for the design, development & deployment of native on-device and web based applications, comprising of Kony’s integrated development environment and Kony’s middleware server software, all of which support the operation and use of the Ordering Activity Application.

1.5 “Kony Pre-Packaged Applications” means a specific pre-configured mobile application that is designed and developed as a single code base with common and selectable features and functionality that will be configured using Kony Studio to provide for unique branding presentation, selectable integration capabilities, and flexibility to generate native on-device, mobile web, and/or SMS/MMS clients. A Pre-Packaged Application is bundled with an application specific run-time license to a single User of the Kony Studio and Kony’s middleware server software.

1.6 “Maintenance / Support Services” means the support services provided by Contractor as described in Section 4 hereunder.

1.7 “Order” means an ordering document between Contractor and Ordering Activity that specifically references this Agreement and describes the Programs(s) licensed, pricing, license term and other terms associated with a transaction.

1.8 “Program(s)” means the executable code of the commercially released version of the Kony Studio, Kony Pre-Packaged Applications and Kony Development Cloud computer software program(s) or portion thereof made available to Ordering Activity by Kony hereunder, as specified on an Order. Programs also include releases, updates and upgrades to the Programs and documentation as may be made available to Ordering Activity by Contractor as part of Support Services.

2. **Licensing:**

2.1 **Delivery.** Upon execution of this Agreement, Contractor will provide a copy of the applicable Program(s) to Ordering Activity.

2.2 **Grant of License.** Contractor hereby grants to Ordering Activity a perpetual, limited, non-exclusive and non-transferable license, for the Programs specified on the applicable Order, to do the following but only to the extent that Programs are licensed by Ordering Activity on an Order (each such situation a permitted “Use”):

   (a) Kony Studio. To install, execute and configure the documented development features of the Kony Studio, solely to create customized applications (including the right to embed and distribute Contractor’s redistributable .exe libraries therein provided Ordering Activity maintains a fully paid production license to the Platform), improvements, extensions or interfaces to a Ordering Activity Application or Pre-Packaged Application. Kony Studio is licensed on a per “User” basis which is a single individual designated by Ordering Activity, which may include employees, agents, independent contractors or consultants located at Ordering Activity’s facility.

   (b) Kony Platform. To (i) as specified on an Order, install and execute a single User license of Kony Studio at Ordering Activity’s site and a single or multiple production implementation of Kony’s middleware server software on Ordering Activity’s server(s), each of which to (a) access and use the administrative and other functions and features of the Platform by Ordering Activity internally; and (b) allow Ordering Activity’s authorized end users to access and use the end user features and functions of the Platform through supported channels; in accordance with the Order, documentation and this Agreement.

   (c) Kony Pre-Packaged Applications. To (i) as specified on an Order execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform by means of the Hosting Services, if hosted by Kony pursuant to an executed Hosting Agreement; or (ii) if not so hosted by Kony, as specified on an Order to install and execute a single or multiple production implementation of the Pre-Packaged Application enabled by the Platform on Ordering Activity’s server(s); and (iii) unlimited rights to distribute the client portion of the Pre-Packaged Application to Ordering Activity authorized end users for their personal use; both of which to allow (a) Ordering Activity to access and use the administrative and other functions and features of the Pre-Packaged Application internally; and (b) Ordering Activity’s authorized users to access and use the end user features and functions of the Pre-Packaged Application through supported channels all in accordance with the Order, documentation and this Agreement.
(d) Documentation. To use the documentation provided by Contractor in support of Ordering Activity’s permitted Use of the Programs, and to reproduce the documentation (or excerpts thereof) as are reasonably necessary to support Ordering Activity’s end users.

(e) Back-Up. To reproduce and install Programs(s) on a back-up server, and execute such Programs(s) on that back-up server only for back-up, back-up testing, disaster recovery and Programs fail-over purposes when Ordering Activity’s production servers are inoperative. Ordering Activity agrees to maintain accurate and current records of all locations of backup copies.

3. Restrictions. Ordering Activity acknowledges that the Programs and their structure, organization, source code and related documentation constitute valuable trade secrets of Kony and its suppliers. Accordingly, except as expressly permitted in Section 2.2, Ordering Activity agrees not to:
   - allow Use of the Programs other than as specified on an applicable Order for which Ordering Activity has paid; or
   - distribute, sell, rent, transfer, lease, lend, sublicense, loan, assign, pledge, grant a security interest in, or otherwise make available the Programs or any part or copies thereof to any third party; or
   - use the Programs in any service-bureau, timesharing, outsourcing or fee-for-service arrangement; or
   - combine or merge a Program with or into another software or incorporate any Program or portion thereof into any compilation; or
   - disassemble, decompile, reverse engineer or otherwise attempt to derive the structure, sequence or organization of source code, except as permitted by applicable law to achieve interoperability with other software if Kony does not offer the means to do so; or
   - remove or alter product identification, copyright, trademark or other proprietary markings contained in or on the Programs or documentation; or
   - modify, adapt, recast or otherwise prepare a derivative work of a Program or portion thereof; or
   - otherwise use or copy the Programs or permit any third party to do any of the foregoing.

   - To reproduce and install Programs(s) on a back-up server, and execute such Programs(s) on that back-up server only for back-up, back-up testing, disaster recovery and Programs fail-over purposes when Ordering Activity’s production servers are inoperative. Ordering Activity agrees to maintain accurate and current records of all locations of backup copies.

Support Services for the KonyOne Platform Programs (hereinafter “Programs”) will include the following:

- Standard Web support on weekdays, excluding India holidays
- Telephone support for Severity 1 incidents on a 24x7x365 basis
- Error resolution and escalation support
- 24x7x365 access to Kony’s Support Portal for trained and certified users
- Access to technical support bulletins
- Patches, corrections, updates and releases to the Program(s) as made available by Kony under Support Services.

Contractor through Kony will provide Ordering Activity’s designated employee(s) access to its technical support team (“Kony Help Desk”), for technical support. Ordering Activity may contact the Kony Help Desk for Support Services through the following means:

Web: http://support.kony.com - For Kony trained and certified individuals (log error reports)
Web: https://developer.kony.com – For Ordering Activity’s who have valid Program licenses (downloads, documentations, developers forum)
Phone: 1-877-777-7684 (for Severity 1 Incidents)

Definition of Support Severity and Response Times
Contractor through Kony will provide Support Services based on Error Reports logged by Ordering Activity in Kony’s support portal (following Ordering Activity’s initial investigation and confirmation the Error is related to the Programs). With respect to the Kony Studio “IDE” (Developer’s Toolkit) and Kony Client Platforms, to ensure the validity of Error request, the submission of Error Reports must be reviewed and submitted by those employees or agents of Ordering Activity who have received Kony’s IDE Developer Certification. Error Reports will be logged by Ordering Activity in accordance with the severity level definitions below. Contractor and Ordering Activity will work together to achieve consensus, should there be any disagreement in assigned severities. Severities assigned to Error Reports may change with time if mutually agreed to by both parties. For example, an issue may be initially categorized as Severity Low and upon further investigation; it may be mutually concluded by Contractor and Ordering Activity that the issue should be reclassified as Severity Medium. Response and Target Resolution times for Errors will be measured from the time the Error Report is logged by Ordering Activity into Kony’s support portal. Error Report activity will subsequently be managed and tracked through the portal.

“Error” means a Program function which does not operate in substantial conformance to Program documentation. Any feature request initiated by the Ordering Activity which is not documented in the Program documentation for the given release will be considered an enhancement feature request.

A “Critical” or “Severity 1” Error renders the Program completely unusable or nearly unusable or introduces a high degree of operational risk in Production environment. No Workaround is available. Until this Error is resolved, the Program’s use is essentially halted. A large number of users and/or core Program functionality is severely impacted.

A “High” or “Severity 2” Error renders essential functionality of the Program to be consistently unavailable or obstructed, and causes a moderate level of hindrance or risk. Workarounds may be available, but use of the Program is acutely degraded and causes continuing operational risk. A moderate number of users are significantly impacted, but overall the Program continues to function.

A “Medium” or “Severity 3” Error is an inconvenience or causes inconsistent behavior, which does not impede the normal functioning of the Program. It could be an Error that occurs inconsistently and affects nonessential functions or is an inconvenience which impacts a small
number of users or small number of devices. It may also contain visual errors where the graphical display of the Program is not ideal, but still functioning correctly.

A “Low” or “Severity 4” Error has a small degree of significance, or is a minor cosmetic issue, or is a “one off” case. A “one off” case occurs when the Error occurs infrequently and cannot be reproduced easily. These are Errors that do not impact the daily use of the Program. A Low Error is something that does not affect normal use, and can be accepted for a period of time, but user would eventually want changed.

5. Ordering Activity Acknowledgement and Obligations.

5.1 Ordering Activity acknowledges and agrees that Contractor nor Kony does not monitor communications or data transmitted through the Programs or Ordering Activity Applications, nor does Contractor nor Kony have access to such communications or data, and that Contractor nor Kony shall not be responsible for the content of any such communications or transmissions. Ordering Activity shall use the Programs and Ordering Activity Applications for authorized and legal purposes. Ordering Activity is solely responsible for the activity of its users and shall ensure that they abide by all applicable laws (including but not limited to international copyright and US Export laws) in connection with Ordering Activity’s and its users’ use of the Programs and Ordering Activity Applications including, without limitation, those related to data privacy, international communications and the transmission of technical or personal data.

5.2 Ordering Activity acknowledges and agrees that Ordering Activity’s and its users’ use of the Programs and Ordering Activity Applications are dependent upon access to telecommunications and Internet services. Ordering Activity and its users shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the Programs and Ordering Activity Applications, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Contractor nor Kony shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

6. Reports.

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

6.4 Verification and Audit. Within reasonable agency regulations, and at Contractor’s written request, Ordering Activity will furnish Contractor with a certification signed by an officer of Ordering Activity verifying that the Programs are being used pursuant to the terms of this Agreement and any applicable Order. Upon at least thirty (30) days prior written notice, Contractor may audit Ordering Activity’s use of the Programs to ensure that Ordering Activity is in compliance with the terms of this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at Ordering Activity’s facilities and will not unreasonably interfere with Ordering Activity’s business activities. Ordering Activity will provide Contractor with access to the relevant Ordering Activity records and facilities. If an audit reveals that Ordering Activity has underpaid license fees to Kony during the period audited, then Ordering Activity and Contractor will work diligently to true-up the account.

7. Ownership. The Programs are licensed to Ordering Activity subject to the terms of this Agreement. Contractor reserves all rights not expressly granted to Ordering Activity. Contractor retains ownership of all copies of the Programs. Ordering Activity acknowledges that the Programs contain and embed valuable, unpublished information that is proprietary and confidential to Contractor and its suppliers; Ordering Activity agrees to keep all such information confidential.

8. Reserved:


9.1 Definition. By virtue of this Agreement, the parties may have access to each other’s Confidential Information. “Confidential Information,” as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. Contractor’s Confidential Information includes, without limitation, the nonpublic aspects of the Programs and any software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Programs. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party’s employees and advisors, that have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.

9.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party’s lawful possession prior to the disclosure without restriction on use or disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on use or disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

9.3 Use and Nondisclosure. Neither party shall make the other’s Confidential Information available to any third party or use the other’s Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other’s Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other’s Confidential Information are legally bound to comply with the obligations set
forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency or court, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the request for information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the disclosure.

10. Warranty and Disclaimer.

10.1 Limited Warranty. Contractor warrants to Ordering Activity that for a period of ninety (90) days from the date of delivery (“Performance Warranty Period”), the Programs, when used as permitted hereunder and in accordance with its documentation, will operate substantially as described in the documentation. If during the Performance Warranty Period, Ordering Activity notifies Contractor of a non-conformity in breach of the foregoing warranty through the applicable technical support Programs in writing, Contractor will, use commercially reasonable efforts to correct the non-conformity or provide a work-around within a reasonable period of time, or, if Contractor determines that it is unable to do so, Contractor will refund to Ordering Activity, any license fees paid for the non-conforming Program prorated from the date the non-conformity was reported to the end of the annual license term. In the event of a refund remedy, Ordering Activity’s license to use the affected Program will be terminated. This provision states Contractors entire liability and Ordering Activity’s sole remedy for any non-conformity in a Program.

10.2 Disclaimer. Ordering Activity assumes sole responsibility and liability for results obtained from the use of the Programs and Ordering Activity Applications and for conclusions drawn from such use. Ordering Activity acknowledges and agrees that Contractor makes no guarantee that the Programs or the use thereof by Ordering Activity or its users will satisfy Ordering Activity’s obligation to comply with industry standards or legal or other regulatory requirements, including without limitation those pertaining to data privacy and security or internal controls. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE PROGRAMS OR SERVICES. WITHOUT LIMITING THE FOREGOING, KONY DISCLAIMS ANY WARRANTY THAT THE PROGRAMS WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. CONTRACTOR FURTHER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PROGRAMS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Infringement Indemnification.

11.1 By Contractor. Subject to the limitations set forth below, and within the parameters of federal regulations, Contractor shall indemnify and defend Ordering Activity against any damages awarded against Ordering Activity in, or payable by Ordering Activity in settlement of, any suit or action brought against Ordering Activity to the extent that it is based upon a claim that the Programs, provided by Contractor hereunder, infringe or misappropriates the intellectual property rights of any third party. Contractor shall at Contractor’s expense, defend any such claim for which indemnity is sought. Ordering Activity shall provide reasonable cooperation to Contractor in Contractor’s defense of any such claim. Contractor’s obligations under this Section are contingent upon: (a) Ordering Activity providing Contractor with prompt written notice of such claim; (b) Ordering Activity granting to Contractor sole authority and control over the defense and settlement of such claim, provided that Contractor shall not agree to any settlement unless Ordering Activity has expressly approved of the settlement in advance, which consent will not be unreasonably withheld, conditioned or delayed; and (c) Ordering Activity keeping Contractor informed of all material developments related to such claim and (where applicable) providing reasonable cooperation to Contractor, at Contractor’s expense, in Contractor’s defense and settlement of such claim. In the event that Contractor’s right to provide the defense is enjoined or in Contractor’s reasonable opinion is likely to be enjoined, Contractor may elect to obtain the necessary rights, or replace or modify the relevant portions thereof, so that they become non-infringing, or, if the foregoing cannot be achieved on a commercially reasonable basis, terminate this Agreement without liability to Ordering Activity and provide Ordering Activity a pro-rated refund of any pre-paid fees. EXCLUDING THE COST OF DEFENSE, THE FOREGOING STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE PROGRAMS.

Contractor shall have no liability or obligation under this Section 11.1 to the extent that any third-party claims described herein are based on (a) use of the Programs in a manner that violates this Agreement; (b) any combination of the Programs with any software, programs, product, service, component, method, and/or other element that is not supplied by Contractor, to the extent the claim would have been avoided but for such combination; (c) any modification to the Programs is made by any person other than Contractor; (d) Contractor’s compliance with particular specifications, instructions, or requirements furnished by Ordering Activity; or (e) any claim for which Ordering Activity is responsible.

11.2 Reserved.

12. Reserved

13. General

13.1 Reserved

13.2 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.3 Severability. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force. The parties agree that neither party shall be deemed the draftsman of this Agreement and, in the event any provision in this Agreement is alleged to be ambiguous, such provision will not be construed in favor of one party on the ground that the provision was drafted by the other party.
13.4 Reserved.

13.5 U.S. Government End Users. The Programs and documentation are “commercial items” as that term is defined in FAR 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. If the Programs and documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Programs and documentation will be only those specified in this Agreement.

13.6 Assignment/Successors. The parties may not assign or transfer this Agreement, in whole or in part, without the other Party’s prior written consent. Any attempted assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, either party may assign or transfer this Agreement to its successor as part of a corporate reorganization, consolidation, merger or sale of substantially all assets of such party, provided the assignee assumes all obligations in this Agreement. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

13.7 Non-Exclusive Remedies. Except as set forth in this Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise, subject to the limitations set forth in this Agreement.

13.8 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.9 Reserved.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

Scope. This Rider and the attached Lastline, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2L, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its
sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
END USER LICENSE AGREEMENT  
(Commercial Terms and Conditions)

The GSA Schedule Contractor acting by and through its supplier, Lastline, Inc., (“Lastline”) and the user of the Licensed Product(s) purchasing under the GSA Schedule Contract (“Customer” or “Ordering Activity”), enter into this agreement including any schedules, exhibits or other attachments (collectively, this “Agreement”) effective as of the date set forth on the Order Form.

RECITAL

Lastline has developed several anti-malware software application solutions for use in protecting computers and computer network systems. Customer desires to license certain of such solutions pursuant to the terms and conditions of this Agreement.

In consideration of their respective rights and obligations as set forth in this Agreement, the parties agree as follows;

AGREEMENT

Definitions:

API A set of web-based services providing programmatic access to Lastline systems and data, together with all updates, revisions, any associated tools and Documentation that Lastline may make available.
Artifact Means any potentially malicious file, URL, email content, or other material submitted by the Customer to the Licensed Product for analysis.
Business Purpose Use of the Licensed Products and Documentation for the protection of Customer’s networks in accordance with the terms of this Agreement.
Comparative Information The criteria measured as part of a competitive analysis, including, but not limited to, performance, latency, usability, efficacy, effectiveness, identification, and detection capability, or comparison of a product’s capability to another product.
Documentation User manuals regarding the Licensed Product and made available to Customer.
Fees The Fees identified in the Order Form and any other Fees that may become due pursuant to this Agreement.
Installation Environment The location of the data center at which the Licensed Products are hosted and accessed and as indicated on any Order Form as either Air Gap, Hosted, or On-Premises Data Share or On-Premises Private.
Licensed Product As specifically indicated on any Order Form, the Licensed Product that is able to identify malicious content within Artifacts, as well as any Updates, Upgrades and new Versions that Lastline develops and makes available to Customer during the License Term.
Malicious Artifact A file made available to Customer by Lastline for downloading individual Malicious Artifacts collected from the internet.
Order Form Customer’s purchase order identifying the Licensed Products by SKU, complete product description and associated Fees (derived from the GSA Schedule pricelist) and incorporating the terms and conditions of this Agreement by reference.
**Term License** The period of time that Customer is authorized to Use the Licensed Product, as set forth in the Agreement, and Fees are paid pursuant to the Order Form.

**Update** Enhancements, modifications, or improvements of the Licensed Product that contains bug fixes and/or minor enhancements or improvements that are made generally available by Lastline to its Customers for no additional license Fee. For clarification, Updates do not contain significant new features or functions that materially impact the performance and/or the nature of services rendered.

**Update Server** Lastline’s site on the internet from which Customer may download updates for Licensed Products including blacklists.
**License Grant; Restrictions; Malware Artifact Access**

**License** Subject to the terms hereof, payment of all Fees, and in accordance with applicable User/Use limitations, Lastline hereby grants Customer a non-exclusive, non-transferable, limited Term License, without the right to sublicense, for Customer to Use the Licensed Products, in executable object code format only and the Documentation for Business Purposes. The Term License is limited to the term, number of Users and Installation Environment indicated on the Order Form. Customer agrees to notify Lastline at the time of renewal of any changes in the number of Users being protected or any changes to the Installation Environment.

**Restrictions** Customer may not rent, lease, sell, transfer (by sublicense, assignment or otherwise), time share, modify, adapt, alter, translate, reproduce, copy, make derivative works from, distribute, publish, use to provide rental or service bureau services, or publicly display the Licensed Products or Comparative Information. Customer may only Use the Licensed Products and Documentation for Business Purposes. Customer may not reverse engineer, decompile, disassemble or otherwise attempt to discover or reconstruct the source code, underlying ideas, algorithms, programming interfaces or configuration files for the Licensed Products, except as may be allowed under applicable law and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to the respective owners. Customer may not use the Licensed Products or Documentation to build similar or competitive products. Customer may not publish or disclose to any third party any performance or benchmark tests, analyses, or any Comparative Information relating to the Licensed Products or the use thereof. Customer may not permit any person or entity to breach the restrictions in this Subsection 2b (Restrictions). Any future release, Update, Upgrade or Version to the Licensed Products or Documentation shall be subject to the terms of this Agreement, unless Lastline expressly states otherwise.

**Reservation of Rights** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly granted herein, Lastline and its suppliers and any Third Party Licensors have and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Licensed Product, to include the underlying software, the APIs, the Malware Artifacts and Documentation, and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited Term License right to Use the Licensed Products and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement or otherwise.

**Third Party Code** The Licensed Products contain certain items of independent, third party code for which Lastline is required to provide attribution to the third party (“Third Party Code”). The Third Party Code is provided with certain third party data, information and feeds (collectively “Feeds”) that are owned by the applicable third party. The restrictions in Subsection 2b (Restrictions) apply to all such Feeds. A list of this Third Party Code is available at https://update.lastline.com/updates/distros/open-source-licenses.txt. Lastline represents that these Third Party Code providers will not diminish the license rights provided herein or limit Customer’s ability to Use the Licensed Product in accordance with the applicable Documentation, and neither the inclusion of Third Party Code in any Licensed Product or use of Third Party Materials will create any obligation on Customer’s part to license Third Party’s Code under any open source or similar license.

**Malware Artifacts Access** Customer has access to download individual Malicious Artifacts from the Licensed Product during the Term, Customer may download and Use the Malicious Artifacts solely for the purposes of testing the Licensed Products or research of the Malicious Artifact. Customer acknowledges and agrees that Customer shall only use the Malicious Artifacts in a secure and isolated lab environment. Customer assumes all risk and liability for using the Malicious Artifacts and Customer shall not distribute the Malicious Artifacts to any third parties or use the Malicious Artifacts for any purposes other than those identified herein.

**TERM**

**Term** Unless otherwise set forth on the Order Form, this Agreement will commence on the Effective Date and shall remain in full force unless earlier terminated (the “Agreement Term”).
**Licensed Product Term** The Licensed Product Term commences with the issuance of a license key and the license start date stated on the Order Form and expires on the end date set forth in the Order Form ("Initial Term"). Customer agrees to install the Licensed Product within 30 days of the license start date. Upon expiration of the Initial Term, the license for the Licensed Product may be renewed by Customer for successive 1-year terms by both parties executing a new Purchase Order, or option to an existing Purchase Order in writing, or a different period if so indicated on the Order Form for renewal (each a “Renewal Term”). The Initial Term and Renewal Term(s) shall be collectively referred to as the “License Product Term.”

**Confidentiality** The Licensed Product in source code form remains a confidential trade secret of Lastline and/or its suppliers. The Licensed Product is protected by the copyright and other intellectual property laws of the United States. Customer acknowledges that, in the course of using the Licensed Product, including the Software, Customer may obtain or learn information relating to the Licensed Product, which may include, without limitation, information relating to the performance, reliability or stability of the Licensed Product, operation of the Licensed Product, knowhow, techniques, processes, ideas, algorithms, and software design and architecture ("Proprietary Information"). As between the parties, such Proprietary Information shall belong solely to Lastline. Subject to the Freedom of Information Act, 5 U.S.C. § 552, during and after the term of this Agreement, Customer shall hold in confidence and protect, and shall not use (except as expressly authorized by this Agreement) or disclose, Proprietary Information to any third party.

RESERVED.

**Installation Environment/Third Party Software** When the Licensed Product is deployed in an On-Premises Installation Environment, Customer will be responsible for the cost of any third party software required to Use and enable deployments of the Licensed Product’s Sandbox functionality (e.g., Microsoft Windows, Microsoft Office.). Information related to the third party software requirements is provided in the Documentation. If Customer accesses Lastline’s Malicious Artifacts, Customer is solely responsible for providing all equipment necessary for testing and researching the Artifact, including but not limited to, the secure and isolated lab environment.

**Additional Licenses** Subject to reasonable prior notice and upon Customer’s issuance of an Order Form for additional licenses, Lastline may increase the scope of Customer’s license to the Licensed Products.

**Provide Accurate Information** In consideration of Customer’s Use of the Licensed Products, Customer agrees to (i) provide true, accurate, current, and complete information about the number of Users as prompted by Lastline and (ii) maintain and promptly update the registration data to keep it truthful, accurate, current, and complete. Customer may receive account information (such as a username, password, API key or token) to use to access Customer’s account for the Licensed Product.

RESERVED.

**Support and Upgrades**

**Support Service** Lastline will provide support to assist Customer in installing the License Products and achieving operational status for the Licensed Products in accordance with the Documentation. Additional application support services shall be made by mutual written agreement on: (i) the schedule for the performance of the additional services, (ii) Lastline’s Fees, if any, for the additional services, and (iii) any additional service terms and conditions that may be required and added by mutual consent as an Exhibit to this Agreement.

**Software Upgrades** Lastline will periodically make available to Customer through the Lastline Update Server, Updates, Upgrades and current Versions of the Licensed Products which will include corrections, and/or enhancements, and/or improvements. These will be made available at no additional Fee to Customer with an active and fully paid Licensed Product in effect during their License Term. Release of these Updates, Upgrades, and current Versions may impact the on-going support and upgrades to previous Versions of the Licensed Product as outlined in the Lastline Software Lifecycle Policy available from the Lastline Customer Support Portal at https://support.lastline.com, and as updated by Lastline from time to time, Customer is responsible for maintaining a currently supported Version for any On-Premises deployments of the Licensed Product(s), to include Hybrid, On- Premises and Air Gap Configurations.

**Access to the Lastline Update Server** Lastline will use commercially reasonable efforts to make the Lastline Update Server accessible, but Lastline does not warrant or guarantee continuous availability.

**Standard Term** Application support services and access to the Lastline Update Server are subject to this Agreement’s terms and timely payment of all Fees.

RESERVED.
**Warranty**

**Performance Warranty** For the duration of the License Product Term of an active and fully paid Lastline Licensed Product, Lastline warrants that the Licensed Products, will perform substantially as specified in the Documentation. Lastline does not warrant that the Licensed Products or Documentation, will meet Customer’s requirements and expectations, that Licensed Products will be uninterrupted or error-free, or that the Licensed Products will protect Customer’s networks from specific threats.

**Remedy for Performance Warranty Breach** Lastline’s sole obligation with respect to a breach of this Section 12 is to use commercially reasonable efforts to correct the breach. If Lastline is unable to correct the breach despite its use of commercially reasonable efforts, then Lastline will notify Customer and Customer may terminate this Agreement. In the event Customer terminates this Agreement, Lastline will issue to Customer a pro-rata refund of the prepaid fees based on the balance of the then-current Term remaining for the applicable Licensed Products. **THE FOREGOING REMEDY IS CUSTOMER’S EXCLUSIVE REMEDY AND LASTLINE’S SOLE LIABILITY FOR A BREACH OF THE WARRANTY AS SET FORTH HEREIN.**

**WARRANTY DISCLAIMER** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER LASTLINE NOR ITS THIRD PARTY LICENSORS MAKE ANY ADDITIONAL WARRANTY WITH REGARD TO THE LICENSED PRODUCT, INCLUDING THAT OF ANY OF LASTLINE’S THIRD PARTY LICENSORS AND DOCUMENTATION. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER’S USE OF THE MALWARE ARTIFACTS IS AT CUSTOMER’S SOLE RISK AND CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER’S PROPERTY OR PERSON, INCLUDING, BUT NOT LIMITED TO, DAMAGE TO CUSTOMER’S COMPUTER NETWORKS AND SYSTEMS OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING THE MALWARE ARTIFACTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO ADDITIONAL WARRANTIES ARE MADE WITH REGARD TO THE MALWARE ARTIFACTS COLLECTED FROM THE INTERNET. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, LASTLINE DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES WITH REGARD TO THE LICENSED PRODUCTS INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LASTLINE DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL PERFORM ERROR FREE OR WITHOUT INTERRUPTIONS.

Limitation of Liability. **IN NO EVENT SHALL LASTLINE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING COSTS OF PROCUREMENT OF SUBSTITUTE GOODS) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LASTLINE’S TOTAL LIABILITY ARISING OUT OR RELATING TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES WILL NOT EXCEED THE AMOUNT PAID FOR THE LICENSED PRODUCT TO WHICH THE CLAIM RELATES, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE.** This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733, and the foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor’s negligence, or for any other matter for which liability cannot be excluded by law.

**RESERVED.**

**Ownership** Customer agrees that as a condition of its rights hereunder, Customer will not remove any product identification, copyright, proprietary or any other notices on the media, within the code and on all copies thereof, and on the Documentation, which appear on the media or within the code of the Licensed Products, and/or on all materials delivered by Lastline.

**RESERVED.**

**Reserved.**

**Privacy** Customer agrees to Lastline’s collection, use, and disclosure of information as set forth in Lastline’s attached Privacy Policy ("Privacy Policy"). Lastline uses Customer personal information only in connection with the administration of Customer’s account as set forth in the Privacy Policy. In a Hosted or Hybrid Installation Environment, Lastline uses information gained during the analysis of Artifacts to assess if a subject is malicious and will use and share that information regarding Malicious Artifacts and any malware samples collected in such analysis according to the terms of our Privacy Policy.

**GENERAL PROVISIONS**
United States Government Restricted Rights All Products are commercial in nature and developed solely at private expense. The Product(s) are delivered as Commercial Computer Software as defined in DFARS 252.227-7014 (June 1995) or as a commercial item as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Lastline’s Software License Agreement for such software. Technical data is provided with limited rights only as provided in DFARS 252.227-7015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

Export Customer is responsible for listing the country or countries in which any Lastline technology is deployed/used in the Order Form. Customer may not use, export, import, or transfer the Licensed Products and Documentation except as authorized by U.S. law, the laws of the jurisdiction in which Customer obtained the Licensed Products and Documentation, and any other applicable laws. In particular, but without limitation, the Licensed Products and Documentation, may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce’s Denied Person’s List or Entity List. By using the Licensed Products and Documentation, Customer represents and warrants that (i) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country and (ii) Customer is not listed on any U.S. Government list of prohibited or restricted parties. Customer also will not use the Licensed Products, Documentation, or Malicious Artifacts for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. Customer acknowledges and agrees that products, services or technology provided by Lastline are subject to the export control laws and regulations of the United States. Customer shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Lastline products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.
LASTLINE PRIVACY POLICY

Effective Date: December 23, 2019

This Privacy Policy applies to our Service platform owned and operated by Lastline, Inc. ("Lastline") that uses our customer’s Personal Data only in connection with the administration of their account as set forth in this Privacy Policy ("Policy"). Lastline respects the privacy of our customers and is committed to protecting the Personal Data that they share with us. This Policy describes how Lastline collects, uses, shares, secures and processes information from the networks of our customers in the course of providing threat detection Services ("Services"), and outlines the ways in which our customers can control our use of that information. The use of information collected through our service shall be limited to the purpose of providing the service for which the Client has engaged Lastline.

Terms

**Artifact** – means any potentially Malicious file, URL, email content, or other material collected by the Sensor or submitted by the Customer to the Licensed Product for analysis.

**Artifact Sharing** – means the sharing of Suspicious and Malicious Artifacts with Lastline as determined by the product SKU purchased by the customer. Customers not wishing to share Suspicious or Malicious Artifacts with Lastline can purchase an On-Premises Private or On-Premises Air Gap deployment.

**Benign** – Those Artifacts Lastline scores as 0-29.

**Hosted** – The Licensed Product is installed in a hybrid deployment where the Lastline deployment leverages a multi-tenant Hosted platform installed in the Lastline Datacenter and sensors deployed at various sites in the customer’s network.

**Malicious** – Those Artifacts Lastline scores as 70 or higher.

**Meta data** – Is data that describes the Artifact and results of the analysis of the Artifact.

**On-Premises Artifact Sharing** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s deployment shares information about Suspicious and Malicious Artifacts identified by their system with Lastline.

**On-Premises Private** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system does not share any Artifacts with Lastline but is capable of receiving information about Malicious Artifacts from Lastline.

**On-Premises Air Gap** – The Licensed Product is installed in a data center located at a Customer’s site. The Customer’s system shares no information with Lastline and does not receive any information about Malicious Artifacts from Lastline.

**Personal Data** – means any information relating to an identified or identifiable natural person ("data subject") who can be directly or indirectly identified in particular by reference to an identifier, such as name, location etc.

**Services** – Means the analysis of Artifacts provided by Lastline to Company.

**Suspicious** – Those Artifacts Lastline scores between 30 and 69.

EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield
Lastline participates in, and has certified its compliance with, the EU-US. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all Personal Data received from European Union (EU) member countries and Switzerland, respectively, in reliance on each Privacy Shield Framework, to the Framework’s applicable Principles. To learn more about the Privacy Shield Frameworks, and to view our certification, visit the U.S. Department of Commerce’s Privacy Shield List. [https://www.privacyshield.gov]

Lastline is responsible for the processing of personal data it receives under each Privacy Shield Framework and subsequently may transfer it to a third party acting as an agent on its behalf. Lastline complies with the Privacy Shield Principles for all onward transfers of personal data from the EU and Switzerland, including the onward transfer of liability provisions.

With respect to personal data received or transferred pursuant to the Privacy Shield Frameworks, Lastline is subject to the regulatory enforcement powers of the U.S. Federal Trade Commission. In certain situations, we may be required to disclose personal data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

If you have unresolved privacy or data use concerns that we have not addressed satisfactorily, please contact our U.S.-based third-party dispute resolution provider (free of charge) at https://feedback-form.truste.com/watchdog/request.

Under certain conditions, more fully described on the Privacy Shield website, you may be entitled to invoke binding arbitration when other dispute resolution procedures have been exhausted.

Lastline commits to cooperate with the panel established by the EU data protection authorities (DPAs) and the Swiss Federal Data Protection and Information Commissioner (FDPIC) and comply with the advice given
by such authorities with regard to human resources data transferred from the EU and Switzerland in the context of the employment relationship.

IN THE EUROPEAN ECONOMIC AREA
Contact us or our European GDPR Representative at the address below or by sending an email to security@lastline.com. Please include your contact information, the name of the Lastline product or website, and a detailed description of your request or privacy concern.

Mail to: Lastline UK Office, M/S: Lastline, Inc., C/O Hillier Hopkins LLP, Chancery House, 199 Silbury Boulevard, Milton Keynes, Bucks, England, MK9 1JL

Information the Lastline Product Collects

Lastline analyzes the traffic on a network and is designed to detect threats posed by malware, as well as communication with Malicious hosts on the internet. Lastline will collect and analyze certain Artifacts (files, URLs, as well as web and email content that could pose a threat to the organizations) that are transmitted via web traffic and as email attachments.

Lastline takes steps to avoid collecting information from our customer’s network that could personally identify their end users or collect or view any data that could be reasonably associated to such information. However, the data we collect through our Services to identify security risks may also contain some Personal Data (i.e. username, email address or IP address). This information is only used in protecting the IT infrastructure of the organization

INFORMATION LASTLINE INSPECTS

Network traffic, including:

- The domain names resolved on the network including the host (IP Address) that resolved the domain.
- The content of some network connections that could pose a risk to an organization.
- Network flows to which Lastline network sensors have visibility.
- Executable programs, scripts, documents or other potential Artifacts that may contain executable code downloaded via the web (if Lastline network sensors are deployed) or sent as email messages and attachments (if Lastline email sensors are deployed).
- This includes email headers and any potentially malicious content in the email body.
- Refer to the Lastline Technical Support Knowledge Base for explicit details on files Lastline is able to analyze.
In On-Premises deployments of Lastline product offerings, with Artifact Sharing enabled (default behavior), the following Artifacts are shared with Lastline:

Artifacts Lastline identifies and scores as Suspicious (30+) or Malicious (70+) [default; users customizable] are shared with Lastline for additional analysis.
These sharing options can be altered by the customer pursuant to their license agreement to expand file types shared with Lastline. (customers may refer to the Lastline Technical Support Knowledge Base or the user documentation for additional information regarding this functionality.)

Email contents, including:

Header information from email messages inspected by the Lastline Sensor or submitted via the API.
In hosted Deployments: Potentially Suspicious or Malicious Email Attachments
On-Premises Artifact Sharing Deployments: Any submitted Suspicious and Malicious content.

INFORMATION LASTLINE RETAINS
Alert information, as well as activity that could become an alert, is collected whenever a computer is attached to a customer’s network and performs Malicious activity for the purpose of providing organizations with meaningful reports regarding their security posture.
In On-Premises deployments, this data is stored on the local Manager, and not shared with Lastline
In Hosted deployments, this data is stored in the Lastline Data Center.
Lastline will retain versions of all content submitted to the Lastline Hosted infrastructure, directly leveraging the UI or via the API. Artifacts are retained if submitted via the API, unless the delete after analysis flag has been set in the API call. Artifacts are always retained when submitted via the UI.
For customers with a Hosted deployment, Lastline will retain all Artifacts captured by the Lastline Sensor as well as any file the user uploaded or has configured to be uploaded to the system.
Lastline will generate and retain metadata as well as subsequent stage Artifacts generated during the Lastline analysis. This includes metadata about the file and behaviors observed during analysis, process snapshots, screenshots of analyzed content.
Customers with On-Premises systems can use the configuration options provided in the product portal to view, manage, and disable information that should never be shared/transmitted to Lastline. All data is retained for customers with a Hosted deployment for 30 days after the term of the agreement.

INFORMATION LASTLINE SHARES
Lastline will share the hashes and Meta data about Malicious Artifacts that are detected within a Hosted or On-Premises deployment (if Artifact Sharing is enabled).
Metadata about the file is not available to a customer, unless that customer’s Lastline deployment has analyzed the same Artifact, or the Artifact is publicly available on the Internet.
Lastline may exchange some Malicious Artifacts and Artifact metadata submitted to the Lastline Platform with other cyber security vendors, with whom we have a confidentiality agreement, to allow both vendors to improve and enhance their respective technologies to defend against new threats or attack vectors.
Pursuant to the license agreement, Customers can opt-out of this level of sharing any Malicious Artifacts with Lastline by sending an email to support@lastline.com.

Information Lastline Collects

In order for a customer to license our products and obtain technical support Services, we will collect certain Personal Data, such as the first and last names of our contacts, mailing address (including postal
code), email address, cell phone or work phone. This information is used only in connection with the administration of a customer’s account with Lastline and for no other purpose.

For the purpose of marketing activities, we may collect the following Personal Data from you: name, title, location, company name, phone number and email address via our website, if you wish to request some types of product or company related content, a product demo or contact us for other reasons.

If you believe that we have inappropriately collected your Personal Data and you would like to request that it be removed from our databases, please contact our Data Protection Officer at privacy@lastline.com.

USER DATA SUPPLEMENTATIONS

We may receive information about you from other sources, including publicly available databases or third parties from whom we have purchased data and may combine this data with information we already have about you. This is to help us update, expand and analyze our records, identify new customers, and provide products and Services that may be of interest to you. If you provide us Personal Data about others, or if others give us your information, we will only use that information for the specific purpose for which it was provided to us.

Examples of the types of Personal Data that may be obtained from public sources or purchased from third parties and combined with information we already have about you, may include:

Address information about you from third party sources, such as the U.S. Postal Service, to verify your address so we can properly send necessary correspondence.
Purchased marketing data about our prospects or customers from third parties that is combined with information we may already have about you to create more tailored information about our products.

In order to opt-out of our marketing communications, please send a request to our Data Protection Officer at privacy@lastline.com.

HOW WE USE THE DATA WE COLLECT
Lastline does not sell, trade or rent to third parties any of the information we collect from our customer's network, or Personal Data (together “the Data”). We may use the Data that we collect for the following purposes:

To provide our customers with our Services;
To provide our customers with customized content;
To process and respond to inquiries related to the Services or to our customer's account;
To provide our customers with important notices relating to the Services, including scheduled downtime and updates to the software;
To provide, maintain, protect and improve our Services; and
To protect Lastline and our customers.

Tracking Technologies

Lastline and its partners use cookies or similar technologies to analyze trends, administer the website, track users' movements around the website, and to gather demographic information about our user base as a whole. You can control the use of cookies at the individual browser level, but if you choose to disable cookies, it may limit your use of certain features or functions on our website or service.

As is true of most websites, we gather certain information automatically. This information may include Internet protocol (IP) addresses, browser type, Internet service provider (ISP), referring/exit pages, the files viewed on our site (e.g., HTML pages, graphics, etc.), operating system, date/time stamp, and/or clickstream data to analyze trends in the aggregate and administer the site.

We partner with a third party to implement marketing programs promoting Lastline and our products on third-party websites using cookies or similar technology. As part of this process we do not collect any Personal Data about website visitors. Anyone can remove themselves from these programs simply by erasing the cookies on their computer. Please note that you will continue to receive generic ads on some websites other than Lastline.com; this is outside of the control of Lastline.

The use of cookies by our partners, affiliates, tracking utility company, and service providers is not covered by this Policy. We do not have access or control over these cookies. Our partners, affiliates, and service
providers use session ID cookies to understand usage patterns on the website. These companies are
obligated to protect our customer’s Personal Data in accordance with their own policies, and Lastline

is not responsible for the privacy practices of other companies’ websites or Services to which our
products and Services may link or otherwise refer.

In order to personalize communications with our customers and to improve our Services, we may also ask you
to provide consumer satisfaction information regarding your experience with our Services. You have the option
of choosing not to provide that information.

Third Party Partners

To provide the Lastline Hosted and some On-Premises Services, we may share submitted Artifacts and other
meta data with third parties that provide Services, such as information processing, data storage and security
Services, for instance Cloud hosting and data service providers. These third parties are only
authorized to use our customer’s data as necessary to provide Services to Lastline and are obligated to
protect our customer’s network data with provisions at least as protective as those contained in this Policy,
and each such provider has security measures in place at least as protective as those described in this
Policy.

SHARING WITH SERVICE PROVIDERS

We may share your information with third parties who provide services on our behalf to help with our
business activities. These companies are authorized to use your Personal Data only as necessary to
provide these services to us. These services may include:

Delivering letters or packages
Payment processing
Providing customer service
Sending marketing communications
Conducting research and analysis
Providing cloud computing infrastructure

Legal Notice
We may disclose your Personal Data as required by law, such as to comply with a subpoena or other legal process, when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request.

If Lastline is involved in a merger, acquisition, or sale of all or a portion of its assets, you will be notified via email and/or a prominent notice on our website of any change in ownership, uses of your Personal Data, and choices you may have regarding your Personal Data.

We may also disclose your Personal Data to any other party with your prior consent.

Protection of Personal Data

Lastline takes precautions, including administrative, technical, and physical measures, to safeguard our customer’s Data against loss, theft, and misuse, as well as against unauthorized access, disclosure, alteration and destruction.

Lastline uses industry-standard efforts to safeguard the confidentiality of Data, including encryption, firewalls and SSL (Secure Sockets Layer). We have implemented reasonable administrative, technical, and physical security controls to protects against the loss, misuse, or alteration of our customer’s Data.

Lastline as a Service Provider

Lastline collects information under the direction of its customers and has no direct relationship with the individuals whose Personal Data it processes. If you are an employee or client of one of our customers and have questions, please contact your IT Security Team or Managed Service Provider for additional information. We may transfer contact information of customers and prospects to companies that help us provide our Service. Transfers to subsequent third parties are covered by the service agreement with our customers.
Lastline acknowledges that you have the right to access your Personal Data. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct their query to our customer (the data controller). If requested to remove data, we will respond within a reasonable timeframe.

Access & Data Retention

Upon request, Lastline will provide you with information about whether we hold any of your Personal Data. If you wish to correct, amend, cancel your account or request that we no longer use your information to provide Services, you may contact us at: info@lastline.com. We will respond to your request within a reasonable timeframe. We will retain your information for as long as your account is active or as needed to provide you with our Services. We will retain and use your information only as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.

Newsletter Preferences

You may sign up to receive an email or newsletter or other communications from us. If you would like to discontinue receiving this information, you may update your email preferences by using the “Unsubscribe” link found in emails we send to you or at your member profile on our website or by contacting us at support@lastline.com.

Notification of Privacy Policy Changes

We may update this Policy from time to time to reflect changes to Lastline’s information practices. If we make any material changes, we will notify you by email (sent to the email address specified in your account) or by means of a notice on this website prior to the change becoming effective. We encourage our customers to periodically review this page for the latest information on our privacy practices.

Lastline, Inc.
1825 S. Grant St., Suite 635 San Mateo,
CA 94402 privacy@lastline.com
These Terms and Conditions (the "Agreement") set forth the terms and conditions agreed to by LogRhythm, Inc. ("LogRhythm") and the Customer identified on the Order to which this Agreement is attached and incorporated ("Customer") under which Customer may license the software and purchase the hardware specified on the Order and other purchase orders submitted by Customer and accepted by LogRhythm. No Order shall be binding upon LogRhythm until accepted by LogRhythm in writing. In consideration of the mutual covenants and conditions set forth below, LogRhythm and Customer agree as follows:

DEFINITIONS

"Appliance" means the appliance listed on an Order comprised of the Hardware and the Software installed on the Hardware.

"Documentation" means the user manuals provided to Customer with the Software or an Appliance in either electronic, online help files or hard copy format. All Documentation is provided in English.

"Delivery Date" means the date of delivery of the Appliance or the Software only, as applicable.

"Effective Date" means the date the Order was signed.

"Intellectual Property Rights" means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

"Hardware" means the hardware purchased from LogRhythm as set forth on an Order.

"Software" means the LogRhythm software programs identified in an Order, all Documentation for the Software, and any Updates (as defined in Exhibit A) that LogRhythm may provide to Customer in connection with Support Services.

SOFTWARE LICENSE GRANT AND OTHER RIGHTS.

Software License Grant. Subject to the terms and conditions of this Agreement, LogRhythm grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software, solely for internal business purposes in accordance with the Documentation and the limitations set forth in this Agreement. If Customer has purchased an Appliance, then the Software may only be used on the Hardware on which the Software has been installed. If Customer licenses the Software for use in a virtual environment each virtual instance requires its own Software license. Customer may make a copy of the Software as necessary for back up and disaster recovery purposes.

Restrictions On Use. Except as expressly permitted by this Agreement, Customer will not (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, distribute, sell or otherwise transfer the Software to any third party; (c) use the Software in any service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or (e) otherwise use or copy the Software except as expressly permitted in Section 2.1.

License Keys. Customer acknowledges that the Software uses a license key mechanism and that use of the Software on a perpetual basis (as opposed to a temporary basis for evaluation purposes) requires authorized and valid license keys ("License Keys") that must be installed by Customer. Customer agrees not to use unauthorized license keys or otherwise circumvent LogRhythm's license key mechanism. LogRhythm will provide the License Keys upon payment in full of all applicable Fees. If LogRhythm has not received the License Fee payment from Customer within the payment time period set forth in Section 5.6, LogRhythm will not be obligated to provide Customer with the License Keys and the Software will cease functioning unless Customer requests and obtains an extension of the evaluation period from LogRhythm.

System Files. All system files, including SQL Server database files and transaction logs, used by an Appliance must reside on either the Appliance or an external storage device purchased from LogRhythm ("Supported Equipment"). Notwithstanding the foregoing, system files do not include LogRhythm archive files.

DELIVERY, INSPECTION AND INSTALLATION.

HARDWARE PURCHASE AND DELIVERY. If Customer is purchasing Hardware, then, subject to terms and conditions of this Agreement, Customer hereby agrees to purchase the Hardware from LogRhythm, and LogRhythm hereby agrees to sell the Hardware to Customer, pursuant to the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

License of Software Only. If Customer is licensing the Software and not purchasing Hardware, then this Section 3.2, the terms and conditions of the Multiple Award Schedule 70 contract and the task/delivery order will govern the delivery of Software. If Customer has not already obtained a copy of the Software prior to the Effective Date, LogRhythm will ship to Customer the Software and Documentation and/or provide Customer a support account from which Customer can download the Software and Documentation in accordance with LogRhythm's reasonable instructions. Customer is responsible for configuring customer-provided hardware or virtual environment in accordance with the configuration parameters as noted in the Documentation. Improper hardware or virtual environment configuration may prevent the Software from operating properly and any such nonstandard configuration may not be supported by LogRhythm.

Software Delivery. Without limiting the warranties in Section 6.1 below, the Software will be deemed delivered the day the License Key is provided to Customer. Unless otherwise mutually agreed to in writing, Customer is responsible for installing the Software and License Keys in accordance with the Documentation.

MAINTENANCE; DEPLOYMENT; TRAINING.

Maintenance. Customer may obtain technical support and Software maintenance described in Exhibit A attached to this Agreement and incorporated herein ("Support Services") in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 Contract. Upon termination of Support Services Customer may continue to use the Software without the benefits provided under the Support Services Exhibit.

Professional Services. Subject to the terms and conditions of this Agreement, including the payment by Customer of the professional service fees ("Professional Service Fees") set forth in an Order, LogRhythm will provide to Customer the professional services described in Exhibit B attached to this Agreement and incorporated herein ("Professional Services"). Customer must use any contracted Professional Services within one year of the Effective Date.

Training. Subject to payment of any training fees ("Training Fees"), Customer may obtain training services from LogRhythm in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.
FEES AND PAYMENT.

Fees. Customer will pay LogRhythm the applicable Appliance price ("Appliance Fee") or Software license fees ("License Fees" and collectively, "Fees") as set forth in and in accordance with the applicable Order. All Fees are nonrefundable unless otherwise expressly stated herein.

Professional Services Fees. Customer will pay the Professional Services Fees set forth in and in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

Support Services Fees. Customer will pay the Support Services Fees as set forth in the terms and conditions of the Multiple Award Schedule 70 contract.

Additional Orders. Customer may order more Appliances, Software product modules and additional usage of the Software as permitted under this Agreement by executing the LogRhythm Order in addition to submitting written purchase orders to LogRhythm in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

Records. Customer will maintain complete and accurate records of its use of the Software and all other data reasonably necessary for verification of compliance with this Agreement.

Audit Rights. LogRhythm will have the right, during normal business hours, in accordance with United States Government security requirement and upon at least five (5) days prior written notice, to have an independent audit firm selected by LogRhythm audit Customer’s records relating to Customer’s activities pursuant to this Agreement to verify that Customer has complied with the terms of this Agreement. The audit will be conducted at LogRhythm’s expense. LogRhythm may submit a request for payment of alleged owed amounts in accordance with the terms and conditions of the Multiple Award Schedule 70 Contract. Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

WARRANTY; DISCLAIMER.

Software Warranty. For a period of ninety (90) days after the Effective Date (the “Software Warranty Period”), LogRhythm warrants that the Software, when used in accordance with the instructions in the Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant the Customer’s use of the Software will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation, correct any reproducible error in the Software reported to LogRhythm by Customer in writing during the Software Warranty Period. If LogRhythm determines that it is unable to correct the error or replace the Software, LogRhythm will refund to Customer all License Fees and Support Service Fees actually paid for the defective Software, in which case this Agreement and Customer’s rights to use the Software will terminate.

Hardware and Third Party Software Warranty. All Hardware and third party software is provided to Customer under the applicable warranty for such Hardware and third party software that is made available from the Hardware manufacturer or third party software licensor. LogRhythm provides no warranties directly to Customer for any Hardware or third party software.

Disclaimers. THE EXPRESS WARRANTIES IN SECTION 6.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, HARDWARE AND SUPPORT SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WHICH ARE HEREBY DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 6.1, THE SOFTWARE AND HARDWARE ARE PROVIDED ‘AS IS’ WITH ALL FAULTS.

INFRINGEMENT CLAIMS.

Indemnity. LogRhythm will hold Customer harmless and will pay all costs and damages finally awarded against Customer in any such action, brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Customer shall give LogRhythm sole control of the defense of such claim and related settlement negotiations unless the Department of Justice (“DOJ”) jurisdictional statute (28 USC 516) vests the right to defend the Government with the DOJ, and consequently the right to exercise sole control, solely in the DOJ. In such cases, Customer and the DOJ shall consult with LogRhythm regarding any such claim and LogRhythm shall have the right to intervene in the proceedings at its own expense through counsel of its choice.

Injunction. If the Software becomes, or in LogRhythm’s opinion is likely to become, the subject of an infringement claim, LogRhythm may, at its option and expense, either (a) procure for Customer the right to continue using the Software, (b) replace or modify the Software so that it becomes non-infringing and remains functionally equivalent, or (c) accept return of the Software, terminate this Agreement upon written notice to Customer and refund Customer the Software Fees paid for such Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

Exclusions. Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or the Documentation, (b) any use of the Software in combination with other products, hardware, equipment, software, or data not authorized by LogRhythm to be used with the Software, (c) any use of any release of the Software other than the current release made available to Customer, or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors.

LIMITATION OF LIABILITY.

NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LOGRHYTHM’S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE AND ANY SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO LOGRHYTHM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN ADDITION, LOGRHYTHM DISCLAIMS ALL LIABILITY OF ANY KIND OF LOGRHYTHM’S LICENSORS. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO BREACH OF SECTIONS 2 OR 9 OR ANY INDEMNITY OBLIGATIONS IN SECTION 7. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR OR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., Clause 552.226-75 – PRICE REDUCTIONS, Clause 52.212-4(h) – PATENT INDEMNIFICATION, and GSAR 52.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

CONFIDENTIALITY.

Confidential Information. “Information” means information that is disclosed by a party (“Discloser”) to the other party (“Recipient”), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Information includes, without limitation, information of or relating to the Discloser’s present or future products, know-how, formulas, designs, processes, ideas, inventions and other technical, business, financial, personnel, customers, forecasting or marketing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, marketing plans, strategies, financial matters, personnel matters, investors or business operations of the Discloser.

Protection of Information. Recipient will not use any Information of Discloser for any purpose not expressly permitted by the Agreement, and will disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Discloser's Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

Exceptions. Recipient's obligations under Section 9.2 with respect to any Information of Discloser will terminate if such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Information of Discloser to the extent that such disclosure is (i) approved in writing by Discloser, (ii) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser’s request and expense, in any lawful action to contest or limit the scope of such required disclosure.

Return of Information. Except as otherwise expressly provided in this Agreement, Recipient will return to Discloser or destroy all Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Information promptly upon the written request of Discloser upon the expiration or termination of the Agreement. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 9.4.

TERM AND TERMINATION

Term. The term of the Agreement will begin on the Effective Date and will continue until terminated.

Termination for Breach. Termination may only be conducted in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

Effects of Termination. Upon termination of this Agreement, Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer’s computers, and return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer’s possession or control. Sections 1, 2.2, 5, 6.3, 7, 8, 9, 10.3 and 11 together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

GENERAL

Proprietary Rights. The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of LogRhythm and its licensors. All rights in and to the Software not expressly granted to Customer in this Agreement are reserved by LogRhythm and its licensors. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of LogRhythm or its licensors on the Software or the Documentation.

Third Party Software. All third party software included with an Appliance is subject to the third party license agreements and/or additional terms and conditions provided with the Appliance that are imposed by LogRhythm’s applicable third party manufacturers and licensors. Customer agrees that Customer will be bound to and comply with all such applicable license agreements and terms and conditions.

Compliance with Laws. Each party will comply with all applicable export and import control laws and regulations in its use of the Software and Appliances and, in particular, Customer will not export or re-export Software or Appliances without all required government licenses and Customer agrees to comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities.

Assignment. Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under the Agreement (including the license rights granted to Customer to the Software) to any third party without the other party’s prior written consent, which consent will not be unreasonably withheld or delayed.

Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic mail, facsimile (fax), or by certified mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the Order, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

Governing Law and Venue. This Agreement and all Statements of Work will be governed by and interpreted in accordance with applicable Federal laws. If it is in the best interests of the Government, any action or proceeding arising from or relating to this Agreement shall be brought in a Federal District Court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

Entire Agreement. This Agreement, the Multiple Award Schedule 70 contract and the task/delivery order constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.
Exhibit A
Support Services

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm ("Agreement"), the terms and conditions of the Multiple Award Schedule 70 contract and this Support Services exhibit (including payment of the applicable fees ("Support Fees"), LogRhythm will provide the Support Services in accordance with the terms and conditions set forth below. Customer must purchase identical Support Services for all installed Software and/or Appliances within a Designated Deployment (defined below) and may not select different Support Services options to cover different installations of Software and/or Appliances across deployments within a Designated Deployment. LogRhythm will be responsible for providing Support Services only for the most current release and the immediately preceding major release of the Software. End-of-Life Support for third party optional software components are in accordance with the End-of-Life policy for each such component as announced. LogRhythm reserves the right to modify its Support Services offering at any time, by providing notice to its Customers, provided such Support Services modification will not be less than what is stated in this Support Services Exhibit and the modification is agreed to in writing and signed by an authorized Government Contracting Officer.

DEFINITIONS.

“Business Day” means 7:00 a.m. to 6:00 p.m. (Mountain Time), Monday through Friday (excluding LogRhythm holidays).

‘Designated Deployment’ shall mean the deployment of the LogRhythm Software that enables complete logging and processing of Customer data.

‘Enhanced Support Services’ shall mean the optional purchase by Customer of 24/7 support subject to the payment of any required additional fees.

‘Error’ shall mean a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program to not operate substantially in accordance with the Documentation.

‘Resolution’ shall mean a modification or workaround to the Supported Program and/or Documentation and/or other information provided by LogRhythm to Customer intended to resolve an Error.

‘Support Hour’ shall mean an hour during a Business Day.

‘Supported Environment’ shall mean any hardware and operating system platform which LogRhythm supports.

‘Supported Program’ shall mean the current version of the Software used in a Supported Environment in use at the Designated Deployment, for which Customer has paid the then current Support Fees.

‘Update’ means subsequent minor maintenance releases of the Software (e.g., 3.1 to 3.2) and patches that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm.

Updates shall not include any release, option or future product which LogRhythm licenses separately from Support Services for an additional fee.

‘Upgrade’ means subsequent major releases of the Software (e.g., 2.0 to 3.0) that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm.

SERVICES PROVIDED.

First Call. LogRhythm is the first tier of support for the Software and Hardware purchased through LogRhythm.

Telephone Support. LogRhythm will provide telephone support to the designated users during the Support Hours. Customer understands and acknowledges that Support Services are provided in English. Customers purchasing Enhanced Support Services will be given instructions for receiving Support Services after end of a Business Day. Telephone support will include the following:

- Assistance in identifying and verifying the causes of suspected Errors in the Supported Program;
- Advice on bypassing identified Errors in the Supported Program, if reasonably possible;
- Assistance in troubleshooting and identifying Hardware-related problems;
- Clarification of the Documentation; and
- Guidance in updates of the Supported Program.

2.3 E-Mail Support. Customers may contact LogRhythm support via email 24 hours a day, 7 days a week. Support emails may be sent to support@logrhythm.com.

2.4 Response Times.

LogRhythm will respond to new support cases whether received via a telephone call or email within (i) four (4) Support Hours after receipt if received during a Business Day or (ii) by 12:00 p.m. Mountain Time the following Business Day if received after the end of a Business Day. LogRhythm will respond to new support cases via email or by directly contacting the applicable designated users. Response times for open support cases will vary depending on the specifics of the case and any Escalation required. If a response will require more than one business day to prepare, Customer will be notified and informed when a response can be expected.

If Customer has purchased Enhanced Support Services LogRhythm will respond to new support cases received via a telephone call within four (4) hours after receipt.

LogRhythm Support Site. LogRhythm maintains a product support site containing product manuals and additional support related information (e.g., FAQ’s, Knowledge Base). Subject to the payment of Support Fees, Customer will be provided 24/7 access to the support site. Customer will be provided support accounts to use when accessing the support site.

Escalation and Severity Levels. All calls are received by Tier 1 or Tier 2 support personnel. LogRhythm’s best attempts are made to solve support issues with Tier 1 support personnel. Issues that are not able to be resolved by the Tier 1 support personnel will be escalated as outlined below:

Tiered Support Definitions: Support requests will be answered and/or escalated based on the following generalized criteria. The Tier I support engineer will be the first contact and will determine escalation if an issue is not solved within 1 hour. Additional escalation will be issue specific and will remain within current contractual guidelines:

<table>
<thead>
<tr>
<th>Tier I – General questions and minor configuration changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier II – Functionality specific questions, advanced configuration changes and initial error investigation</td>
</tr>
<tr>
<td>Tier III – Advanced functionality and configuration questions and detailed error investigation</td>
</tr>
</tbody>
</table>
## Tier IV (Sustaining Engineering)

Advanced error investigation to determine SW configuration changes and/or failed functionality

Tier IV software support is reserved for consultation on development related issues only during business hours.

<table>
<thead>
<tr>
<th>Support Tickets</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier I</td>
<td>All incoming tickets are automatically assigned to Tier I.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Escalation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Escalate to Tier II if issue is not resolved within one hour, with the following exceptions:</td>
<td>o Awaiting customer response o Awaiting internal response or follow up</td>
</tr>
<tr>
<td>Tier II – If the issue is not resolved within two hours of escalation to Tier II, Escalate to Tier III</td>
<td></td>
</tr>
<tr>
<td>Tier III – If the issue is not resolved by the following business day, escalate to Tier IV</td>
<td></td>
</tr>
</tbody>
</table>

**Support Ticket Escalation:**
Support calls are generally not escalated if work is under way and/or a solution is being researched or created. However, severity levels are designed as means to provide escalation in cases of an inability to make systems operational as outlined below.

### Ticket Severity:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical (Severity 1)</td>
<td>The system has crashed or is in a “hung” state, or displays a fatal error - resulting in data loss or corruption.</td>
</tr>
<tr>
<td>High (Severity 2)</td>
<td>System is severely degraded such that a component or feature does not meet requirements or are inaccessible or inoperable.</td>
</tr>
<tr>
<td>Medium (Severity 3)</td>
<td>System is slightly degraded such that a component or feature does not meet minimum or expected requirements.</td>
</tr>
<tr>
<td>Low (Severity 4)</td>
<td>System is functional with a minor defect or customer has general question or is requesting minor configuration change information.</td>
</tr>
</tbody>
</table>

**Support Cases.** Each support case will be assigned a case number. Customer must provide the number when providing communications to LogRhythm regarding the support case. Support cases will be closed when Customer has verified the issue is resolved, where possible. Support cases will also be closed after three (3) Business Days of inactivity on the part of Customer and can be re-opened upon request.

**Qualified Support Cases.** Qualified support cases are limited to questions that cannot be easily answered by referring to LogRhythm product documentation or information made available on the LogRhythm support site. Qualified support cases also include reporting any abnormal functioning of LogRhythm software. Qualified support cases do not include questions pertaining to the normal deployment, configuration, and operation of LogRhythm products as described in LogRhythm product documentation.

**Unqualified Support Cases.** Unqualified support cases include questions that could have been answered by reviewing LogRhythm Documentation or information made available via the LogRhythm support site. If Customer is submitting a high volume of Unqualified Support Cases, LogRhythm and Customer will work together to determine the areas of operation underlying the cases submitted and will jointly determine a corrective course of action as required.

**Travel and Other Expenses.** Support Services provided hereunder shall be provided at LogRhythm’s principal place of business, or at the Designated Deployment at Customer’s expense, as mutually agreed upon in writing by the parties and authorized by a Government Contracting Officer in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable.

**Exceptions.** LogRhythm shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Supported Program (in whole or in part), (b) use of the Supported Program in an environment other than a Supported Environment; or (c) problems related to nonLogRhythm provided hardware. Any corrections performed by LogRhythm for such Errors shall be made, in LogRhythm’s reasonable discretion, at LogRhythm’s then-current time and material charges.

**SOFTWARE SUPPORT.** Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:
Updates. LogRhythm will provide Updates for the Supported Programs as and when developed for general release in LogRhythm’s sole discretion. Each Update will consist of a set of programs and files made available from LogRhythm’s web site and will be accompanied by Documentation adequate to inform Customer of the problems resolved and any significant operational differences resulting from such Update.

Upgrades. Customer will be entitled to major Software release upgrades (e.g. 2.0 to 3.0) at no additional cost while a Support Services contract is in effect. An upgrade to LogRhythm provided Hardware may be required in order to utilize any such Upgrades.

Third-Party Software Updates. LogRhythm approves and makes available information regarding Updates of Third Party software included in the Software to Customers via LogRhythm’s web site support.

Knowledge Base Updates. Customer will be entitled to knowledge base updates at no additional cost.

HARDWARE SUPPORT. Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

Basic Hardware Services. As part of Support Services, LogRhythm will facilitate Hardware warranty coverage with the Hardware manufacturer on servers and their components for a period of three (3) years after delivery for Hardware purchased through LogRhythm.

If Hardware is replaced in whole or in part under a warranty program Customer will be responsible for the cost of any Hardware or components not returned as may be required to comply with the warranty.

Modification, alteration, or any other changes to the Hardware may violate and/or void the Hardware warranty and/or Support Services agreement. In no instance should the Customer open the external case of the Hardware without direction from LogRhythm personnel.

Hardware upgrades for enhancements to Software features included in Customers initial Software release will be provided by LogRhythm. Hardware upgrades to support new Software features provided to customer via a Software Upgrade or Update will not be provided by LogRhythm and Customer, at its option, may upgrade the Hardware to utilize such new Software features.

Enhanced Hardware Services. Hardware that is subject to an Enhanced Support Services agreement will be provided with 24/7 support with 4-hour onsite response, after troubleshooting.

Extended Warranty. Upon Customer’s renewal of Support Services in years four (4) and five (5); LogRhythm will facilitate an extended hardware warranty service for each of those years, provided such warranty service is offered by the hardware manufacturer. Hardware warranty services beyond year five (5) will continue to be facilitated by LogRhythm provided such are offered at the discretion of the hardware manufacturer.

Pre-Replacement of Defective Hardware. Hardware warranty repairs will be made in accordance with the Basic Hardware Services or Enhanced Hardware Services as contracted by Customer. Replacements for defective Hardware to be provided to Customer under the warranty program will be sent on a pre-replacement basis when possible. Customer will have ten (10) business days to return to the defective Hardware to LogRhythm. If the replacement of a complete Appliance is required, the replacement Appliance will be shipped fully configured for Customer’s use unless an alternative course of action is mutually agreed upon by LogRhythm and Customer.

CUSTOMER RESPONSIBILITIES.

Supervision and Management. Customer is responsible for undertaking the proper supervision, control and management of its use of the Supported Programs, including, but not limited to: (a) assuring proper Supported Environment configuration, Supported Programs installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

Training. Customer is responsible for ensuring that all appropriate personnel are trained and familiar with the operation and use of the Supported Programs and associated equipment.

Designated Users. Customer shall designate a reasonable number of individuals to serve as the designated users with LogRhythm for the Support Services provided hereunder. To receive notification of any new Updates available from LogRhythm Customer must subscribe to the LogRhythm user forums.

Access to Personnel and Equipment. Customer shall provide LogRhythm with access to Customer’s personnel and, at Customer’s discretion, its equipment during Support Hours.

LogRhythm will, to the best of its ability, provide Support Services to Customer in accordance with Customer’s internal security and/or network access policies. If Customer requests Support Services for an Error that requires remote access and Customer is unable to provide such access, then the Government Contracting Officer may elect to pay LogRhythm additional Support Fees and Expenses incurred for onsite Support Services so long as the additional Support was agreed to in writing by an authorized Government Contracting Officer prior to the services being rendered. If Customer does not wish to pay for such onsite Support Services, LogRhythm’s obligation to provide any Resolution for the Error shall be excused.

Customer Introduced Third-Party Software. Customer may elect to install additional software on to the Hardware on the drive specified in the LogRhythm Documentation. It is recommended that Customer contact LogRhythm before installing any software on to the Hardware. In such instance, Customer acknowledges and assumes the risk that (a) LogRhythm is not responsible for the functionality of any such software; (b) LogRhythm reserves the right to require the removal of any and all such software when addressing support issues (failure to remove such software after requested by LogRhythm will void LogRhythm’s Support Service obligations); (c) any such installation may negatively impact the performance, reliability and/or security of the Software and/or Hardware; (d) the Software may not perform as intended or in accordance with the LogRhythm Documentation; and (e) any such software which adversely affects the performance of the LogRhythm Appliance will void all warranties and cancel all Support Services obligations.
EXHIBIT B  LOGRHYTHM PROFESSIONAL SERVICES ATTACHMENT

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm to which this Exhibit B is attached and incorporated therein ("Agreement"), the terms and conditions of the Multiple Award Schedule 70 contract and this Professional Services Attachment (including payment of the applicable fees, LogRhythm will provide the Professional Services in accordance with the terms and conditions set forth below.

Scope of Services. LogRhythm will provide the Professional Services to Customer under this Professional Services Attachment ("PSA"). At the start of the deployment planning, Customer and LogRhythm will develop a mutually agreed upon deployment plan that will be detailed in one or more Statements of Work ("SOW") (the "Services"). Deployment Services include but are not limited to the process of configuring the Software and/or Appliance and deploying in Customer’s environment.

Assumptions and Responsibilities

Assumptions. The following assumptions are hereby acknowledged by the parties and apply to the performance of the Services under this PSA:

- Changes to this PSA will be documented using a Project Change Request form in accordance with the process outlined in this PSA. Customer will ensure that data backup is performed. LogRhythm will not be responsible for the loss or corruption of any Customer data or for any system downtime. Except as may be purchased under a separate LogRhythm Services Agreement, LogRhythm will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logins outside of the Services described in this PSA.
- LogRhythm reserves the right to subcontract any or all portions of the Services that LogRhythm is obligated to perform under this PSA. LogRhythm will provide a Project Lead with the qualifications, expertise, and knowledge to fulfill LogRhythm’s obligations under this PSA, as necessary and applicable to the Services being performed under this PSA.
- LogRhythm will use commercially reasonable efforts to complete the Services described in this PSA in a timely manner.
- LogRhythm will perform all appropriate Services either onsite at the Customer facilities or remotely, via a remote desktop session. Services not requiring presence onsite may be performed at LogRhythm facilities by mutual agreement between Customer and LogRhythm.
- LogRhythm reserves the right to subcontract any or all portions of the Services that LogRhythm is obligated to perform under this PSA. LogRhythm will submit written or verbal status reports on the Services being performed under this PSA as necessary and mutually agreed upon by Customer and LogRhythm.
- LogRhythm will provide a Project Lead with the qualifications, expertise, and knowledge to provide the Professional Services under this PSA, as necessary and applicable to the PSA requirements of Section 1.
- Customer Responsibilities. Completion of the contingent upon Customer fulfilling the following responsibilities:
by the non-initiating party whether or not to continue performance of the Services or to stop all Services being performed until a mutually agreed upon Change Request Form has been signed by both parties.

**Change Request Review.** After the submission of a Change Request Form to a Project Lead and validation of the requested change, the LogRhythm Project Lead will review the requested change to determine if it is within the scope of the SOW.

Within Services Scope. If the LogRhythm Project Lead determines that the change requested by Customer is within the scope of the SOW, the Project Leads of both parties will execute the Change Request Form and implement the change into performance of the Services as appropriate.

Outside Services Scope. If the LogRhythm Project Lead determines that the requested change is outside the scope of Services the SOW, the LogRhythm Project Lead will then determine whether such requested change impacts the pricing or scheduling projections for the performance of the Services.

determines that the requested change does not impact the pricing or scheduling projections of the SOW, the Project Leads will execute the Change Request Form and implement the requested change into the performance of the Services as appropriate.

If the LogRhythm Project Lead

determines that the requested change does impact the pricing or scheduling projections of the SOW, the terms of Section 4.3 will apply.

This process is not intended to handle change requests which would constitute a cardinal change to the SOW. Additionally, LogRhythm reserves the right to reject change requests at its discretion.

**Cost Estimate Preparation.** Upon determination that the Change Request impacts the pricing or scheduling of the Services under the SOW, a cost estimate applicable to the performance of the requested change will be prepared by LogRhythm and provided to the Customer. The cost estimate will fully document the scope of the change, and provide a basis of estimate for the proposed adjustments in price, schedule, and/or other factors as applicable. If applicable, a schedule (separate from but integrated with the implementation plan) will be developed and maintained for each such authorized change.

**Change Implementation.** The execution of the Change Request Form by both the Multiple Award Schedule 70 Contractor, acting on behalf of LogRhythm and an authorized Government Contracting Officer, in accordance with the terms and conditions of the Multiple Award Schedule 70 contract and the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable, will cause the Change Request Form to become part of and incorporated into the SOW. Commencement of the performance of the requested change is conditioned upon the mutual execution of the Change Request, and LogRhythm’s receipt of an additional P.O. authorization to cover the agreed upon price for each requested change.

**Fee Description and Payment**

**Professional Services Fees.** In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, Customer will pay the Professional Service Fees for the performance of the Services under this PSA.

**Rights to Development.** LogRhythm will retain all right, title and interest in and to development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services, which are based on trade secrets or proprietary information. No license to any patents, trade secrets, trademarks or copyrights is deemed to be granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in the Agreement. Rights associated with any joint development projects will be subject to future discussion and under a separate agreement with terms to be mutually agreed upon by both parties.

**Constructive changes.** LogRhythm and Customer agree that: (a) Customer has knowledge of and control over the conditions and constraints of Customer’s facilities, and IT environment; and administers how the services on Customer’s IT infrastructure are performed; (b) LogRhythm may undertake a course of action under this engagement which was unforeseen at the time the PSA was executed but is necessary, arises from a latent or unusual condition, is at the direction of the Customer, or results from an act of omission of the Customer and, by changing LogRhythm’s manner, method, or scope of work, increases LogRhythm’s cost or schedule to perform; (c) should LogRhythm’s cost or schedule to perform so increase, LogRhythm will have the right to an equitable adjustment to the price, schedule, and/or terms of the PSA for such changes even if these changes have not been submitted through the Project Change Process set forth in Section 4.

8. **Entire Agreement.** This PSA, the Multiple Award contemporaneous agreements, understandings, and Schedule 70 contract and the task/delivery order constitute the communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.
END USER LICENSE AGREEMENT

This End User License Agreement, including any Order which by this reference is incorporated herein (this “Agreement”), is a binding agreement between LogZilla Corporation (“LogZilla”) and the undersigned Ordering Activity under GSA Schedule contracts receiving the Software (as defined below) accompanied by this Agreement (“Ordering Activity” or “Customer” or “You”). The Ordering Activity may have received an “evaluation edition”, “alpha”, “beta”, or other non-commercial release version of the Software (“Evaluation Edition”) or a commercially released or generally available version of the Software and the Ordering Activity’s rights will vary depending on the version that it received.

LogZilla provides the software solely on the terms and conditions set forth in this agreement and on the condition that Customer accepts and complies with them. By both parties executing this Agreement in writing, you accept this agreement and agree that Ordering Activity is legally bound by its terms. If the Ordering Activity does not agree to the terms of this agreement, LogZilla will not and does not license the software to the Ordering Activity and it may not install the software or documentation.

Notwithstanding anything to the contrary in this agreement or the Ordering Activity’s acceptance of the terms and conditions of this agreement, no license is granted (whether expressly, by implication or otherwise) under this agreement, and this agreement expressly excludes any right, concerning any software that the Ordering Activity did not acquire lawfully or that is not a legitimate, authorized copy of LogZilla's software.

Definitions. For purposes of this Agreement, the following terms have the following meanings:

“Development Use” means use of the Software by Ordering Activity to design, develop and/or test new applications for Production Use.

“Documentation” means user manuals, technical manuals and any other materials provided by LogZilla, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.

“Fees” are the License Fees and the Support Fees in accordance with the GSA Pricelist.

“License Fees” means the license fees, paid by Ordering Activity in accordance with the GSA Pricelist for the license granted under this Agreement.

“License Package” means the type of license selected by Ordering Activity depending on the number of hosts and messages Ordering Activity needs. License Packages are available in evaluation, small business and enterprise sizes.

“Order” means the document by which the Software and any Support Services are ordered by Ordering Activity.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.
“Production Use” means using the Software with Ordering Activity’s applications for internal business purposes only, which may include third party Ordering Activity’s access to or use of such applications. “Production Use” does not include the right to reproduce the software for sublicensing, resale, or LogZilla EULA Final Version distribution, including without limitation, operation on a time sharing or service bureau basis or distributing the software as part of an ASP, VAR, OEM, distributor or reseller arrangement.

“Software” means the object code versions of the software set forth in the Order.

“Support Fees” means the support fees to be paid by Ordering Activity for the Support Services ordered under this Agreement.

“Third Party” means any Person other than Ordering Activity or LogZilla. “Use” means Development Use or Production Use.

License Grant and Scope. Subject to and conditioned upon Ordering Activity’s strict compliance with all terms and conditions set forth in this Agreement, LogZilla hereby grants to Ordering Activity a non-exclusive, non-transferable, non-sublicensable (except as expressly set forth in Section 2(d)), limited license during the Term (as defined below) to use the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 4 or elsewhere in this Agreement. This license grants Ordering Activity the right to:

Download and install in accordance with the Documentation the Software and Documentation solely for Ordering Activity’s Use and in accordance with the number messages or events associated with the License Package, each as specified in the Order. In addition to the foregoing, Ordering Activity has the right to make one copy of the Software solely for archival purposes, provided that Ordering Activity does not, and does not allow any Person to, install or use any such copy other than if and for so long as the copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Ordering Activity uninstalls and otherwise deletes such inoperable copy. All copies of the Software made by Ordering Activity:

will be the exclusive property of LogZilla;

will be subject to the terms and conditions of this Agreement; and

must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Ordering Activity’s internal business purposes. If Ordering Activity has acquired Software for Development Use, Ordering Activity is not permitted to use the Software for Production Use. If Ordering Activity has acquired Software for Production Use, Ordering Activity is not permitted to use the Software for Development Use.

Download or otherwise make a reasonable number of copies of the Documentation depending on the
License Package and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Ordering Activity:

will be the exclusive property of LogZilla;

will be subject to the terms and conditions of this Agreement; and

must include all trademark, copyright, patent and other intellectual property rights notices contained in the original.

Permit third party consultants to access and use the Software solely for Ordering Activity’s internal business operations, provided that such consultants execute an agreement with Ordering Activity with terms and conditions no less protective of LogZilla than those in this Agreement. Ordering Activity remains liable for any breach of this Agreement by a third party consultant.

Third-Party Materials. The Software may include software, content, data or other materials, including related documentation, that are owned by Persons other than LogZilla and that are provided to Ordering Activity on terms that are in addition to and/or different from those contained in this Agreement (“Third-Party Licenses”). Ordering Activity is not bound by any Third-Party Licenses that it has not executed in writing with the third party.

Use Restrictions. Ordering Activity will not:

use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;

except as may be permitted by Section 2(d) and strictly in compliance with its terms, provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Ordering Activity, with access to or use of the Software or Documentation;

modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Software or Documentation, including any copy thereof;

except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;

rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the
Software or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud or other technology or service;

use the Software in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including:

power generation systems;

aircraft navigation or communication systems, air traffic control systems or any other transport management systems;
safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire or other safety response systems; and

military or aerospace applications, weapons systems or environments;

use the Software in violation of any Federal law, regulation or rule; or

use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to LogZilla’s commercial disadvantage.

**Responsibility for Use of Software.** Ordering Activity is responsible and liable for all uses of the Software through access thereto provided by Ordering Activity, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Ordering Activity is responsible and liable for all actions and failures to take required actions with respect to the Software by any other Person to whom Ordering Activity may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement.

**Feedback.** If Ordering Activity provides any feedback to LogZilla concerning the functionality and performance of the Software (including identifying potential errors and improvements) (“Feedback”), Ordering Activity hereby assigns to LogZilla all right, title, and interest in and to the Feedback, and LogZilla is free to use the Feedback without any payment or restriction to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

**Compliance Measures.**

The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against use of the Software: (i) beyond the scope of the license granted pursuant to Section 2; or (ii) prohibited under Section 4. Ordering Activity will not, and will not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.

Upon reasonable notice to Ordering Activity, during the Term and for three years thereafter, Ordering Activity will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Software. Ordering Activity will provide such information to LogZilla and certify that it has paid all
fees required under this Agreement within five business days of any written request, so long as no more than one request in a 12 month period is made. LogZilla may, in LogZilla’s sole discretion, audit Ordering Activity’s use of the Software under this Agreement at any time during the Term and for three years thereafter to ensure Ordering Activity’s compliance with this Agreement, provided that (i) any such audit will be conducted on not less than 30 days’ prior notice to Ordering Activity, and (ii) no more than 1 audit may be conducted in any 12 month period except for good cause shown. LogZilla also may, in its sole discretion, audit Ordering Activity’s systems within 3 months after the end of the Term to ensure Ordering Activity has ceased use of the Software and removed the all copies of the Software from such systems as required hereunder. Ordering Activity will fully cooperate with LogZilla’s personnel conducting such audits and subject to Government Security requirements provide all reasonable access requested by LogZilla to records, systems, equipment, information and personnel, including machine IDs, serial numbers and related information. LogZilla will only examine information related to Ordering Activity’s use of the Software. LogZilla may conduct audits only during Ordering Activity’s normal business hours and in a manner that does not unreasonably interfere with Ordering Activity’s business operations.

If any of the measures taken or implemented under this Section 6 determines that Ordering Activity’s use of the Software exceeds or exceeded the use permitted by this Agreement then:

Ordering Activity will, within thirty (30) days following the date of receipt of written notice and invoice from LogZilla, pay to LogZilla the retroactive License Fees for such excess use and obtain and pay for a valid license to bring Ordering Activity’s use into compliance with this Agreement. In determining the Ordering Activity Fee payable pursuant to the foregoing, the rates for such licenses will be determined in accordance with the GSA Schedule Pricelist.

Maintenance and Support.

Subject to Section 8(d), the license granted hereunder entitles Ordering Activity to the technical support and maintenance services ("Support Services") identified on the Order, if any, during the Term.

Support Services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "Updates") as LogZilla makes generally available at no additional charge to the Ordering Activity of the Software then entitled to Support Services. LogZilla may develop and provide Updates in its sole discretion, and Ordering Activity agrees that LogZilla has no obligation to develop any Updates at all or for particular issues. Ordering Activity further agrees that all Updates will be deemed "Software," and related documentation will be deemed “Documentation,” all subject to all terms and conditions of this Agreement. Ordering Activity acknowledges that LogZilla may provide Updates via download from a website designated by LogZilla and that Ordering Activity’s receipt thereof will require an internet connection, which connection is Ordering Activity’s sole responsibility. LogZilla has no obligation to provide Updates via any other media. Support Services do not include any new version or new release of the Software LogZilla may issue as a separate or new product, and LogZilla may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

If Ordering Activity reports a bug or error to LogZilla, LogZilla will use commercially reasonable efforts to begin development on an Update for such bug or error within 12 hours of receipt of notification from Ordering Activity.

LogZilla reserves the right to condition the provision of Support Services, including all or any Updates, on Ordering Activity’s registration of the copy of Software for which support is requested. LogZilla has no obligation to provide Support Services, including Updates:
for any but the most current version or release of the Software;

for any copy of Software for which all previously issued Updates have not been installed;

if Ordering Activity is in breach under this Agreement; or

for any Software that has been modified other than by or with the authorization of LogZilla, or that is being used with any hardware, software, configuration or operating system not specified in the Documentation or expressly authorized by LogZilla in writing.

Collection and Use of Information.
Ordering Activity acknowledges that LogZilla may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

the provision of maintenance and support services; and

security measures included in the Software as described in Section 6.

Ordering Activity agrees that LogZilla may use such information for any purpose related to any use of the Software by Ordering Activity or on Ordering Activity’s equipment, including but not limited to:

improving the performance of the Software or developing Updates; and

verifying Ordering Activity’s compliance with the terms of this Agreement and enforcing LogZilla’s rights, including all intellectual property rights in and to the Software.

Intellectual Property Rights. Ordering Activity acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Ordering Activity. Ordering Activity does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. LogZilla and its licensors and service providers reserve and retain their entire right, title and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, except as expressly granted to Ordering Activity in this Agreement. Ordering Activity will safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Ordering Activity will promptly notify LogZilla if Ordering Activity becomes aware of any infringement of LogZilla’s intellectual property rights in the Software and fully cooperate with LogZilla, at LogZilla’s sole expense, in any legal action taken by LogZilla to enforce its intellectual property rights. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

Confidentiality. By virtue of this Agreement, the parties may have access to information that is confidential to one another (“Confidential Information”). Confidential Information includes the Software, Documentation, and all information clearly identified as confidential. A party’s Confidential Information does not include information that: (a) is or becomes a part of the public domain through no
act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. The parties agree to hold each other’s Confidential Information in confidence during the term of this Agreement and for a period of 2 years after termination of this Agreement. The parties agree, unless required by law, not to make each other’s Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. LogZilla may reasonably use Ordering Activity’s name and a description of Ordering Activity’s use of the Software for its investor relations and marketing purposes to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71, unless Ordering Activity provides written notice within 7 days of installation of the Software to LogZilla that it may not do so. LogZilla recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

Payment. All License Fees and Support Fees are payable within 30 days of the receipt date of invoice from LogZilla and. Any renewal of the license or maintenance and support services hereunder will not be effective until the fees for such renewal have been paid in full. Late payments accrue interest at a rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this agreement. LogZilla shall state separately on its invoices that taxes are excluded from the fees and the Ordering Activity agrees to either pay the amount of the taxes to LogZilla or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Term and Termination.

This Agreement and the license granted hereunder will remain in effect for the term set forth on the Order or until earlier terminated as set forth herein (the “Initial Term” This Agreement may be renewed for additional successive one (1) year terms by executing a new Agreement in writing (each, a “Renewal Term” and both the Initial Term and the Renewal Term are the “Term”). Notwithstanding the foregoing, for Evaluation Edition licenses, this Agreement and the license granted hereunder will end upon completion of the testing or evaluation period specified by LogZilla, which shall not exceed 30 days from delivery of the Software to Ordering Activity unless otherwise expressly agreed in writing by LogZilla.

when the end user is an instrumentality of the u.s., recourse against the united states for any alleged breach of this agreement must be brought as a dispute under the contract disputes clause (contract disputes act). during any dispute under the disputes clause, logzilla shall proceed diligently with performance of this agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the agreement, and comply with any decision of the contracting officer.

Reserved.

Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and Ordering Activity will cease using and destroy all copies of the Software and Documentation. No expiration or termination will affect Ordering Activity’s obligation to pay all Fees that may have become due before such expiration or termination, except as set forth in Section 14(c).
Limited Warranties, Exclusive Remedy and Disclaimer/Warranty Disclaimer.

If you are using Evaluation Edition of the Software, the Software is provided “AS IS” and without any warranties. Solely with respect to Software for which LogZilla receives a Fee, LogZilla warrants that, for a period of 90 days following the first installation of the Software, the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith. THE FOREGOING WARRANTY DOES NOT APPLY, AND LOGZILLA STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

The warranties set forth in Section 14(a) will not apply and will become null and void if Ordering Activity or any other Person provided access to the Software by Ordering Activity, whether or not in violation of this Agreement:

- installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by LogZilla in writing;

- modifies or damages the Software; or

- misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by LogZilla in writing.

If, during the period specified in Section 14(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the Section 14(b), LogZilla will, subject to Ordering Activity’s promptly notifying LogZilla in writing of such failure, either:

- repair or replace the Software, provided that Ordering Activity provides LogZilla with all information LogZilla requests to resolve the reported failure, including sufficient information to enable LogZilla to recreate such failure; or

- if LogZilla is unable to repair or replace the Software, refund the License Fees paid for such Software, subject to Ordering Activity’s ceasing all use of and, if requested by LogZilla, returning to LogZilla all copies of the Software or certifying in writing that all copies of the Software have been destroyed.

If LogZilla repairs or replaces the Software, the warranty will continue to run from the installation date, and not from Ordering Activity’s receipt of the repair or replacement. The remedies set forth in this Section 14(c) are Ordering Activity’s sole remedies and LogZilla’s sole liability under the limited warranty set forth in Section 14(a).

EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN Section 14(a) AND THE SUPPORT SERVICES SET FORTH IN Section 8, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO ORDERING ACTIVITY “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LOGZILLA, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, LOGZILLA PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET ORDERING ACTIVITY’S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.
Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

IN NO EVENT WILL LOGZILLA OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO ORDERING ACTIVITY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES IN SYSTEM OR NETWORK SECURITY OR OTHER SECURITY INCIDENTS OF ANY KIND, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT LOGZILLA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

IN NO EVENT WILL LOGZILLA’S AND ITS AFFILIATES’, INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS’, COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF THE CONTRACT PRICE.

THE LIMITATIONS SET FORTH IN Section 15(a) AND Section 15(b) WILL APPLY EVEN IF ORDERING ACTIVITY’S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

Export Regulation. The Software and Documentation may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. Ordering Activity will not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. Ordering Activity will comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the US.

US Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if Ordering Activity is the U.S. Government or any contractor therefor, Ordering Activity will receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance 48 C.F.R. §12.212, Ordering Activity and their contractors.

Miscellaneous.
This Agreement will be governed by and construed in accordance with the Federal laws of the United States and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

Excusable delays shall be governed by FAR 52.212-4.
All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order (or to such other address as may be designated by a party from time to time in accordance with this Section 18(c)).

This Agreement (including the Order) and, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), that are incorporated by reference herein, constitutes the sole and entire agreement between Ordering Activity and LogZilla with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of a conflict between the terms in the body of this Agreement and the Order, the terms of the Order will prevail.

Ordering Activity will not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, merger, a sale of all or substantially all of Ordering Activity’s assets, business reorganization or otherwise, without LogZilla’s prior written consent. Any purported assignment, delegation or transfer in violation of this Section 18(e) is void LogZilla may not assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer’s consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

The following Sections survive termination of this Agreement: 1, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
LOOKINGGLASS CYBER SOLUTIONS INC.
11091 SUNSET HILLS ROAD SUITE 210
RESTON, VA 20190

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Lookingglass Cyber Solutions Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 52.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made,
i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. The Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
DEFINITIONS. Certain capitalized terms, if not otherwise defined on herein shall have the meanings set forth below in this Section 1.

“Appliance” shall mean, collectively, the Computer Equipment, the Licensed Software, and any third party software and any patches, updates, improvements, additions and other modifications or revised versions that may be provided by Lookingglass from time to time ordered and paid for by Ordering Activity pursuant to an Order Form.

“Computer Equipment” means Lookingglass' network information management hardware equipment, including the various hardware components that comprise such equipment.

“Confidential Information” means any material or information relating to a Party’s research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Lookingglass shall constitute Confidential Information of Lookingglass.

“Customer Content” means the data, media and content (structured and unstructured) generated, collected or recorded by the Ordering Activity or by any supplier or licensor to Ordering Activity that is uploaded, stored, analyzed and made available to and through the Licensed Software.

“Data” shall mean Lookingglass’ commercially available proprietary analysis and information and third party information regarding the characteristics of certain security threats and vulnerabilities, data and analysis of malicious software and executables that is periodically provided to Lookingglass customers and the Ordering Activity through a Data Service Subscription pursuant to the terms of this Attachment A.

“Data Service Subscription” shall mean Lookingglass’ service that Lookingglass customers may purchase through an Order Form, whereby the Data is delivered to the Appliance(s) at Ordering Activity’s site for use by Ordering Activity.

“Documentation” shall mean Lookingglass’ standard user manuals and/or related documentation generally made available to Ordering Activities of the Licensed Software.

“Effective Date” shall have the meaning set forth in Order Form placed with Contractor.

“Initial Term” shall have the meaning given such term in Section 8.1.

“Installation Services” shall have the meaning given such term in Section 6.2.

“Intellectual Property Rights” shall have the meaning given such term in Section 4.

“Licensed Products” shall mean, collectively, the Licensed Software, Data and the Documentation.

“Licensed Software” shall mean, collectively, the executable, object code version(s) of Lookingglass' proprietary software, procedures, rules or routines, including Upgrades and updates that are furnished or developed under this Attachment A or the Maintenance Services, excluding any third party applications, that is included on an Appliance.

“Maintenance and Support Services” shall mean the services described in Section 6.1 and Exhibit B.

“Professional Services” shall have the meaning given such term in Section 6.3.

“Term” means the period during which the Order Form remains in force and effect in accordance with Section 8.1.

“Training Services” shall have the meaning given such term in Section 6.4.

“Updates” means a new issuance of any Licensed Software that provides: (i) minor improvements to existing features; and/or (ii) minor additions in functionality compared to the previous issuance; and/or (iii) bug fixes, corrections, patches, or work-arounds. An Update shall be identified by the numeral change to the right of the first decimal point (e.g. a change from version 1.5 to 1.6 or from 1.4.1 to 1.4.2).

“Warranty Period” shall have the meaning given such term in Section 7.1.

PURCHASE OF APPLIANCE.

Purchasing of Appliance. During the Term, Ordering Activity may purchase, and Contractor agrees to sell, the Appliance pursuant to one or more standard Order Forms, provided, however, that Ordering Activity’s rights in, and the use of, any Licensed Software, installed on such Appliance, shall be governed by the license grant and restrictions contained in Section 3.

Order Forms. During the Term, Ordering Activity may order the Appliance, Data Service Subscription and/or the Maintenance and Support Services by submitting an executed Order Form.

SOFTWARE & DATA LICENSE.

Software License. Subject to the terms and conditions of this Attachment A, Contractor hereby grants to Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable, perpetual license (“Lookingglass License”) to use the Licensed Products for Ordering Activity’s internal use. Ordering Activity may use the Licensed Software embedded on an Appliance only with the Appliance for which the
Licensed Software is provided and registered for use. If any Licensed Software is provided on separate media, Ordering Activity may (i) only use it in accordance with the terms set forth in this Attachment A and (ii) make a reasonable number of copies solely for internal backup purposes.

Data License. During the Term and subject to the terms and conditions of this Attachment A, Ordering Activity may purchase a Data Service Subscription from Contractor for use with the Appliance. Upon payment of applicable GSA fees by Ordering Activity, Contractor hereby grants to Ordering Activity a non-transferable, non- sub-licensable, non-exclusive license to download, install and use the Data on the Appliance(s) only for internal Ordering Activity purposes. Ordering Activity may install and use only a single copy of the Data on a single Appliance.

OWNERSHIP.

Appliances and Licensed Products. Ordering Activity acknowledges that Lookingglass and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights ("Intellectual Property Rights") in and to the Appliance and the Licensed Products (including all components thereof), and Lookingglass expressly reserves all rights not expressly granted to Ordering Activity in this Attachment A. Ordering Activity shall not engage in any act or omission that would impair Lookingglass’ and/or its licensors’ Intellectual Property Rights in the Licensed Products and any other materials, information, processes or subject matter proprietary to Lookingglass. Raw data shall not be redistributed, republished, or posted for others not a party to this Attachment A to view, use, or otherwise manipulate.

Customer Content. Contractor through Lookingglass acknowledges that, as between the Ordering Activity and Lookingglass, Ordering Activity owns all Intellectual Property Rights in and to the Customer Content. Ordering Activity agrees that Lookingglass may copy, store, process, analyze and display such Customer Content through the Licensed Software and hereby grants to Lookingglass a non-exclusive, non-transferable right and license to use the Customer Content during the Term for the limited purposes of performing Lookingglass’ obligations under this Attachment A, solely as authorized hereunder, and to collect and use any such data, in non-user specific and aggregated statistical form, for the development and maintenance of its products and services and for Lookingglass’ other business purposes. Ordering Activity hereby represents and warrants that it has sufficient right to grant Lookingglass access to and use of the Customer Content, solely as authorized in accordance with the terms of this Attachment A. Ordering Activity shall be solely responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, consistency integrity, legality, reliability, and appropriateness of all Customer Content. Lookingglass shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Content.

GENERAL USAGE RESTRICTIONS.

Prohibited Uses. Ordering Activity will not use the Appliances or the Licensed Products for any purposes beyond the scope of the licenses granted in this Attachment A. Without limiting the generality of the foregoing, Ordering Activity will not: (i) authorize or permit use of the Licensed Products by persons; (ii) distribute any copies of the Licensed Products; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Ordering Activity’s rights under the licenses granted in Section 3; (iv) modify or create any derivative works of the Licensed Products (or any component thereof), except with the prior written consent of Contractor through Lookingglass; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Products are compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Attachment A shall be construed to grant Ordering Activity any right to obtain or use such source code.

Proprietary Notices. Ordering Activity shall duplicate all proprietary notices and legends of Lookingglass and its suppliers or licensors upon any and all copies of the Appliances and the Licensed Products made by Ordering Activity. Ordering Activity shall not remove, alter or obscure any Lookingglass proprietary notice or legend.

MAINTENANCE AND SUPPORT; OTHER SERVICES.

Maintenance and Support Terms and Conditions. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ Maintenance and Support Services by paying Contractor the then-applicable annual maintenance and support GSA fee. The terms and conditions that govern the Maintenance and Support Services as provided by Contractor through Lookingglass are attached hereto as Exhibit B. Any Updates provided to Ordering Activity pursuant to the Maintenance and Support Services shall be deemed part of the Licensed Software and shall be licensed under the terms and conditions of the grant of License in Section 3 above.

Installation Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ installation services, either on-site or remotely, for the Appliance ("Installation Services").

Professional Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ professional services under which support shall be provided to Ordering Activity by Contractor through Lookingglass ("Professional Services").

Training Services. Pursuant to an Order Form, the Ordering Activity may purchase Lookingglass’ training services ("Training Services"), under which a representative of Lookingglass shall be present at Ordering Activity’s designated location to provide training services on the operation of the Appliance(s) to the Ordering Activity.

WARRANTIES AND LIMITATIONS.

Limited Lookingglass Warranties. Contractor hereby warrants, for the benefit of Ordering Activity only, that the unmodified Appliances and Licensed Software will conform in all material respects to the specifications within the Documentation for a period of ninety (90) days after the delivery date ("Warranty Period"), provided that such warranty will not apply to failures to conform to the specifications to the extent such failures arise, in whole or in part, from: (i) any use of the Appliances or the Licensed Software other than in accordance with the Documentation; (ii) modification of the Appliances or the Licensed Software by Ordering Activity or any third party; or (iii) any combination of the Appliances and the Licensed Softwares with software, hardware or other technology not provided by Contractor through Lookingglass under this Attachment A. Contractor further warrants that the media on which the Licensed Products are delivered to Ordering Activity will be free of material defects for Warranty Period. During the Warranty Period,
Contractor will replace the Appliances, Licensed Software, and media, free of charge to Ordering Activity, provided Ordering Activity promptly notifies Contractor of such defect and returns the Products to Contractor.

ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THAT DATA AND INFORMATION PROVIDED MAY BE UNEVALUATED AND UNVERIFIED, AND SHALL NOT CONSTITUTE ANY REPRESENTATION OR WARRANTY. ORDERING ACTIVITY ACKNOWLEDGES AND AGREES THEY MUST USE ITS OWN JUDGMENT IN ASSESSING THE NATURE AND ACCURACY OF THE DATA AND INFORMATION PROVIDED.

No Other Warranties. EXCEPTION AS EXPRESSLY WARRANTED IN SECTION 7.1 OF THIS ATTACHMENT A, THE APPLIANCES AND THE LICENSED PRODUCTS, AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY CONTRACTOR ARE PROVIDED “AS IS” AND “WITH ALL FAULTS,” AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. ORDERING ACTIVITY IS RESPONSIBLE FOR IMPLEMENTING APPROPRIATE PROCEDURES TO MAKE ONSITE BACK-UP COPIES OF ORDERING ACTIVITY’S PROGRAM FILES AND DATA FILES TO MINIMIZE ANY DAMAGE THAT MIGHT ARISE FROM AN ERROR OR DEFECT IN THE APPLIANCES OR THE LICENSED PRODUCTS. NO WARRANTY IS MADE BY CONTRACTOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. CONTRACTOR DOES NOT WARRANT THAT THE APPLIANCES OR THE LICENSED PRODUCTS OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS ATTACHMENT A WILL MEET ORDERING ACTIVITY’S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. ORDERING ACTIVITY ACKNOWLEDGES THAT CONTRACTOR’S OBLIGATIONS UNDER THIS ATTACHMENT A ARE FOR THE BENEFIT OF ORDERING ACTIVITY ONLY.

MISCELLANEOUS.

8.1. U.S. Government End-Users. Each of the components that constitute the Licensed Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth herein.

EXHIBIT B
MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

Definitions.

“Error” means any reproducible failure of the Software to perform any material function set forth in the accompanying documentation.

“New Release” means a new release of the Software issued by Lookingglass provided for the purpose of materially enhancing the functionality or performance of the Software. New Release shall be identified by the numeral to the left of the first decimal point (e.g., a change from version 1.1 to 2.0).

“Maintenance Release” means a bug fix or minor enhancement to the Software, which is identified by the numeral to the right of the first decimal point in the Software (e.g., a change from version 1.1 to 1.2).

“Maintenance and Support Services” means that (a) Contractor through Lookingglass shall provide Ordering Activity with all Maintenance Releases released during the term for which Maintenance and Support Services fees have been paid; (b) Contractor through Lookingglass shall answer questions from Ordering Activity regarding the operation of the Software via telephone and e-mail, according to the escalation procedures set forth below; and (c) Contractor through Lookingglass shall use commercially reasonable efforts to correct any Errors in the Software reported by Ordering Activity and confirmed by Lookingglass in accordance with the priority level assigned to the Error by Lookingglass, as described in the escalation procedures set forth below.

Ordering Activity Obligations.

Ordering Activity shall furnish descriptions and machine readable examples of Errors in the form requested by Lookingglass technical support personnel. Ordering Activity shall also assist Lookingglass’ efforts to duplicate any Errors or problems reported by Ordering Activity.

Contractor through Lookingglass reserves the right to limit the number of individuals who are authorized to make requests for Maintenance and Support Services, and requests Ordering Activity to designate two (2) initial primary contacts. Such technical support contacts must be knowledgeable in the use of the Software and the Ordering Activity’s operating environment. Ordering Activity agrees to notify Lookingglass of any changes in primary support contacts within a reasonable time period.

Help Desk; Escalation Procedures.

Contractor through Lookingglass shall provide the following support: answering of telephone calls placed to the customer support telephone number 888-SCOUT93 (726-8893), and e-mail support at support@lgscout.com. Lookingglass shall use commercially reasonable efforts to provide such support from 9 a.m. to 5 p.m. in each Continental United States Time Zone, excluding Alaska, Monday through Friday excluding U.S. holidays. Errors may be reported any time.

Contractor through Lookingglass shall respond to Errors in accordance with the priority level indicated in the chart below, which priority level shall be determined by Lookingglass.
<table>
<thead>
<tr>
<th>Priority</th>
<th>Definition</th>
<th>Target Response for Initial Requests*</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 1</td>
<td>Error that renders the Software inoperative or causes the Software to fail catastrophically</td>
<td>Within 4 business hours</td>
<td>Lookingglass shall promptly initiate the following procedures upon confirmation of the Error by Lookingglass: (1) assign a senior technical support manager to correct the Error; (2) notify senior Lookingglass management that a Priority 1 defect has been reported and that steps are being taken to correct the defect; (3) provide Ordering Activity with periodic reports on the status of the resolution; (4) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 2</td>
<td>Error that materially restricts Ordering Activity’s use of the Software</td>
<td>Within 1 business day</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 3</td>
<td>Error that causes only a minor impact on Ordering Activity’s use of the Software and/or a defect for which a workaround is available.</td>
<td>Within 2 business days</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
<tr>
<td>Priority 4</td>
<td>A cosmetic or documentation Error that does not impact use of the Software</td>
<td>Within 2 business days</td>
<td>Lookingglass shall (1) assign technical support to correct the Error; (2) provide Ordering Activity with periodic reports on the status of the resolution; and (3) commence work to provide Ordering Activity with a workaround or fix.</td>
</tr>
</tbody>
</table>

* Target response time for support requests by e-mail or other on-line facility is within one (1) business day.

The response times set forth in the chart above are target response times only. Lookingglass' sole obligation is to use commercially reasonable efforts to respond to Errors within such time frames, not to have resolved them.

4. Exclusions and Limitations. Lookingglass shall have no obligation to support:

- Altered, damaged or modified Software;
- Software that is not the current release or the most recent previous release;
- Errors or other software problems caused by Ordering Activity’s negligence, changes made by any party other than Lookingglass, hardware malfunction, and/or other causes beyond the reasonable control of Lookingglass;
- Software installed in an operating or hardware environment not supported by Lookingglass.

5. Maintenance Releases. Contractor through Lookingglass’ obligations to provide Maintenance Releases shall only require Lookingglass to supply such releases as soon as reasonably possible after such releases become generally available. This Maintenance and Support Services Exhibit shall not be construed to obligate Lookingglass to provide Maintenance Releases to Ordering Activity on any specific timetable.
END USER LICENSE AGREEMENT – ENTERPRISE VERSION

APPLICABILITY. This end user license agreement (the “Agreement”) governs the use of accompanying software, unless it is subject to a separate agreement between Ordering Activity under GSA Schedule contracts (“you” or “Ordering Activity”) and Micro Focus LLC and its subsidiaries (“Micro Focus”). By downloading, copying, or using the software you agree to this Agreement. By both parties executing this Agreement in writing, you agree to this Agreement.

TERMS. This Agreement includes attached supporting material, which may be software license information, additional license authorizations, software specifications, published warranties, supplier terms, open source software licenses and similar content (“Supporting Material”). Nothing herein shall bind the Ordering Activity to any Supporting Material terms unless the terms are provided for review and agreed to in writing by all parties.

AUTHORIZATION. If you agree to this Agreement on behalf of another person or entity, you warrant you have authority to do so.

CONSUMER RIGHTS. If you obtained software as a consumer, nothing in this Agreement affects your statutory rights.

ELECTRONIC DELIVERY. Micro Focus may elect to deliver software and related software product or license information by electronic transmission or download.

LICENSE GRANT. If you abide by this Agreement, Micro Focus grants you a non-exclusive nontransferable license to use one copy of the version or release of the accompanying software for your internal purposes only, and is subject to any specific software licensing information that is in the software product or its Supporting Material.

Your use is subject to the following restrictions, unless specifically allowed in Supporting Material:

You may not use software to provide services to third parties.

You may not make copies and distribute, resell or sublicense software to third parties.

You may not download and use patches, enhancements, bug fixes, or similar updates unless you have a license to the underlying software. However, such license doesn't automatically give you a right to receive such updates and Micro Focus reserves the right to make such updates only available to customers with support contracts.

You may not copy software or make it available on a public or external distributed network.

You may not allow access on an intranet unless it is restricted to authorized users.

You may make one copy of the software for archival purposes or when it is an essential step in authorized use.

You may not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of software. If you have a mandatory right to do so under statute, you must inform Micro Focus in writing about such modifications.

REMOTE MONITORING. Some software may require keys or other technical protection measures and Micro Focus may monitor your compliance with the Agreement, remotely or otherwise. If Micro Focus makes a license management program for recording and reporting license usage information, you will use such program no later than 180 days from the date it's made available.

OWNERSHIP. No transfer of ownership of any intellectual property will occur under this Agreement.

COPYRIGHT NOTICES. You must reproduce copyright notices on software and documentation for authorized copies.

OPERATING SYSTEMS. Operating system software may only be used on approved hardware and configurations.

90-day Limited Warranty for Micro Focus Software.

Micro Focus -branded software materially conforms to its specifications, if any, and is free of malware at the time of delivery; if you notify Micro Focus within 90 days of delivery of non-conformance to this warranty, Micro Focus will replace your copy. This Agreement states all remedies for warranty claims. Micro Focus does not warrant that the operation of software will be uninterrupted or error free, or that software will operate in hardware and software combinations other than as authorized by Micro Focus in Supporting Material. To the extent permitted by law, Micro Focus disclaims all other warranties.

INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT. Micro Focus will defend and/or settle any claims against you that allege that Micro Focus -branded software as supplied under this Agreement infringes the intellectual property rights of a third party. Micro Focus will rely on your prompt notification of the claim and cooperation with our defense. Micro Focus may modify the software so as to be noninfringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to you the amount paid for the affected product in the first year or the depreciated value thereafter. Micro Focus is not responsible for claims resulting from any unauthorized use of the software. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
LIMITATION OF LIABILITY. Micro Focus's liability to you under this Agreement is limited to the amount actually paid by you to Micro Focus for the relevant software, except for amounts in Section 12 ("Intellectual Property Rights Infringement"). Neither you nor Micro Focus will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; or any liability that may not be excluded or limited by applicable law.

TERMINATION. This Agreement is effective until terminated or in the case of a limited-term license, upon expiration; however When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Micro Focus shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Immediately upon termination or expiration, you will destroy the software and documentation and any copies, or return them to Micro Focus. You may keep one copy of software and documentation for archival purposes. We may ask you to certify in writing you have complied with this provision. We may request to inspect your premises to ensure that you have done so.

Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to this Agreement may be made only through a written amendment signed by both parties. If Micro Focus doesn't exercise its rights under this Agreement, such delay is not a waiver of its rights.

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Vendor shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MARIADB CORPORATION

MARIADB CORPORATION. LICENSE, WARRANTY AND SUPPORT TERMS

MariaDB Subscription Services
MariaDB Subscription customers have access to technical support services including Problem Resolution Support, Engineering Support, Consultative Support, Remote Login Support, and Telephone Support for the MariaDB platform (MariaDB server, MariaDB TX for transactions, MariaDB AX for analytics, MariaDB MaxScale, and related products like storage engines) via the Customer Support Portal.

Each designated technical contact will receive a Customer Support Portal login (based on the associated email address) that can be used to report new support issues, monitor ongoing issues, or review historical issues. Information regarding making changes to technical contacts can be found in the "Welcome Letter" provided after signup, and is also available in the "Contact Us" section of the Customer Support Portal. If you have issues initially logging into the Customer Support Portal, you will be prompted to email success@mariadb.com for further assistance.

If Remote DBA services are purchased, an on-boarding call is scheduled to gather the necessary information for the MariaDB Remote DBA team to remotely access supported products. Information about the architecture, operating systems, database server versions, backup schedules, etc. will also be documented during this call. Once the required information has been collected, monitoring software will be installed and setup to alert MariaDB Corporation. Certain alerts such as server availability, replication health, and others will be configured to open issues automatically in the Customer Support Portal.

All services are delivered in English. MariaDB Corporation will use reasonable efforts to provide technical support in languages other than English using MariaDB Corporation's available personnel via voice calls and in-person meetings, but may not have such resources available at all or at the time of the support request. All communication via the Customer Support Portal should remain in English. There are no Service Level Agreements for non-English support at this time.

<table>
<thead>
<tr>
<th>Subscriber Service (TX/AX)</th>
<th>Support</th>
<th>Remote DBA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problem Resolution Support</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Engineering Support</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Consultative Support</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Remote Login Support (Remote DBA)</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Telephone Support (escalation for callback)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Real-time Chat Support (Slack)</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

Problem Resolution Support

The focus of Problem Resolution Support is helping to restore service (due to outages caused by crashes, replication failures, table corruption, etc.), and assisting with command syntax, installation, configuration, upgrades, and other general product usage topics.

Engineering Support

Engineering Support can include bug fixes, patches, hotfixes, and topics that require communication with and/or escalations to the product engineering teams. Hot fixes are provided to address critical failures and may not receive the full QA and regression testing performed on regular maintenance releases due to the urgent nature of the situation.

Custom feature development (Non-Recurring Engineering) is a separate service and is not included in Engineering Support. Engineering Support is available on those platforms for which we or our partners produce supported product binaries, subject to the relevant Maintenance and Lifecycle policies for the specific product and platform. Engineering Support is unavailable for products or platforms that have reached their maintenance end of life. MariaDB Corporation Engineering Policies. For other products, please see the respective vendor’s website.

Consultative Support
Consultative Support covers issues that are specific to a customer’s deployment, such as performance tuning, best practice recommendations, and basic code reviews, rather than general product usage, service failures, or software defects. MariaDB Remote DBA is a separate service and is not included in Consultative Support. At the discretion of the assigned MariaDB Subscription Services Engineer, long running consultative support tasks (i.e., greater than 2 hours) may be referred to MariaDB Professional Services.

Consultative Support is intended for narrow, specific topics and is not a replacement for a dedicated, on-site or remote consulting engagement to address systemic, architectural, or wide-ranging subjects. The MariaDB Subscription Services Engineer will provide assistance resolving performance problems caused by server configuration, poorly performing queries, table definitions, indexing strategies, storage engines, and more, suggesting changes and identifying alternative implementations suited to a particular environment.

MariaDB Subscription Services Engineers can review source code to assist with following best practices and ensuring code correctness regarding the various client APIs, stored procedures and server extensions, recommending changes as necessary to support particular needs.

Remote Login Support (Remote DBA)

A MariaDB Remote DBA subscription provides remote login support as well as the following services listed below. The main distinguisher between AX/TX Support and AX/TX Remote DBA is that the Remote DBA has the ability to log into your environment and do the work for you. AX/TX Support (non RDBA) will walk you through the needed resolution steps via communication within the Customer Support Portal through the support ticket which you have raised.

<table>
<thead>
<tr>
<th>Standard Subscription</th>
<th>Platinum Subscription</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installation of monitoring and alerting solution</td>
<td>✓</td>
</tr>
<tr>
<td>Real-time chat service</td>
<td>✓</td>
</tr>
<tr>
<td>Telephone support as necessary (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Initial environment and configuration review</td>
<td>✓</td>
</tr>
<tr>
<td>Database configuration recommendations</td>
<td>✓</td>
</tr>
<tr>
<td>Backup configuration and monitoring (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Review and recommend best practices</td>
<td>✓</td>
</tr>
<tr>
<td>Database recovery assistance</td>
<td>✓</td>
</tr>
<tr>
<td>Backup verification via automatic restore (limitations apply)</td>
<td>✓</td>
</tr>
<tr>
<td>Replication setup, configuration, and repair</td>
<td>✓</td>
</tr>
<tr>
<td>Schema changes and migrations</td>
<td>✓</td>
</tr>
<tr>
<td>Query optimization and tuning assistance</td>
<td>✓</td>
</tr>
</tbody>
</table>

https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
Quarterly upgrades of MariaDB Server (limitations apply)  ✓
Quarterly security and performance audits as requested  ✓
Semi-annual architecture review as requested  ✓
Other database administration–related tasks as agreed  ✓

Connectivity  The MariaDB Remote DBA team prefers the use of SSH jump boxes. The use of a VPN is also acceptable. Screen sharing applications such as WebEX are not acceptable for Remote DBA offerings.

Server and Database Accounts  It is preferred to have one vendor account for server and database access (and VPN if required). However, certain security regulations may prevent this (PCI, HIPAA, etc). In those circumstances, individual accounts for each Remote DBA will be necessary. The customer is responsible for timely creation of accounts for Remote DBAs. No SLAs or 24x7 coverage can be guaranteed for customers requiring individual logins. Additionally, the use of SSH keys and/or two-factor authentication (Authy, Google Authenticator, RSA SecurID, etc) is highly recommended.

Monitoring and Administration Tools  The MariaDB Remote DBA team requires a server within the customer’s infrastructure for monitoring and other utilities. This can be the same server as the SSH jumpbox.

Geographical Restrictions  If a customer has a geographical restriction (only MariaDB Remote DBAs from US, EU, etc), then business hours coverage only.

Telephone Support  For S1 emergency production outages, customers may request that a MariaDB Subscription Services Engineer make contact by telephone. Resolving technical issues generally requires analysis of system logs and other data that must be transmitted via email and file attachments to the support issue rather than by telephone. Including this information when reporting the support issue dramatically hastens the process of resolving the problem and restoring production functionality.

ISSUE SEVERITY AND SERVICE LEVEL AGREEMENTS  All issues are assigned a severity level (S1-S4) reflecting the impact to production operations. This is set initially by the technical contact when reporting a new issue via the Customer Support Portal, and MariaDB Subscription Services Engineers will help to ensure that the issue receives an appropriate rating. Each severity level has a corresponding Service Level Agreement (SLA).

<table>
<thead>
<tr>
<th>Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>S1</td>
<td>Catastrophic problem that severely impacts the ability to conduct business. This means that production systems are down (completely non-responsive or not functioning) and no known workaround exists.</td>
<td>30 minutes 24x7</td>
</tr>
<tr>
<td>S2</td>
<td>High impact problem in which production operations are disrupted but remain somewhat productive or have an available workaround.</td>
<td>2 hours 24x5</td>
</tr>
<tr>
<td>S3</td>
<td>Medium or lower impact problem that involves partial loss of non-critical functionality. This may be a minor issue with limited or no loss of functionality or impact to production operations. This includes administrative requests and errors in product documentation.</td>
<td>4 hours 24x5</td>
</tr>
<tr>
<td>S4</td>
<td>Low level problem that does not significantly affect system function or operations. This includes new feature requests.</td>
<td>8 hours 24x5</td>
</tr>
</tbody>
</table>

In exceptional situations, MariaDB Subscription Services may elect to assign an S1 or S2 Severity level for failures on non-production systems based on the overall business impact. MariaDB Subscription Services may change the severity of an issue based on the guidelines above at the discretion of the assigned MariaDB Subscription Services Engineer.

ESCALATION REQUESTS  Customers may request escalation of a specific support issue directly within the Customer Support Portal by clicking the Escalate Issue link at the top of any issue details page, then selecting the type of escalation and supplying other relevant information. Available escalations include:
Emergency Callbacks for S1 emergency production outages
Higher Priority Handling when an issue has become more serious than reported
Engineer in Different Timezone

SUPPORTED PRODUCTS

<table>
<thead>
<tr>
<th>Product TX</th>
<th>MariaDB TX Cluster</th>
<th>MariaDB AX</th>
<th>MariaDB</th>
<th>Add-on</th>
</tr>
</thead>
<tbody>
<tr>
<td>MariaDB Server</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB Cluster with Galera</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB MaxScale</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>MariaDB ColumnStore</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>MariaDB Backup</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MariaDB Client Library for C</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MariaDB Client Library for JDBC</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MariaDB Client Library for ODBC</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MariaDB Audit Plugin</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MariaDB PAM Authentication Plugin</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>MariaDB Monitoring</td>
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</tr>
<tr>
<td>MariaDB Admin</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Eperi Key Management Plugin</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Amazon Key Management Plugin</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Severalnines ClusterControl Enterprise</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Spider Storage Engine (10.3+)</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>MyRocks Storage Engine (10.3+)</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
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</table>
### Supported Storage Engines

<table>
<thead>
<tr>
<th>Storage Engine</th>
<th>5.5</th>
<th>10.0</th>
<th>10.1</th>
<th>10.2</th>
<th>10.3</th>
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</thead>
<tbody>
<tr>
<td>Aria</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Blackhole</td>
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<tr>
<td>InnoDB</td>
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<td>✓</td>
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<tr>
<td>Memory</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MyISAM</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MyRocks</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Spider</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>XtraDB</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
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</table>

### Supported Plugins

<table>
<thead>
<tr>
<th>Storage Engine</th>
<th>5.5</th>
<th>10.0</th>
<th>10.1</th>
<th>10.2</th>
<th>10.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Plugin</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Auth Socket</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>AWS Key Management</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Client Statistics</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Cracklib Password Check</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Dialog</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tr>
<tr>
<td>ed25519</td>
<td>✓</td>
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</tr>
<tr>
<td>Feedback</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>File Key Management</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>GSSAPI Authentication</td>
<td>✓</td>
<td>✓</td>
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<td></td>
<td>✓</td>
</tr>
<tr>
<td>Index Statistics</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>
### Additional Information

**Contact Sales** for more information regarding available MariaDB Subscription Services.

Consulting services and commercially reasonable “best effort” Support services for additional products and technologies may be delivered at MariaDB Corporation's discretion.

The overall level of support available for a particular product and platform combination may vary from version to version.

Support for legacy versions of products that no longer receive Engineering Support may require an additional fee. **Contact Sales** for more information regarding support for legacy products.

Support for issues specific to a platform that lacks Engineering Support may be limited to problems that can be reproduced on a platform that has Engineering Support. Examples include those platforms that have reached their maintenance end of life (such as RHEL 3 and Windows 2000 Server), and platforms for which we or our partners do not produce supported product binaries (such as FreeBSD).

MariaDB Subscription Services are not available for products on the POWER platform. MariaDB Corporation will make every commercially reasonable effort to work with other product and platform vendors to resolve issues affecting our supported products.

### Licenses used by MariaDB

MariaDB is distributed under the **GPL license**, version 2.

The MariaDB client libraries for C, Java and ODBC are distributed under the LGPL license, version 2.1 or later. The LGPL license allows you to distribute these MariaDB client libraries freely with any application.

The MariaDB client library included with the MariaDB server is also GPL version 2, but has a **FLOSS exception** that allows you to combine it with most other open source software, without conflicting with their license, even if that license is incompatible with the GPL.

We do however recommend you to use the new client libraries for any non-GPL application.

**Internal usage is free**

The GPL license only affects code that you distribute to other parties.
Internal usage within an organization is totally free and not subject to any conditions. There is no such thing as ‘internal distribution’ that would restrict the usage of your code by requiring it to be GPLed.

Connecting to a remote service that runs MariaDB (or any other GPL software) in the background is also free. For internal programs for which you own all the copyright(s), there is essentially no risk in using GPL software. The argument you can use in your defense is that if the software became GPL as part of the distribution, you as the copyright holder could immediately revert your part back to its original copyright. No one has the right to require you to reveal or redistribute your code to the outside of your organization even if you would have distributed it internally linked with GPL software!

If your lawyers are concerned about distributions of software linked with GPL libraries between different legal entities within your organization, you can solve this by distributing your components and the GPL software separately, and have your other entity combining them. You can also switch to use the new LGPL client libraries.

**Distributing an application with a MariaDB connector/client**

This section is for those that want to distribute the MariaDB client library code, but not the server, with their applications.

**Free software/open source applications**

If your application is Free software/open source and uses one of the licenses listed in the FLOSS exception, the GPL in the client library does not affect your application.

In other cases we recommend you to use the new LGPL Client libraries.

**Using a connector that is not GPL**

If you are using a connector that is not GPL, you are only bound by the license of that connector. Some examples are:

**MySQL native driver for PHP - mysqlnd**

**ruby-mysql**

**LGPL client libraries or C, Java and ODBC**

The above have licenses that allow you to use them freely, without you being bound by the GPL.

**Using a database source independent framework**

If you are using a framework that allows you to connect dynamically to different RDBMS systems, any GPL licensed module loaded by the framework will not affect the application. Such frameworks are:

- ODBC (Open Database Connectivity)
- JDBC (Java Database connectivity)
- Perl
- PHP PDO MySQL driver

The reason the GPL in the MySQL client library would not affect your application in this case is that the GPL client is supporting a standard interface and is thus merely an optional component among many. Your application could just as easily use the framework to connect to a RDBMS other than MariaDB or MySQL.

Any software can be connected to the GPL v2 licensed MySQL Connector/ODBC, without the need for that software to be GPLed. This is because there is a piece of general management software, the ODBC manager, between the GPLed MySQL Connector/ODBC and your software. If any logic would require the software which interfaces with MySQL Connector/ODBC to be GPL, then that would apply also to the ODBC manager itself. Yet, the ODBC manager is not GPL, neither on Windows nor on Linux. By consequence, no one would be allowed to use MySQL ODBC driver for anything.

**Using the MariaDB client library for C**

If your application is using a license that is not covered by the FLOSS exception, then you should use the new LGPL client libraries or C.

The LGPL license allows you to distribute these MariaDB client library freely with any application. If you modify the client library, you need to publish the new source code.

**Distributing a proprietary application with the MariaDB / MySQL server**

When you are distributing your application together with MariaDB or MySQL you are bound (or can be seen to be bound by some lawyers) by the GPL if some of the following statements apply:

- You are using GPL code from MySQL linked directly to your application. (Like the MySQL GPL client library).
- Your application requires the MariaDB server to work and without the MariaDB server it doesn't start or it has very limited functionality.

The problem with the client library can be avoided by using one of the solutions mentioned earlier. If your application works with many databases, either natively or by using one of the database source independent frameworks, then you can freely distribute the MariaDB server with your application without being affected by the GPL. The reason for this is that MariaDB would only be an optional, independent component in your software distribution and section 2 of the GPL explicitly allows this:

"In addition, mere aggregation of another work not based on the Program with the Program (or with a work based on the Program) on a volume of a storage or distribution medium does not bring the other work under the scope of this License."

Nothing herein shall bind the Ordering Activity under GSA Schedule Contracts to any GPL license, LGPL license, or any other Third Party terms unless the terms are provided for review and agreed to in writing by all parties. You also have the option to buy licenses for MySQL from Oracle to get MySQL under other copyright terms. If you would like to later be able to use MariaDB instead of MySQL, please ensure that your license agreement allows you to make changes to the MySQL code! (This is something that you should ensure in all cases as otherwise you may run into bugs that Oracle will not fix, you are not allowed to fix and could make MySQL software unusable for you).

The rights to use the MariaDB code changes in your application can be requested from SkySQL.
Appendix A

Microsoft License Terms and Conditions

MICROSOFT CORPORATION ("MICROSOFT") IS A FIRST TIER SUBCONTRACTOR UNDER THIS CONTRACT. THESE MICROSOFT LICENSE TERMS AND CONDITIONS APPLY TO MICROSOFT PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR’S GSA SCHEDULE CONTRACT (THE “CONTRACT”). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

In this agreement, the following definitions apply:

“Additional Product” means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Customer Data” means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services.

Any reference in this agreement or an Enrollment to a “day” means a calendar day, except references that specify "business day”.

“Enrollment” means the document that Government Partner submits to Microsoft to place orders for Enrolled Affiliate.

“Enrolled Affiliate” or "you" means any entity of the United States or entity authorized by the United States that enters into a Government Contract for Products with Government Partner.

“Enterprise” means Enrolled Affiliate and the Affiliates listed on an Enrollment.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Government Partner chooses to order License(s) under an Enrollment for Enrolled Affiliate. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fixes” means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.
“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.
“Government Contract” means the Government Partner’s GSA Schedule Contract, which incorporates these Microsoft License Terms and Conditions.

“Government Partner” means the entity from whom you place your order for Products under the Government Contract.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“License” means Enrolled Affiliate’s right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under these Additional Use Right and Restrictions.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time.

“Order” means the order placed by you to the Government Partner under the Government Partner’s GSA Schedule contract.

“Product” means all products identified on the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Product availability may vary by region.

“Product Terms” means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at http://explore.ms.com and is updated from time to time.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.
“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

“use” or “run” means to copy, install, use, access, display, run or otherwise interact.

**LICENSES FOR PRODUCTS.**

Upon Microsoft’s acceptance of Government Partner’s Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

**License Grant.** By accepting an Enrollment, Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate’s continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. Microsoft reserves all rights not expressly granted in this agreement.

**Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrollment is renewed or Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

**Applicable Use Rights.**

**Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise’s use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft
makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

**Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

More restrictive use rights. If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise’s use of that Product during the term.

**Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

**New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not use the new version immediately.

Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version’s Use Rights.

If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.

**License confirmation.** The Government Contract, the Order, the Enrolled Affiliate’s order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate’s evidence of all Licenses ordered by the Government Partner under an Enrollment for an Enrolled Affiliate.

**Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of any member of the Enterprise, Microsoft will work with Government Partner in good faith to determine how to accommodate the Enterprise’s changed circumstances in the context of these Additional Use Rights and Restrictions.

**Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.

**Program updates.** Microsoft may make a change to the Enterprise and/or Enterprise Subscription programs that will make it necessary for Enrolled Affiliates to enter into a new agreement and Enrollments with Government Partner at the time of an Enrollment renewal. If any such updates occur during a current contract, including option periods, such change(s) will be made at no increase in cost to Enrolled Affiliate: all pricing in the current contract, including contract options will be honored despite any such change(s).
**MAKING COPIES OF PRODUCTS AND RE-IMAGING RIGHTS.**

**General.** Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party’s actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Government Contract and the Order.

**Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.

**Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

Separate Licenses must be acquired from the separate source for each Product that is re-imaged.

The Product, language, version and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type from the separate source.

Enrolled Affiliate must adhere to any Product specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.

**TRANSFERRING AND ASSIGNING LICENSES.**

**License transfers.** License transfers are not permitted, except that Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:

- an Affiliate, or
- a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of an Affiliate or a division of an Affiliate or (2) a consolidation involving Enrolled Affiliate or an Affiliate.

Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

**Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from [http://www.microsoft.com/licensing/contracts](http://www.microsoft.com/licensing/contracts) and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by
Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability. Any license transfer not made in compliance with this section will be void.

**Internal assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Use Rights.

**USE, OWNERSHIP, RIGHTS, AND RESTRICTIONS.**

**Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.

**Fixes.** Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fixe will apply.

**Non-Microsoft software and technology.**

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate’s use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft’s licensing terms.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate’s use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.

**Restrictions** Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.

No transfer of ownership; **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.
CONFIDENTIALITY.

"Confidential Information" is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party’s business, products or services.

Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (“Representatives”) and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other’s Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

Freedom of Information Act (FOIA). Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft's confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

PRIVACY AND COMPLIANCE WITH LAWS.

Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of these Microsoft License Terms and Conditions and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate’s contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.

Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

U.S. export. Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.
WARRANTIES.

Limited warranties and remedies.

Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.

Online Services. Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate’s use. Enrolled Affiliate’s remedies for breach of this warranty are in the SLA.

The remedies above are Enrolled Affiliate’s sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

Exclusions. The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.

DISCLAIMER. Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

DEFENSE OF THIRD PARTY CLAIMS.

By Microsoft. Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that arises from Microsoft’s provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate’s combination of a Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate’s use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this agreement;

(vi) Enrolled Affiliate’s continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes provided free of charge.

Your agreement to protect. Enrolled Affiliate agrees that use of Customer Data or non- Microsoft software Microsoft hosts on Enrolled Affiliate’s behalf will not infringe any third party’s patent, copyright or trademark or make unlawful use of any third party’s Trade Secret. In addition, Enrolled Affiliate will not use an
Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate’s use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate’s right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

**Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement; and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

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**LIMITATION OF LIABILITY.**

To the extent permitted by applicable law, for each Product, each party’s maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

**Online Services.** For Online Services, Microsoft’s maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.

**Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages finally awarded up to US$5,000.

**Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

**Exceptions.** No limitation or exclusions will apply to liability arising out of either party’s (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party’s intellectual property rights.

This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to these Microsoft License Terms and Conditions under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

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**TRUE-UP REQUIREMENTS**

**True-Up Order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified
Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

**Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate’s Government Partner. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.

**Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

**True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

**Late true-up.** If the true-up order or update statement is not received when due:
Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and.

*Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).*

**Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.

**VERIFYING COMPLIANCE.**

**Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to verify Enrolled Affiliate’s and its Affiliates compliance with the Product’s license terms.

**Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days’ notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate’s operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation and subject to Enrolled Affiliate’s security requirements. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft’s self-audit process; which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, within 30 days, Contractor will invoice Enrolled Affiliate for sufficient Licenses to cover that use or distribution, if unlicensed use or distribution is 5% or more, Enrolled Affiliate may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of Licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Enrolled Affiliate from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

**GOVERNMENT COMMUNITY CLOUD.**

**Community requirements.** Agency certifies that all Enrolled Affiliates in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Government Partner’s or an Enrolled Affiliate’s license(s) for Government Community Cloud Services.
Services. Agency acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Amendment.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

**Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

**MISCELLANEOUS.**

**Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.

**Management and Reporting.** Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft’s Volume Licensing Service Center web site (or successor site) at: https://www.microsoft.com/licensing/servicecenter. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

**Free Products.** Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate purposes only, and is not provided for use by or personal benefit of any specific government employee.

**Assignment.** Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.

**Use of contractors.** Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.

**Third party beneficiary.** Microsoft is a third party beneficiary of this agreement and may enforce its terms.

**Survival.** All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.

**Privacy and Compliance with applicable Laws, privacy and security.**

Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate’s industry that are not also generally applicable to information technology services providers.
Natural disaster. In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on http://www.microsoft.com at such time.

Disputes. Any breach of these Microsoft License Terms and Conditions, including Enrolled Affiliate’s obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

Voluntary Product Accessibility Templates. Microsoft supports the government’s obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates (“VPATs”) for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft’s VPAT page. Further information regarding Microsoft’s commitment to accessibility can be found at http://www.microsoft.com/enable.

If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein, contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under these Microsoft License Terms and Conditions shall apply in place of, or serve to modify any provision of these Microsoft License Terms and Conditions, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of these Microsoft License Terms and Conditions, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

Section headings. All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement.
Appendix A
Microsoft License and Services Terms and Conditions

MICROSOFT CORPORATION ("MICROSOFT") IS A FIRST TIER SUBCONTRACTOR UNDER THIS CONTRACT. THESE MICROSOFT LICENSE TERMS AND CONDITIONS APPLY TO MICROSOFT PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR’S GSA SCHEDULE CONTRACT (THE “CONTRACT”). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

In this Agreement, the following definitions apply:

“Additional Product” means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at http://azure.microsoft.com/en-us/regions/#services, which are Government Community Cloud Services.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx or a successor site Microsoft later identifies.

“Customer Data” means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services or provided in connection with the delivery of Professional Services.

Any reference in this agreement or an Enrollment to a “day” means a calendar day, except references that specify “business day”.

“Enrollment” means the document you submit to Microsoft to place orders for Enrolled Affiliate.

“Enrolled Affiliate” or “you” means any entity of the United States or entity authorized by the United States that enters into a Government Contract for Products.

“Enterprise” means Enrolled Affiliate and the Affiliates listed on an Enrollment.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Enrolled Affiliate chooses to order License(s) under an Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.
“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fixes” means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the Government Partner’s GSA Schedule Contract, which incorporates these Microsoft License Terms and Conditions.

“Government Partner” means the entity from whom you place your order for Products under the Government Contract.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“Joint Ownership” means each party has the right to independently exercise any and all rights of ownership now known or hereinafter created or recognized, including without limitation the rights to use, reproduce, modify and distribute the Service Deliverable for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

“License” means Enrolled Affiliate’s right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under these Additional Use Right and Restrictions.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.


“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.
“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Online Services Terms are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“Order” means the order placed by Government Partner on your behalf under the Government Partners’ GSA Schedule contract or Blanket Purchase Agreement issued thereunder.

“Pre-Existing Work” means any computer code or materials developed or otherwise obtained independently of the efforts of a party under a Statement of Services;

“Product” means all products identified on the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Product availability may vary by region.

“Product Terms” means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at https://www.explore.ms/ and is updated from time to time. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Product Terms are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“Professional Services” means all Product support services and Microsoft research or engineering services or advice provided to Customer under this Agreement. “Professional Services” or “services” does not include Online Services;

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.
“Service Deliverables” means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Enrolled Affiliate at the conclusion of Microsoft’s performance of the Professional Services;

“Services”. The precise scope of the Professional Services will be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate’s Affiliates may enter into Statements of Services under this Agreement with Microsoft’s local Affiliates. Microsoft’s ability to deliver the Professional Services depends upon Enrolled Affiliate’s full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

“Statement of Services” means any work orders, services descriptions, or other description of Professional Services that incorporates this Agreement;

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms. Notwithstanding anything in the Mandatory Addendum License Agreement or Service Level Agreement included in the Government Contract to the contrary, the Use Rights are hereby incorporated into this agreement and the Government Contract and a binding on the parties.

“use” or “run” means to copy, install, use, access, display, run or otherwise interact.

LICENSES FOR PRODUCTS.

Upon Microsoft’s acceptance of an Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

License Grant. By accepting an Enrollment, Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate’s continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. Microsoft reserves all rights not expressly granted in this agreement.

Duration of Licenses. Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the
Enrollment is renewed or Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

**Applicable Use Rights.**

**Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise’s use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

**Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

More restrictive use rights. If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise’s use of that Product during the term.

**Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not use the new version immediately.

Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.

If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.

**License confirmation.** The Government Contract, the Order, the Enrolled Affiliate’s order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate’s evidence of all Licenses ordered by an Enrollment for an Enrolled Affiliate.

**Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of any member of the Enterprise, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate the Enterprise’s changed circumstances in the context of these Additional Use Rights and Restrictions.

**Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation
or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or
(3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.

Making copies of Products and re-imaging rights.

General. Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party’s actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Government Contract and the Order.

Copies for training/evaluation and back-up. For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.

Right to re-image. In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

Separate Licenses must be acquired from the separate source for each Product that is re-imaged.

The Product, language, version and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type from the separate source.

Enrolled Affiliate must adhere to any Product specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.

Transferring and assigning licenses.

License transfers. License transfers are not permitted, except that Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:

an Affiliate, or

a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of an Affiliate or a division of an Affiliate or (2) a consolidation involving Enrolled Affiliate or an Affiliate. Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.
Notification of License Transfer. Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from http://www.microsoft.com/licensing/contracts and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability. Any license transfer not made in compliance with this section will be void.

Internal assignment of Licenses and Software Assurance. Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Use Rights.

Use, ownership, rights, and restrictions.

Products. Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.

Fixes. Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply.

Non-Microsoft software and technology. Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft’s licensing terms.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.

Restrictions. Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.

No transfer of ownership; Reservation of rights. Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.

Confidentiality.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data and any Statement of Services.

Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality
obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party’s business, products or services.

Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (“Representatives”) and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other’s Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly. These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

Freedom of Information Act (FOIA). Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft’s confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

Privacy and Compliance with Laws.

Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of these Microsoft License Terms and Conditions and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate’s contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.

Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

U.S. export. Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.
Warranties.

Limited warranties and remedies.

Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.

Online Services. Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate’s use. Enrolled Affiliate’s remedies for breach of this warranty are in the SLA.

Professional Services. Microsoft warrants that all Professional Services will be performed with professional care and skill. If Microsoft fails to do so and Enrolled Affiliate notifies Microsoft within 90 days of the date of performance, then Microsoft will either re-perform the Professional Services or return the price paid for them as Enrolled Affiliate’s sole remedy for breach of the Professional Services warranty.

Enrolled Affiliate will perform its applicable responsibilities and obligations to support Microsoft’s performance of the Professional Services, as specified in the applicable Statement of Services.

The remedies above are Enrolled Affiliate’s sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

Exclusions. The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.

DISCLAIMER. Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

Defense of third party claims.

By Microsoft. Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix or Service Deliverable made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that arises from Microsoft’s provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix or a Service Deliverable Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate’s combination of a Product or Fix or Service Deliverable with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate’s use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix or Service Deliverable in violation of this agreement; (vi) Enrolled Affiliate’s continued use of a Product or Fix or Service Deliverable after being notified to stop due to a third party claim; or (vii) Products or Fixes or Service Deliverables provided free of charge.

Your agreement to protect. Enrolled Affiliate agrees that use of Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate’s behalf will not infringe any third
party’s patent, copyright or trademark or make unlawful use of any third party’s Trade Secret. In addition, Enrolled Affiliate will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate’s use of the Product or Fix or Service Deliverable, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate’s right to the Product or Fix or Service Deliverable and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and Service Deliverables and, for Online Services, any amount paid for a usage period after the termination date.

**Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (subject to 28 U.S.C. § 516); and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

**Limitation of liability.**

To the extent permitted by applicable law, for each Product, each party’s maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

**Online Services.** For Online Services, Microsoft’s maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.

**Professional Services.** Each party’s total liability for all claims relating to Professional Services will be limited to the amounts Enrolled Affiliate was required to pay for the Professional Services or the limitation of liability for the Online Service with which the Professional Services are offered, whichever is greater.

**Free Products, Professional Services and Distributable Code.** For Professional Services, products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages finally awarded up to US$5,000.

**Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

**Exceptions.** No limitation or exclusions will apply to liability arising out of either party’s (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party’s intellectual property rights.

This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to these Microsoft License Terms and Conditions under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
True-up requirements

**True-Up Order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

**Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.

**Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.
**True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

**Late true-up.** If the true-up order or update statement is not received when due:

Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and

Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

**Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.

**Verifying compliance.**

**Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to verify Enrolled Affiliate’s and its Affiliates compliance with the Product’s license terms.

**Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days’ notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliates operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation and subject to Enrolled Affiliate’s security requirements. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft’s self-audit process; which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, within 30 days, Contractor will invoice Enrolled Affiliate for sufficient Licenses to cover that use or distribution. If unlicensed use or distribution is 5% or more, Enrolled Affiliate may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of Licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Enrolled Affiliate from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.
Professional services.

**Description of Supplier Services.** The precise scope of the Professional Services will be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate’s Affiliates may enter into Statements of Services under this Agreement with Microsoft’s local Affiliates. Microsoft’s ability to deliver the Professional Services depends upon Enrolled Affiliate’s full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

Use, ownership, rights and restrictions.

**Fixes.** Each Fix is licensed under the same terms as the Product to which it applies (e.g., Azure Government Services). If the Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply. If no use terms are provided, Enrolled Affiliate shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fix solely for its internal business use. Enrolled Affiliate may not modify, change the file name or combine any Fix with any non-Microsoft computer code, except as expressly permitted in a licensing agreement.

**Pre-Existing Work.** All rights in Pre-Existing Work will remain the sole property of the party providing the Pre-Existing Work. Each party may use, reproduce and modify the other party’s Pre-Existing Work only as needed to perform obligations related to Professional Services. Upon payment in full and subject to Enrolled Affiliate’s compliance with this Agreement, Microsoft grants Enrolled Affiliate a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (excluding object code) any Microsoft Pre-Existing Work provided as part of a Service Deliverable, solely in the form delivered to Enrolled Affiliate and solely for Enrolled Affiliate’s internal business purposes.

**Service Deliverables.** Except as may be otherwise explicitly expressed in a Statement of Services, upon payment in full, Microsoft grants to the Enrolled Affiliate a non-exclusive, perpetual, fully paid up license to use, reproduce and modify any Service Deliverables for the Enrolled Affiliates internal governmental purposes only and not for sale or distribution to any unaffiliated third party. Microsoft or the Enrolled Affiliate will be the sole owner of any modifications that each makes based upon the Service Deliverables. If any Service Deliverables are determined not to be commercial items and are delivered subject to: (i) the Department of Defense FAR Supplement (“DFARS”) in the course of performance of this Agreement, Microsoft assigns to the Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at DFARS 252.227-7014(b)(1) are present; or with government purpose rights if the conditions at DFARS 252.227-7014(b)(2) are present; or with restricted rights if the conditions at DFARS 252.227-7014(b)(3) are present; or (ii) the Federal Acquisition Regulation (“FAR”), Microsoft assigns to the Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at FAR 52.227-14(b) are present; or limited rights or restricted rights if the conditions at FAR 52.227-14(g) are present. Any modification made to Service Deliverables or other data with Enrolled Affiliate funds shall remain the property of the party making the modification.

**Affiliates rights.** Enrolled Affiliate may only sublicense its rights to the Service Deliverables and Sample Code granted hereunder to its Affiliates, but Enrolled Affiliate’s Affiliates may not sublicense these rights. Enrolled Affiliate is responsible for ensuring its Affiliates’ compliance with this Agreement.

**Materials.** All rights in any Materials developed by Microsoft (other than Software code) and provided to Customer in connection with the services shall be owned by Microsoft except to the extent such Materials constitute Customer’s Pre-Existing Work. Upon payment in full, Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify the Materials solely for Customer’s internal business operations and without any obligation of accounting or payment of royalties.
Non-Microsoft Software and Technology. Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses. Enrolled Affiliate may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Agreement.

Sample Code. Upon payment in full, Microsoft grants Enrolled Affiliate a non-exclusive, perpetual, non-transferable license to use and modify any Software code provided by Microsoft for the purposes of illustration (“Sample Code”) and to reproduce and distribute the object code form of the Sample Code for Enrolled Affiliate's internal business purposes only and not to any unaffiliated third party.

General Use Restrictions and Reservations. Enrolled Affiliate must not (and must not attempt to) reverse engineer, decompile, or disassemble any Microsoft proprietary products, services and/or intellectual property, including, without limitation, Azure Government Services, Microsoft Products and/or Pre-Existing Work. Except as expressly permitted in this Agreement, Enrolled Affiliate must not (a) separate and run parts of a Microsoft Product on more than one computer, upgrade or downgrade parts of a Microsoft Product at different times, or transfer parts of a Microsoft Product separately or (b) distribute, sublicense, rent, lease, lend, or host any Microsoft Product, Fixes, or Services. Notwithstanding anything in this Agreement to the contrary, all rights not expressly granted are reserved to Microsoft.

Restrictions on use. The U.S. Government must agree to not reverse engineer, decompile or disassemble any Product, Fix or Service Deliverable, except to the extent expressly permitted by applicable law despite this limitation. Except as expressly permitted in this Agreement, the U.S. Government must agree not to distribute, sublicense, rent, lease, lend or host any Product, Fix or Service Deliverable.

Reservation of Rights. Products, Fixes, and Service Deliverables are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Agreement. No rights will be granted or implied by waiver or estoppel.

Supportability of Products. Support for Products is available under the terms of a licensing agreement, a separate Statement of Services or under the terms set forth at http://support.microsoft.com or a successor site.

Segmentation. The purchase of any Products and related Professional Service Offerings or other Service offerings are all separate offers and separate from any other order for any Products and related Professional Service offerings or other Service offerings you may receive or have received from Microsoft. You understand that you may purchase and/or acquire any Products and related Professional Service offerings or other Service offerings independently of any other Products or Service offerings. Your obligation to pay for (a) any Products and related Professional Service offerings is not contingent on performance of any other Professional Service offerings or delivery of any other Products or (b) other Professional Service offerings is not contingent on delivery of any Products or performance of any additional/other Professional Service offerings.

Government Community Cloud.

Community requirements. Agency certifies that all Enrolled Affiliates in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of an
Enrolled Affiliate’s license(s) for Government Community Cloud Services. Agency acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Amendment.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

**Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

The Compliance Trust Center Page describes the control standards and frameworks with which Azure Government Services comply.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

**Operational and ordering considerations for Office 365 GCC High**

Enrolled Affiliate (i) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the Enrollment and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the Enrollment), as of the
day that User's account is reserved, unless a License for each such User is ordered in advance. Enrolled Affiliate is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

ii. Enrolled Affiliate acknowledges that (i) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (ii) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 Service Descriptions, may differ from those components available in similar suites available in other forms of Office 365 Services.

Miscellaneous.

Severability. If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.

Management and Reporting. Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft’s Volume Licensing Service Center web site (or successor site) at: https://www.microsoft.com/licensing/servicecenter. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.

Waiver. Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

Free Products. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate purposes only, and is not provided for use by or personal benefit of any specific government employee.

Assignment. Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.

Use of contractors. Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.

Third party beneficiary. Microsoft is a third party beneficiary of this agreement and may enforce its terms.

Survival. All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.

Privacy and Compliance with applicable Laws, privacy and security.

Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate’s industry that are not also generally applicable to information technology services providers.

Natural disaster. In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on http://www.microsoft.com at such time.
**Disputes.** Any breach of these Microsoft License Terms and Conditions, including Enrolled Affiliate’s obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

**Voluntary Product Accessibility Templates.** Microsoft supports the government’s obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates (“VPATs”) for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft’s VPAT page. Further information regarding Microsoft’s commitment to accessibility can be found at https://www.microsoft.com/en-us/accessibility.

If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein, contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under these Microsoft License Terms and Conditions shall apply in place of, or serve to modify any provision of these Microsoft License Terms and Conditions, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of these Microsoft License Terms and Conditions, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

**Insurance while performing Professional Services on Enrolled Affiliate’s premises.** Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Enrolled Affiliate’s premises under this Agreement via commercial insurance, self insurance, or any other similar risk financing alternative. Microsoft will provide Enrolled Affiliate with evidence of coverage on request.

**Cost or pricing data.** Microsoft will not, under any circumstances, provide Enrolled Affiliate with, or accept any Statement of Services that would require the submission of, cost or pricing dataas defined by 48 CFR 15.4 or the submission of noncommercial items.

**Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement.
EXHIBIT A

Microsoft Cloud Agreement
US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement entered into between the Ordering Activity under GSA Schedule contracts customer who is a Community member ("Customer" or "Ordering Activity") and the person or entity who has entered into a prime contract with the Customer ("Contractor") as an addendum and governs Customer’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “agreement”). It is effective on the date that the Contractor provisions the Customer's Subscription. Key terms are defined in Section 9.

Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

Software. Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.

Use Rights. The Use Rights in effect when Customer orders Software will apply to Customer’s use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

Temporary and perpetual licenses. Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

Online Services. Customer may use the Online Services as provided in this agreement.

Online Services Terms. The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period

Suspension. Microsoft may temporarily suspend use of an Online Service during Customer’s violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

End Users. Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

Customer Data. Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to

Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.
Responsibility for your accounts. Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services.
Customer must promptly notify customer support about any possible misuse of Customer’s accounts or authentication credentials or any security incident related to the Online Services.

Reservation of rights. Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

Restrictions. Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft’s intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer’s use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

Preview releases. Microsoft may make Previews available. Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into “General Availability.”

Verifying compliance for products.

Right to verify compliance. Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products’ license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including, subject to the Government’s reasonable security requirements, access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft’s self-audit process, which Microsoft may request as an alternative to a third-party audit. Such an audit request shall not occur more than once in a twelve month period.

Remedies for non-compliance. If verification or self-audit reveals any unlicensed use of Products, then Customer will, within 30 days, order sufficient licenses to cover any unlicensed use of products and Contractor will invoice Customer for additional license fees sufficient to cover the unauthorized use revealed by the audit and payment will be due 30 days after receipt of the invoice. If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

Verification process. Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers’ compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a
confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification is subject to the Government’s reasonable security requirements, will take place during normal business hours, and in a manner that does not unreasonably interfere with Customer’s operations.

Subscriptions, ordering.

Available Subscription offers. The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:

Online Services Commitment Offering. Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

Consumption Offering (also called Pay-As-You-Go). Customer pays based on actual usage with no upfront commitment.

Limited Offering. Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

Software Commitment Offering. Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

Ordering.

Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer’s internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer’s Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be responsible for any actions of such Affiliates or third parties related to their use of the Products.

The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

Pricing and payment. Prices for each Product and any terms and conditions for invoicing and payment will be in accordance with the GSA Pricelist.

Eligibility for Academic, Government and Nonprofit versions. Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:
For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at [https://azuregov.microsoft.com/general](https://azuregov.microsoft.com/general);

For government offers, the requirements listed at [https://azuregov.microsoft.com/general](https://azuregov.microsoft.com/general) and [https://azuregov.microsoft.com/general](https://azuregov.microsoft.com/general)

For nonprofit offers, the requirements listed at [https://azuregov.microsoft.com/general](https://azuregov.microsoft.com/general) As an exception to the foregoing, if Customer is not a government entity but has been verified by Contractor to be an eligible member of the Community, then the requirements in (ii) above shall not apply. Microsoft reserves the right to verify eligibility at any time and submit a claim to the Contracting Officer under the Contract Disputes Act if Microsoft believes the eligibility requirements are not met.

**Security, privacy, and data protection.**

Reseller Administrator Access and Customer Data. Customer acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Contractor; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Contractor’s administrative privileges; (iii) the Contractor’s privacy practices with respect to Customer Data or any services provided by the Contractor are subject to the terms of the Customer Agreement and may differ from Microsoft’s privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing the Contractor with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

If Customer plan to include criminal justice information or federal tax information with its Customer Data, it is Customer’s responsibility to ensure compliance with FBI CJIS Policy, including ensuring that all of Customer’s and/or Contractor’s employees that will have unencrypted access to Customer Data meet the FBI background check. Customer must contract Contractor to obtain an applicable amendment to this Government Agreement for that purpose.

Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.
As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users’ consent to the same.

Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

**Warranties.**

**Limited Warranty.**

**Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

**Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer’s use. Customer’s remedies for breach of this warranty are in the SLA. The remedies above are Customer’s sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

**Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

**DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTIES ABOVE, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, MICROSOFT PROVIDES NO WARRANTIES OR CONDITIONS FOR PRODUCTS AND DISCLAIMS ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES FOR PRODUCTS, INCLUDING WARRANTIES OF QUALITY, TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Defense of third party claims.**

**By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer’s license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer’s continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

**Customer’s agreement.** Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer’s behalf will not infringe any third party’s patent, copyright or trademark or make unlawful use of any third party’s trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

**Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer’s use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or
modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer’s right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

Other terms. Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

Limitation of liability.

For each Product, each party’s maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

Online Services. For Online Services, Microsoft’s maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft’s aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.

ii. Free Products and distributable code. For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages finally awarded up to US$5,000.

III. EXCLUSIONS. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOSS OF REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF USE, LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.

iv. Exceptions. The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; (2) violation of the other's intellectual property rights,

For Customers that are Federal Agencies, this Section shall not impair the Customer’s right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

ITAR Covered Services. This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms only apply if Customer provides express notice to Microsoft of Customer’s intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.

Customer Prerequisites:

Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.
Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Customer’s administrator(s) will manage and configure the ITAR Covered Services.

Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer’s End Users’ use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer’s behalf to Microsoft’s billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

Special Terms.

(i) ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer’s preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer’s compliance with the ITAR will be dependent, in part, on Customer’s configuration of the services and adoption and implementation of policies and practices for Customer’s End Users’ use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

Personnel. Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.

Use of Subcontractors. As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft’s policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations.

Notification. The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:
Customer acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Customer’s control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Customer. If Customer becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Customer will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.

If, subsequent to notification of a Security Incident by Microsoft, Customer determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Customer’s responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Customer determines such notification is required under applicable law or regulation or your internal policies.

If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.

f. Conflicts. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

**IRS 1075 Covered Services.** If the Customer is subject to IRS 1075 with respect to its use of the Online Services, then this section applies but only to the IRS 1075 Covered Services, defined below, Customer buys under the Subscription

**Customer Prerequisites**

Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.

Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.

Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users’ use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this Section 9. No other services are supported by the terms of this Section 9. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization (“Support Data”), if any, or data provided by or on Customer’s behalf to Microsoft’s billing or commerce systems in connection with purchasing/ordering IRS 1075 Covered Services (“Billing Data”), if any, is not subject to the provisions of this Section 9. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing.
Data.

IRS Publication 1075 Special Terms.

IRS 1075 Covered Services. The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation. Customer’s compliance with IRS Publication 1075 will be dependent, in part, on Customer’s configuration of the services and adoption and implementation of policies and practices for Customer’s End Users’ use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075. Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section 9.

Personnel Records and Training. Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.

Training Records. Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.

Confidentiality Statement. Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.

Cloud Computing Environment Requirements. The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft’s compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.

Use of Subcontractors. Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft’s policies. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.

Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at http://azure.microsoft.com/en-us/support/trust-center/, or successor locations identified by Microsoft.

Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.

Security Incident Notification. The Security Incident handling process defined in the OST will
apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:

Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer's control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.

If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.

Customer Right to Inspect.

Audit by Customer. Customer will, (i) be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft's subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer's expense, be permitted to communicate with Microsoft's independent third party auditors involved in the preparation of audit reports. Customer will use this information above to satisfy with any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are in full satisfaction of any audit that may otherwise be requested by the Customer.

Confidentiality of Audit Materials. Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft’s audit information is afforded the highest level of confidentiality available under applicable law.

This Section 9.c is in addition to compliance information available to Customer under the OST.

Criminal Justice Information Services (CJIS). If the Customer is subject to CJIS with respect to its use of the Online Services, then this section applies but only to the Government CJIS Covered Services, defined below, you buy under the Subscription.

Customer Prerequisites

Microsoft’s representations as it relates to its CJIS Covered Services’ compliance with the FBI Criminal Justice Information Systems (“CJIS”) Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer’s incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer’s order with the Contractor. They are also subject to Customer’s incorporation and flow down of such terms in Customer’s contracts with a Covered Entity.

Please visit https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit https://azure.microsoft.com/en-us/pricing/enterprise-agreement/. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.

Customer can access the terms and conditions of Microsoft’s adherence to the FBI CJIS
Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft’s support for CJI will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer’s responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.

Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer’s use of the Covered Services to store or process CJI, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJI into the Covered Services.

Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

**Government Community requirements.** Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.

Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

Government Community Cloud Services will be offered only within the United States.

Additional European Terms, as set forth in the Use Rights, will not apply.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally,
Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

Operational and Ordering Consideration for GCC High:

Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

The parties acknowledge that, as of the date this Agreement was executed, the Office 365 ProPlus "click-to-run" (C2R) feature is not yet available in Office 365 GCC High, notwithstanding anything to the contrary in the Use Rights. Accordingly, the following terms and conditions shall apply:

Until C2R functionality is made available, Customer may install up to two (2) local copies of Office Professional Plus for each User to whom E3 licenses are assigned, for the sole use of those assigned Users on Qualified Devices in Customer's Enterprise.

Once C2R functionality is made available (the "C2R release date," to be announced in the Office 365 Service Descriptions), Customer must cease installing additional local copies of Office Professional Plus, and shall as soon as practicable (but in no event later than 12 months following the C2R release date) replace each local copy that was installed pursuant to the preceding paragraph with a C2R-installed copy.

Miscellaneous.

Notices. You must send notices by mail, return receipt requested, to the address below.

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<thead>
<tr>
<th>Notices should be sent to:</th>
<th>Copies should be sent to:</th>
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<tbody>
<tr>
<td>Microsoft Corporation</td>
<td>Microsoft Corporation Legal and Corporate Affairs Volume</td>
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<tr>
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<tr>
<td>Redmond, WA 98052 USA</td>
<td>USA</td>
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<tr>
<td>Via Facsimile: (425) 936-7329</td>
<td>Via Facsimile: (425) 936-7329</td>
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</table>

Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account.
administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

**Assignment.** Neither Customer, Contractor nor Microsoft may assign this agreement either in whole or in part without the other party’s prior written consent. Any prohibited assignment is void.

**C. Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

**Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.

**No agency.** This agreement does not create an agency, partnership, or joint venture.

**No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.

**Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

**Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other’s confidential information.

**Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

**Entire agreement.** In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

**Survival.** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

**U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

**Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity’s behalf.

**ADDITIONAL TERMS APPLICABLE WHEN THE CUSTOMER IS A U.S. FEDERAL AGENCY.**

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or
authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

**Definitions.**

Any reference in this agreement to “day” will be a calendar day. “Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party.

“Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at [http://azure.microsoft.com/en-us/regions/#services](http://azure.microsoft.com/en-us/regions/#services), which are Government Community Cloud Services.

“CJIS” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at [https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS](https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS) or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.
“Customer Agreement” means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx or a successor site Microsoft later identifies.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI CJIS Policy. “Customer Data” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services. “Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“FTI” is defined as in IRS Publication 1075.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“IRS 1075 Covered Services” means Azure Government services listed as being in the scope for IRS 1075 at http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/ or its successor site. Without limitation, IRS 1075 Covered Services do not include any other separately branded Online Services.

“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective January 1, 2014, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.
“ITAR Covered Services” means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at https://www.microsoft.com/en-us/TrustCenter/Compliance/itar or its successor site.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at https://www.microsoft.com/en-us/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Licensing Site” means http://www.microsoft.com/licensing/contracts or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.


“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services and attached hereto. The Online Services Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Online Services Terms applies to Enrolled Affiliate’s order.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached hereto. The Product Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Product Terms applies to Enrolled Affiliate’s order.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site. The SLA in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the SLA applies to Enrolled Affiliate’s order.
“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.
“Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller. “Technical Data” has the meaning provided in 22 C.F.R. § 120.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.
Microsoft online subscription agreement

This Microsoft Online Subscription Agreement is between the Ordering Activity under GSA Schedule contracts ("you" or "your"), and Microsoft Corporation ("Microsoft", "we", "us", or "our"). It consists of the terms and conditions below, as well as the Online Services Terms, the SLAs, and the Offer Details for your Subscription or renewal (together, the "agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed as applicable. Key terms are defined in Section 8.

Use of Online Services.

Right to use. We grant you the right to access and use the Online Services and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.

Acceptable use. You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in this agreement or the Online Services Terms.

End Users. You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.

Customer Data. You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Microsoft to you or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.

Responsibility for your accounts. You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.

Preview releases. We may make Previews available. Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLAs and all limited
warranties provided in this agreement. Previews may not be covered by customer support. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into general availability.

Managed Services for Microsoft Azure. You may use Microsoft Azure Services to provide a Managed Service Solution provided (1) you have the sole ability to access, configure, and administer the Microsoft Azure Services, (2) You have administrative access to the virtual OSE(s), if any, in the Managed Service Solution, and (3) the third party has administrative access only to its application(s) or virtual OSE(s). You are responsible for the third party's use of Microsoft Azure Services in accordance with the terms of this agreement. Your provision of Managed Services remains subject to the following limitations in the Online Services Terms:

you may not resell or redistribute the Microsoft Azure Services, and

you may not allow multiple users to directly or indirectly access any Microsoft Azure Services feature that is made available on a per user basis.

Additional Software for use with the Online Services. To enable optimal access to and use of certain Online Services, you may install and use certain Software in connection with your use of the Online Service as described in the Online Services Terms. We license Software to you; we do not sell it. Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment. Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

Purchasing services.

Available Subscription offers. The Portal provides Offer Details for available Subscription offers, which generally can be categorized as one or a combination of the following:

Commitment Offering. You commit in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis in advance of use as long as it does not violate 31 U.S.C. 3324. With respect to Microsoft Azure Services, additional or other usage (for example, usage beyond your commitment quantity) may be treated as a Consumption Offering. Committed quantities not used during the Term will expire at the end of the Term.

Consumption Offering (also called Pay-As-You-Go). You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.

Limited Offering. You receive a limited quantity of Online Services for a limited term without charge (for example, as a Trial Subscription) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to pricing, cancellation fees,
payment, and data retention may not apply.

Ordering.

By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription. Unless otherwise specified in those Offer Details, Online Services are offered on an "as available" basis. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but Affiliates may not place orders under this agreement. You also may assign the rights granted under Section 1.a to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

Some offers may permit you to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

Pricing and payment. Payments are due and must be made according to the Offer Details for your Subscription.

For Commitment Offerings, the price level may be based on the quantity of Online Services you ordered. Some offers may permit you to modify the quantity of Online Services ordered during the Term and your price level may be adjusted accordingly in accordance with the GSA Pricelist, but price level changes will not be retroactive. During the Term of your Subscription, prices for Online Services will not be increased, as to your Subscription, from those in the GSA Pricelist the time your Subscription became effective or was renewed, except where prices are identified as temporary in the Offer Details, or for Previews or Non-Microsoft Products. All prices are subject to change at the beginning of any Subscription renewal in accordance with the GSA Pricelist.

Reserved.

Renewal.

Upon renewal of your Subscription, this agreement will terminate, and your Subscription will thereafter be governed, by the terms and conditions set forth in this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), on the date on which your Subscription is renewed (the "Renewal Terms"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.

For Commitment Offerings, a Subscription terminates upon expiration of the Term.
For Consumption Offerings, your Subscription will terminate upon expiration of the term and subsequent Subscription terms will be purchased separately.

For Limited Offerings or Trial Subscriptions, renewal may not be permitted.

**Eligibility for Academic, Government and Nonprofit versions.** You agree that if you are purchasing an academic, government or nonprofit offer, you meet the respective eligibility requirements listed at the following sites:

For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at http://go.microsoft.com/?linkid=9862882; 

For government offers, the requirements listed at http://go.microsoft.com/?linkid=9862883; and


**Taxes.** Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Microsoft shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Term, termination, and suspension.**

**Agreement term and termination.** This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.

**Subscription termination.** You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing within thirty (30) days of receipt of the invoice.

**One-Month Subscription.** A Subscription having a one-month Term may be terminated anytime without any cancellation fee.

**Subscriptions of more than one-month.** If you terminate a Subscription to Microsoft Azure Services within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription, but no payments will be due for the remaining portion of the terminated Subscription.
For all other Online Services, if you terminate a Subscription before the end of the Term, you will receive a refund of any portion of the Subscription fee you have paid for the remainder of the Term; provided, however, no refunds will be provided for partially unused months.

**Suspension.** We may suspend an End User from use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; or an End User does not abide by the Acceptable Use Policy or violates other terms of this agreement.

We may temporarily suspend your use of the Online Services if you fail to respond to a claim of alleged infringement under Section 5 within a reasonable time; or you do not pay amounts due under this agreement.

For all other Subscriptions, a temporary suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice before we temporarily suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within 60 days after we temporarily suspend, we may bring dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Microsoft shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**WARRANTIES.**

**Limited warranty.**

**Online Services.** We warrant that the Online Services will meet the terms of the SLA during the Term and perform substantially in accordance with the Online Service written materials accompanying it. Your only remedies for breach of this warranty are those in the SLA.

**Software.** We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the contract price paid for the Software or (2) repair or replace the Software.

**Limited warranty exclusions.** This limited warranty is subject to the following limitations:

any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;

this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;

this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and this limited warranty does not apply to Previews or Limited Offerings.
DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply to the fullest extent permitted under applicable law.

Defense of claims.

Defense.

We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

Reserved.

Limitations. Our obligations in Section 5a won't apply to a claim or award based on: (i) any Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product; (ii) your combination of the Product with, or damages based upon the value of, Customer Data, or a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or (v) Products provided free of charge.

Remedies. If we reasonably believe that a claim under Section 5.a.(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

Obligations. Each party must notify the other promptly of a claim under this Section. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 5 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

Limitation of liability.

Limitation. The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the contract price under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed
the contract price for that Online Service during the Subscription. For Products provided free of charge, Microsoft's liability is limited to direct damages up to $5,000.00 USD.

EXCLUSION. Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Exceptions to limitations. The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 5; or (2) violation of the other's intellectual property rights.

Miscellaneous.

Notices. You must send notices by mail, return receipt requested, to the address below.

<table>
<thead>
<tr>
<th>Notices should be sent to:</th>
<th>Copies should be sent to:</th>
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<tbody>
<tr>
<td>Microsoft Corporation</td>
<td>Microsoft Corporation</td>
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<tr>
<td>Volume Licensing</td>
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<td>Group One Microsoft</td>
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<td>Redmond, WA 98052 USA</td>
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<td></td>
<td>Via Facsimile: (425) 936-7329</td>
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You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

License Transfers and Assignment. You or Microsoft may not assign this agreement either in whole or in part or transfer licenses without the other party's prior written consent.
Reserved

Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

No agency. This agreement does not create an agency, partnership, or joint venture.

No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

Applicable law and venue. This agreement is governed by the Federal laws of the United States.

Entire agreement. This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) The Government Purchase Order, (), the underlying GSA Schedule Contract, (3) this Microsoft Online Subscription Agreement, (3) the Online Services Terms, (4) the applicable Offer Details, and (5) any other documents in this agreement.

Survival. The terms in Sections 1, 2.e, 3.b, 4, 5, 6, 7, and 8 will survive termination or expiration of this agreement.

U.S. export jurisdiction. The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see https://www.microsoft.com/exporting/.

Force majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Contracting authority. If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity’s behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.

Government customers should consult with Microsoft. Government customers should consult with Microsoft prior to acceptance. If you are a government customer, before accepting this agreement, you should consult with your Microsoft representative to assure full compliance with local laws and governmental procurement processes.

Stamp tax. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Microsoft shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
Definitions.

Any reference in this agreement to “day” will be a calendar day. “Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms. "Customer Solution" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

"Managed Service Solution" means a managed IT service you provide to a third party that consists of the administration of and support for Microsoft Azure Services.

"Microsoft Azure Services" means one or more of the Microsoft services and features identified at https://azure.microsoft.com/en-us/services, except where identified as licensed separately.

"Non-Microsoft Product" is defined in the Online Services Terms.

"Offer Details" means the pricing and related terms applicable to a Subscription offer, as published in the Portal.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Dynamics CRM Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the terms that apply to your use of the Products available at https://www.microsoft.com/licensing/onlineuserights..

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Portal" means the Online Services' respective web sites that can be found at https://www.microsoft.com/licensing/online-services/default.aspx, https://azure.microsoft.com/en-us/pricing/, or at an alternate website we identify.

"Product" means any Online Service (including any Software).

"Software" means Microsoft software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

"Subscription" means an enrollment for Online Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately and which will be governed by the terms of a separate Microsoft Online Subscription Agreement.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).
Microsoft Volume Licensing

License Agreement/Product Use Rights

April 2015
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INTRODUCTION

UNIVERSAL LICENSE TERMS

Definitions
Your Use Rights
Rights to use other versions Third Party Software
Pre-release Code Updates and Supplements No Commercial Hosting Technical Limitations
Other Rights Documentation Outsourcing Software Management License Reassignment Product Activation Additional Functionality/Optional Service Using More than One Product or Functionality Together Font Components Windows Software Components Benchmark Testing Products That Include SQL Server Technology SQL Server Reporting Services Map Report Item Multiplexing System Center Packs Distributable Code Software Plus Services Creating and Storing Instances No Separation of Software

DESKTOP APPLICATIONS (PER DEVICE)  


DESKTOP OPERATING SYSTEMS (PER COPY PER DEVICE)

Rental Rights for Windows Windows 8.1 Pro and Enterprise Windows Embedded 8.1 Industry Pro and Enterprise

SERVERS: PROCESSOR/CAL (PROCESSOR LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)

Windows Server 2012 R2 Datacenter Windows Server 2012 R2 Standard

SERVERS: SERVER / CAL (SERVER LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)


SERVERS: PER CORE (CORE LICENSE)


MANAGEMENT SERVERS (MANAGEMENT LICENSE [SERVER OR CLIENT])

System Center 2012 R2 Client Management Suite System Center 2012 R2 Configuration Manager System Center 2012 R2 Datacenter System Center 2012 R2 Standard

SPECIALTY SERVERS (SERVER LICENSE)


DEVELOPER TOOLS (USER LICENSE)

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<td>ONLINE SERVICES (USER OR DEVICE SUBSCRIPTION LICENSE, SERVICES SUBSCRIPTION LICENSE, AND/OR ADD-ON SUBSCRIPTION LICENSE)</td>
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Introduction

**USING THIS DOCUMENT**

These License Agreement/Product Use Rights are an important part of the License between Microsoft and Microsoft Volume Licensing customers.

These License Agreement/Product Use Rights apply to the Microsoft Products that you order from the authorized Microsoft reseller or Government Partner under such party's contract with you (your “Volume Licensing Agreement”). If you are an entity of the United States Government, these Microsoft License Agreement/Product Use Rights constitute an addendum to your Volume Licensing Agreement and govern your use of the Microsoft Products. For all other entities, these Microsoft License Agreement/Product Use Rights are incorporated into your Volume License Agreement and govern your use of the Microsoft Products. References to “Enterprise Agreement” or “Select Agreement” in these License Agreement/Product Use Rights refer to the volume licensing program agreement executed between Microsoft and your authorized Microsoft reseller or Government Partner. Any program terms that apply to you are expressly incorporated into your Volume Licensing Agreement.

**LICENSE TYPES**

The type of License you acquire depends on what is available under your agreement and what you order. Some Products, such as Online Services, are available under Subscription Licenses only. Other Products are available under either perpetual or fixed-term licenses or on a subscription basis, depending on the Microsoft Volume Licensing Program under which they are licensed. See your Volume Licensing Agreement and the Microsoft Product List at [http://go.microsoft.com/?linkid=9839207](http://go.microsoft.com/?linkid=9839207) for more information about the License types available under your agreement and for a particular Product.
HOW TO DETERMINE WHICH LICENSE TERMS APPLY TO A PRODUCT

The License terms that apply to your use of a given licensed Product include the Universal License Terms, the General License Terms for the licensing model under which the Product is licensed, and any Product-specific License Terms.

Universal License Terms

Universal License Terms apply to every Product licensed through Microsoft Volume Licensing (except where specifically noted in the General License Terms and/or Product-Specific License Terms).
General License Terms

General License terms apply to all Products licensed under a given Licensing Model (except where specifically noted in the Product-Specific License Terms).

Product-Specific License Terms

Product-Specific License Terms apply specifically to the Product or Products under which they are listed.

### LICENSING MODELS

There are nine different Licensing Models used for acquiring licensed Products through Microsoft Volume Licensing:

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Note that some Products may be available under more than one Licensing Model. Also, some Products use a combination of two or more Licensing Models and are included in the Combined Licensing Models section after the sections for each Licensing Model.

Notices

Appendix 1 includes notices relevant to various Products as noted in the Product-Specific terms.

Software Assurance Benefits

Appendix 2 contains License terms that apply to Software Assurance benefits. The Microsoft Volume Licensing Product List describes these benefits.

Additional Software

Appendix 3 includes the additional software for the listed server Products.

### PRIOR VERSIONS AND PRODUCTS NO LONGER AVAILABLE WORLDWIDE

These License Agreement/Product Use Rights cover the most recent version of Microsoft Products. Earlier versions of this
document containing License terms for earlier versions of Products are available at http://www.microsoftvolumelicensing.com/userights/PURRetired.aspx. You will also find some archived versions of the License Agreement/Product Use Rights at http://www.microsoft.com/licensing/about-licensing/product-licensing.aspx. If you cannot find the version you need, please contact your account manager or reseller.

**CLARIFICATIONS AND SUMMARY OF CHANGES**

We designed these License Agreement/Product Use Rights to help you License and manage your use of Microsoft Products. Below are recent additions, deletions, and other changes to the License Agreement/Product Use Rights. Also listed below, as necessary, are clarifications of Microsoft licensing policy in response to common customer questions.
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**Lync Online**

Skype for Business Online has replaced Lync Online.

**Management Servers**

Added to the General License Terms that use of a physical OSE to run hardware virtualization software, provide hardware virtualization services or run software to manage and service OSEs on a device, does not require a Management License.

**Windows Server 2012 R2**

Added Forefront Identity Manager 2010 User CAL, Enterprise Mobility Suite User SL and Microsoft Azure Active Directory Premium as fulfilling Additive CAL requirement for Forefront Identity Manager 2010 R2 functionality.

Added Forefront Identity Manager 2010 R2 External Connector as fulfilling Additive External Connector requirement for Forefront Identity Manager 2010 R2 functionality.

Added requirement for a CAL for management of identity information.

Clarified that no CAL is required for user only using Forefront Identity Manager synchronization service.
UNIVERSAL LICENSE TERMS

These license terms apply universally to your use of Microsoft software and Online Services licensed under your Volume Licensing Agreement.

We do not transfer any ownership rights in any licensed Product or Online Service, and we reserve all rights not expressly granted.

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s), including Online Services available through Microsoft's Volume Licensing program shall apply in place of, or serve to modify any provision of this License Agreement/Product Use Rights, even if a user or authorized officer of you or your Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the Products that such provisions attach to) and any term or condition of this License Agreement/Product Use Rights, then the relevant term or condition of this License Agreement/Product Use Rights shall govern and supersede the purchase of such Product(s) to the extent of any such conflict.

If any document or provision referenced in a URL or otherwise incorporated into this License Agreement/Product Use Rights contains terms that (a) allow for the automatic termination of a License; (b) allow for the automatic renewal of fees; (c) require the governing law to be anything other than Federal law; (d) require you to indemnify Microsoft or any third party; and/or (e) otherwise violate applicable law, then such provision shall not apply.

Definitions

Terms used in these License Agreement/Product Use Rights but not defined will have the definition provided in your Volume Licensing Agreement. The following definitions also apply:

Additive CAL means a CAL that must be used on conjunction with a base CAL.

Additive External Connector License means an External Connector License that must be used in conjunction with a base External Connector License.

Affiliate means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

CAL means client access License. There are two kinds of CALs: user and device. A user CAL allows access to the server software from any device by one user. A device CAL allows access to the server software from one device by any user.

Client OSE means an OSE running a client operating system.

Clustered HPC Application means high performance computing applications that solve complex computational problems, or a set of closely related computational problems in parallel. Clustered HPC applications divide a computationally complex problem into a set of jobs and tasks which are coordinated by a job scheduler, such as provided by Microsoft HPC Pack, or similar HPC middleware, which distributes these in parallel across one or more computers operating within an HPC cluster.

Cluster Node means a device that is dedicated to running Clustered HPC Applications or providing job scheduling services for Clustered HPC Applications.

Core Factor means a numerical value associated with a specific physical processor for purposes of determining the number of Licenses required to license all of the physical cores on a server.

Core Infrastructure Server (CIS) software means the set of individual Microsoft Products for which you are granted use, access or management rights under a particular edition of the CIS Suite License. CIS software includes the latest versions of those Products made available during the term of your Software Assurance coverage (and any prior version).

Customer Data means all data, including all text, sound, or image files and software that are provided to us by, or on behalf of, you through your use of the Online Service.
Cycle Harvesting Node means a device that is not dedicated to running Clustered HPC Applications or job scheduling services for Clustered HPC Applications.

Enrollment means the document that Government Partner submits to Microsoft under a Microsoft Volume Licensing program to place orders for you.

Enterprise means you and the Affiliates specifically designated in your Volume Licensing Agreement and the Enrollment.

Enterprise Online Service means any Online Service designated as an Enterprise Online Service in the Product List and chosen for you by the Government Partner under your Enrollment. Enterprise Online Services are treated as Online Services, except as otherwise noted.

Enterprise Product means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen for you by the Government Partner. Enterprise Products must be licensed for all Qualified Devices and Qualified Users.
on an Enterprise-wide basis under a Microsoft Volume Licensing program. Enterprise Products are treated as Products, except as otherwise noted

External Connector License means a License attached to a Server that permits access to the server software by External Users.

External Users means users that are not either your or your Affiliates’ employees, or your or your affiliates’ onsite contractors or onsite agents.

Fleet Applications means software that uses MapPoint, and data from sensors used specifically with multiple vehicles to provide location information (such as GPS systems and triangulation devices).

Hardware Thread means either a Physical Core or a hyper-thread in a Physical Processor.

High Performance Computing ("HPC") Workload means a workload where the server software is used to run a Cluster Node and is used in conjunction with other software as necessary to permit security, storage, performance enhancement and systems management on a Cluster Node for the purpose of supporting the Clustered HPC Applications.

Industry Device (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (e.g., a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g., a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

Instance means an image of software that is created by executing the software’s setup or install procedure or by duplicating an existing Instance.

License means your right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses.

Licensed Device means the single physical hardware system to which a License is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

Licensed Server means the single Server to which a License is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

Licensed User means the single person to whom a License is assigned.

Management License means a License that permits management of one or more OSEs. There are two categories of Management Licenses: Server Management License and Client Management License. There are three types of Client Management Licenses: User, OSE and device. A User Management License permits management of any OSE accessed by one user; an OSE Management License permits management of one OSE accessed by any user; a device Management License (Core CAL or Enterprise CAL Suite) permits management of any OSE on one device.

Managing an OSE means to solicit or receive data about, configure, or give instructions to the hardware or software that is directly or indirectly associated with the OSE. It does not include discovering the presence of a device or OSE.

Non-Microsoft Product means any software, data, service, website or other Product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Online Services or elsewhere.

Online Service means the Microsoft-hosted services identified in the Online Services section of the Product List.

Operating System Environment (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. There are two types of OSEs, physical and virtual. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.

Physical Core means a core in a Physical Processor.
**Physical OSE** means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Hyper-V Server or similar technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar technologies) is considered part of the Physical OSE.

**Physical Processor** means a processor in a physical hardware system.

**Product** means all Products identified on the Product List, such as software, Online Services and other web-based services, including pre-release or beta versions. Products may be made available under programs that vary by region.
Product List means the statement published by Microsoft from time to time on the World Wide Web at http://www.microsoft.com/licensing/contracts, or at a successor site that Microsoft identifies. The Product List includes any Product-specific conditions or limitations on the acquisition of Licenses for, or use of, Products.

Qualified Device means any device that is used by or for the benefit of your Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of your Enterprise.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

Qualified User means a person (e.g., employee, consultant, contingent staff, etc.) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product CAL or any Enterprise Online Services. It does not include a person who accesses server software or Online Services solely under a License identified in the Qualified User exemptions in the Product List.

Reserved License means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

Production Environment means any Physical or Virtual OSE running a production workload or accessing production data, or any Physical OSE hosting one or more Virtual OSEs running production workloads or accessing production data.

Qualifying Third Party Device means a device that is not controlled, directly or indirectly, by you or your affiliates (e.g., a third party’s public kiosk).

Running Instance means an Instance of software that is loaded into memory and for which one or more instructions have been executed. (You “Run an Instance” of software by loading it into memory and executing one or more of its instructions.) Once running, an Instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

SL means Subscription License.

Server means a physical hardware system capable of running server software. Server Farm means a single data center or two data centers each physically located:

- in a time zone that is within four hours of the local time zone of the other (Coordinated Universal Time (UTC) and not DST).
- and/or within the European Union (EU) and/or European Free Trade Association (EFTA).

VDI Licensed Device means a device to which you assign a VDI suite License and from which you access and remotely use virtual Client OSEs.

VDI Host means a device on which you host virtual Client OSEs running software you access and remotely use from VDI Licensed Devices.

VDI Software means the Microsoft software for which you are granted use, access or management rights under the VDI Suite License.

Virtual Core means the unit of processing power in a virtual hardware system. A Virtual Core is the virtual representation of one or more hardware threads.

Virtual OSE means an OSE that is configured to run on a virtual hardware system.

Virtual Processor means a processor in a virtual hardware system. Solely for licensing purposes under the Server: Per Processor Licensing Model, a virtual processor is considered to have the same number of threads and cores as each physical processor on the underlying physical hardware system.

Web Workloads (also referred to as “Internet Web Solutions”) are publicly accessible and consist solely of web pages, websites, web applications, web services, and/or POP3 mail serving. For clarity, access to content, information, and applications served by the software within an Internet Web Solution is not limited to your or your affiliates’ employees.
Software in Internet Web Solutions is used to run:

- web server software (for example, Microsoft Internet Information Services), and management or security agents (for example, System Center Operations Manager agent).
- database engine software (for example, Microsoft SQL Server) to support Internet Web Solutions.
- the Domain Name System (DNS) service to provide resolution of Internet names to IP addresses as long as that is not the sole function of that instance of the software.

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core
Your Use Rights
If you comply with your Volume Licensing Agreement, you may use the software and Online Services as expressly permitted in these License Agreement/Product Use Rights.

Rights to use other versions
For any permitted copy or instance, you may create, store, install, run or access in place of the version licensed, a copy or instance of a prior version, different permitted language version, or different available platform version (for example, 32 bit or 64 bit). You may use different versions of components only as permitted under the Product-Specific License Terms. The use of an earlier version under these downgrade rights does not extend the support lifecycle of the earlier version.

Third Party Software
The software may contain third party proprietary programs that are licensed under separate terms that are presented to you. The software may also contain third party open source programs that Microsoft, not the third party, licenses to you under Microsoft’s license terms. Notices, if any, for the third party open source programs are included for your information only.

Pre-release Code
Pre-release code is subject to any specific terms that accompany it.

Updates and Supplements
We may update or supplement the software you license. If so, you may use that update or supplement with the software, subject to any additional terms that accompany the update or supplement.

No Commercial Hosting
You may not host the Products for commercial hosting services.

Technical Limitations
You must comply with any technical limitations in the Products that only allow you to use them in certain ways. You may not work around them.

Other Rights
Rights to access the software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.

Documentation
Any person that has valid access to your computer or internal network may copy and use the documentation for your internal reference purposes. Documentation does not include electronic books.

Outsourcing Software Management
You may install and use permitted copies of the software on Servers and other devices that are under the day-to-day management and control of third parties, provided all such Servers and other devices are and remain fully dedicated to your use. You are responsible for all of the obligations under your Volume Licensing Agreement regardless of the physical location of the hardware upon which the software is used.

License Reassignment
Most, but not all, Licenses may be reassigned from one device or user to another. The general rules governing License reassignment are described below, along with some special rules for certain Products and License types.

LIMITATIONS ON LICENSE REASSIGNMENT
Except as permitted below, you may not reassign Licenses on a short-term basis (within 90 days of the last assignment), nor may you reassign Licenses for Rental Rights, or Software Assurance separately from the underlying License to which the Software Assurance is attached.

CONDITION ON LICENSE REASSIGNMENT
When you reassign a License from one device or user to another, you must remove the software or block access from the former device or from the former user’s device.

**SPECIAL CONSIDERATIONS FOR CERTAIN PRODUCTS AND LICENSE TYPES**

**CALs, Management Licenses and User/Device Subscription Licenses (SLs).** You may reassign a CAL, Management License or user or device SL on a short-term basis, to cover a user’s absence or the unavailability of a device that is out of service. Reassignment of these Licenses for any other purpose or timeframe must be permanent. This right does not apply to
Enterprise Mobility Suite Add-on User SLs, Enterprise Mobility Suite User SLs, Windows desktop operating system User SLs, or Window Virtual Desktop Access (VDA) Licenses or User SLs.

**Early Reassignment Due to Hardware Failure.** You may reassign sooner than within 90 days of the last assignment if you retire the Licensed Device or server due to permanent hardware failure. This right applies to: all server licenses (other than CALs and Management Licenses), Enterprise Mobility Suite and Enterprise Mobility Suite Add-on User SLs, Windows Virtual Desktop Access Subscription Licenses, VDI suites, and Visual Studio Load Test Virtual User Pack 2010.

**Reassignment of Software Assurance Related Rights.** Licenses that are granted or acquired in connection with Software Assurance coverage (e.g., Windows Thin PC, MDOP, User SLs for Software Assurance) generally must be reassigned as and when the qualifying License and Software Assurance are reassigned.

**Subscription Licenses for the Windows desktop operating system.** You may reassign your Windows (VDA) Subscription Licenses and Software Assurance for the Windows desktop operating system User SLs, subject to the general limitation against short-term reassignment and assignment rules stated in the Product List.

**Reassignment of Software Assurance for Windows per Device and Windows Industry operating systems.** You may reassign Software Assurance coverage and the underlying Windows Enterprise Upgrade License or Windows Industry Enterprise Upgrade License to a replacement device, but not on a short-term basis, and only if that replacement device is licensed for a qualifying operating system as required in the Product List; provided, however, you must remove any related desktop operating system upgrades from the former device. Reassignment of a Windows Enterprise Upgrade License or Windows Industry Enterprise Upgrade License may only be done if the upgrade License is covered by active Software Assurance.

**License Mobility within Server Farms and Server Re-partitioning.** You may reassign certain server licenses on a short-term basis under License Mobility within Server Farms rights and Server Repartitioning.

**Product Activation**

Some products and are protected by technological measures and require activation and a Volume License Product key to install or access them. Activation associates the use of the software with a specific device. For information about when activation or a product key is required, see the Product Activation section on [http://www.microsoft.com/licensing/activation](http://www.microsoft.com/licensing/activation). You are responsible for both the use of product keys assigned to you and activation of Products using your Key Management Service (KMS) machines. Volume License product keys are confidential and subject to the confidentiality provision in your Volume Licensing Agreement with Microsoft. You may not disclose product keys to third parties at any time, even after your Volume Licensing Agreement with Microsoft terminates or expires and notwithstanding any time limitation to the contrary.

**KMS and Multiple Activation Key (MAK) Activation**

During Multiple Activation Key (MAK) activation, the software will send information about the software and the device to Microsoft. During Key Management Service (KMS) host activation, the software will send information about the KMS host software and the host device to Microsoft. KMS client devices activated using KMS do not send information to Microsoft. However, they require periodic reactivation with your KMS host. The information sent to Microsoft during MAK or KMS host activation includes:

- the version, language and product key of the software
- the Internet protocol address of the device
- information derived from the hardware configuration of the device.

For more information, see [http://www.microsoft.com/licensing/existing-customers/product-activation.aspx](http://www.microsoft.com/licensing/existing-customers/product-activation.aspx). By using the software, you consent to the transmission of this information. Before you activate, you have the right to use the version of the software installed during the installation process. Your right to use the software after the time specified in the installation process is limited unless it is activated. This is to prevent its unlicensed use. You are not licensed to continue using the software after that time if you do not activate it. If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software. The software will remind you to activate it until you do.

**Proper Use of KMS**
You may not provide unsecured access to your KMS machines over an uncontrolled network such as the Internet.

**Unauthorized Use of MAK or KMS Keys**

Microsoft may take any of these actions related to unauthorized use or disclosure of MAK or KMS keys: prevent further activations, deactivate, or otherwise block the product key from activation or validation. Key deactivation may require the customer to acquire a new product key from Microsoft.

**Additional Functionality/Optional Service**

We may provide additional functionality for or an optional add-on service to the Products. Other License terms or use rights, and fees may apply.
Using More than One Product or Functionality Together

You need a license for each Product and separately licensed functionality used on a device or by a user. For example, if you use Office on Windows, you need Licenses for both Office and Windows. Likewise, to access Remote Desktop Services in Windows Server you need both a Windows Server CAL and a Remote Desktop Services CAL.

Font Components

While you run the software or use an Online Service provided by Microsoft, you may use the fonts included with or installed by that software or Online Service, respectively, to display and print content. You may only embed fonts in content as permitted by the embedding restrictions in the fonts; and temporarily download them to a printer or other output device to print content.

Windows Software Components

The software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, Powershell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JAVAScript, Dbghelp.dll, and Web Deploy technologies. All these are part of Windows software. Except as provided in Benchmark Testing below, the license terms for Microsoft Windows apply to your use of these components.

Benchmark Testing

SOFTWARE

You must obtain Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of the server software or additional software that comes with it. This applies to Products in the Microsoft Servers or Microsoft Developer Tools Licensing Models (see Table of Contents). This does not apply to the .NET Framework (see below) or to Windows Server. It, however, does apply to SQL Technology, in any, licensed with these Products.

MICROSOFT .NET FRAMEWORK

The software may include one or more components of the .NET Framework (‘.NET Components”). If so, you may conduct internal benchmark testing of those components. You may disclose the results of any benchmark test of those components, provided that you comply with the conditions set forth at http://go.microsoft.com/fwlink/?LinkID=66406. Notwithstanding any other agreement you may have with Microsoft, if you disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of your Products that compete with the applicable .NET Component, provided it complies with the same conditions set forth at http://go.microsoft.com/fwlink/?LinkID=66406.

Products That Include SQL Server Technology

If your edition of the software includes a SQL Server database software Product licensed under the Product-Specific license terms (“SQL Server Database”) you may run that SQL Server Database in one or more physical or virtual operating system environments on any of your servers to support the software. You may also use the same instances of SQL Server Database to support other Products that include any version of SQL Server Database. You do not need SQL Server CALs for such use.

You may not share that instance to support any Product that is not licensed with SQL Server Database.

If your edition of the software includes SQL Server-branded components other than a SQL Server Database, such components are licensed to you under the terms of their respective License s. Such License s may be found:

☐ in the “legal”, “License s” or similarly named folder in the installation directory of the so
standalone license agreements or appended to the software’s license agreement; or
☐ through the software’s unified installer.

If you do not agree to a SQL Server-branded component’s license terms, you may not use the component.

SQL Server Reporting Services Map Report Item

Power View and SQL Reporting Services Map Item both include use of Bing Maps, including geocodes, within Power View or SQL Reporting Services Map Item. Your use of Bing Maps is also governed by the Bing Maps End User Terms of Use available at: http://go.microsoft.com/?linkid=9710837 and the Bing Maps Privacy Statement available at: http://go.microsoft.com/fwlink/?LinkID=248686.
**Multiplexing**

Hardware or software you use to pool connections, reroute information, reduce the number of devices or users that directly access or use the Product, or reduce the number of operating system environments (or OSEs), devices or users the Product directly manages, (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of License s of any type that you need.

**System Center Packs**

The license terms for the applicable System Center Products apply to your use of Management Packs, Configuration Packs, Process Packs and Integration Packs included with the software.

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Distributable Code

The software or Online Service may include code that you are permitted to distribute in programs you develop if you comply with the terms below.

**RIGHT TO USE AND DISTRIBUTE**

The code and text files listed below are “Distributable Code.” These License Agreement/Product Use Rights may provide rights to other Distributable Code.

**REDIST.TXT Files:** You may copy and distribute the object code form of code listed in REDIST.TXT files.

**Sample Code:** You may modify, copy, and distribute the source and object code form of code marked as “sample.”

**OTHER-DIST.TXT Files:** You may copy and distribute the object code form of code listed in OTHER-DIST.TXT files.

**Third Party Distribution:** You may permit distributors of your programs to copy and distribute the Distributable Code as part of those programs.

**Silverlight Libraries:** Copy and distribute the object code form of code marked as “Silverlight Libraries”, Silverlight “Client Libraries” and Silverlight “Server Libraries”;

**Additional License Terms for Products in the Developer Tools Section of these License Agreement/Product Use Rights:** The software may also contain the following Distributable Code. You may:

**REDIST.TXT Files:** Copy and distribute files listed in the REDIST list located at [http://go.microsoft.com/fwlink/?LinkId=286955](http://go.microsoft.com/fwlink/?LinkId=286955);

**Sample Code:** Modify, copy, and distribute source and object code form of code marked as “Code Snippet”;

**Image Library:** Copy and distribute images and animations in the Image Library as described in the software documentation. You may also modify that content. If you modify the content, it must be for use that is consistent with the permitted use of the unmodified content.

**Templates, Site Templates and Blend Site Templates for Visual Studio:** Modify, copy, deploy and distribute the source and object code form of templates and code marked as “site templates”;

**Fonts and Blend Fonts for Visual Studio:** Distribute unmodified copies of the Buxton Sketch font, SketchFlowPrint font and SegoeMarker font;

**Styles and Blend Styles for Visual Studio:** Copy, modify and distribute the object code form of code identified as “X Styles”;

**Icons:** Distribute unmodified copies of code marked as “icons”;

**ASP.NET MVC and Web Tooling Extensions:** Modify, copy and distribute or deploy any .js files contained in the ASP.NET Model View Controller, ASP.NET Web Pages or in the Web Tooling Extensions as part of your ASP.NET programs;

**Visual Studio LightSwitch Project Templates:** Modify, copy and distribute or deploy the .js files contained in the Visual Studio LightSwitch project templates as part of your LightSwitch programs.

**Windows Library for JavaScript.** Copy and use the Windows Library for JavaScript, without modification, in your programs that you develop for your internal use or in programs that you develop and distribute to third parties. The following also applies to your programs that work in conjunction with the Windows Library for JavaScript. The Windows Library for JavaScript files helps your programs implement the Windows design template and UI look and feel. You may distribute programs containing the Windows Library for JavaScript only through the Windows Store and not by any other means.

**Setup Program:** Distribute distributable code included in a setup program only as part of that setup program. You may not modify it.

**EXTENSIBILITY KIT - Files for Microsoft Commerce Server 2009 Standard and Enterprise Editions:** Copy and distribute the source and object code form of the code marked as “Extensibility Kit”; and

**Access Runtime Files.** Copy and distribute the object code form of SETUP.EXE, ACCESSRT.MSI, and ACCESSRT.CAB files from a licensed copy of Microsoft Office Professional Plus 2013 or Microsoft Office Access 2010 software. You and your end users may only use these files to provide database features for your non-database management programs.

**DISTRIBUTION REQUIREMENTS**

For any Distributable Code you distribute, you must:

- add significant primary functionality to it in your programs;
- for any Distributable Code having a filename extension of .lib, distribute only the results of running such Distributable Code through a linker with your program;
- distribute Distributable Code included in a setup program only as part of that setup program without modification; and
- require distributors and external end users to agree to terms that protect it at least as much as your Volume Licensing Agreement.
including these License Agreement/Product Use Rights and the Product List; and display your valid copyright notice on your programs.
DISTRIBUTION LIMITATIONS

You may not:

- alter any copyright, trademark or patent notice in the Distributable Code;
- use Microsoft’s trademarks in your programs’ names or in a way that suggests your programs come from or are endorsed by Microsoft;
- distribute Distributable Code, to run on a platform other than Microsoft operating systems, run-time technologies, or application platforms, except that JavaScript, CSS and HTML files included for use in websites and web applications (as opposed to Windows Library for JavaScript files) may be distributed to run any platform;
- include Distributable Code in malicious, deceptive or unlawful programs; or
- modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that the code be disclosed or distributed in source code form, or that others have the right to modify it.

Software Plus Services

Microsoft may provide services with products through software features that connect with Microsoft or service provider computer systems over the Internet. It may change or cancel the services at any time. You may not use the services in any way that could harm them or impair anyone else’s use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

Creating and Storing Instances

You may create and store any number of instances of the software on any of your servers or storage media solely to exercise your right to run instances of the software under your server licenses or your Windows Enterprise license terms.

No Separation of Software

You may not separate the software for use in more than one OSE under a single License, unless expressly permitted. This applies even if the OSEs are on the same physical hardware system.

Additional Terms

Licenses for Products

Products. Unless otherwise specified elsewhere in these License Agreement / Product Use Rights, use of any Product that you license is governed by the License Agreement / Product Use Rights specific to each Product and version and by the terms of your Volume Licensing Agreement.

Fixes. Fixes are licensed according to the License terms applicable to the Product to which those Fixes relate. If the Fixes are not provided for a specific Product, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, you shall have a non-exclusive, perpetual, fully paid-up License to use and reproduce the Fixes solely for your internal use. You may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code, except as expressly permitted by Microsoft.

Reservation of rights. All rights not expressly granted are reserved.

Upon Microsoft’s acceptance of the Government Partner Enrollment on your behalf, you have the following rights during the term of the applicable Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a Product licensed under your Volume Licensing Agreement could be affected by minimum system requirements or other factors (e.g., hardware or other software).

General.

For Enterprise and Enterprise Subscription Enrollments: You may use the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in these License Agreement/Product Use Rights, so long as Microsoft receives timely orders and
payments from Government Partner for all required Licenses for such Products and you comply with applicable License terms. The Licenses obtained under an Enrollment are not related to any order or fulfillment of software media.

For Select Enrollments and Select Plus Affiliate Registrations: At any time after the effective date of the Enrollment or after your registration has been accepted by us, you may run for your own benefit as many available Products you choose, provided that you submit orders for all copies of Licenses in the month in which those copies are first run by you and the Government Partner submits orders on your behalf to Microsoft for such Licenses.

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Use by Affiliates. You may sublicense the right to use the Products to any of your agency Affiliates included in your Enterprise, but Affiliate recipient of Licenses may not sublicense these rights and its use must be consistent with the License terms contained in these License Agreement/Product Use Rights.

Special rule for Enterprise Products. So long you place annual true-up orders as required and the Government submits such orders to Microsoft as required on your behalf under an Enterprise Enrollment (but not under an Enterprise Subscription Enrollment), you may use the latest version (or any prior version) of each Enterprise Product on each of your Qualified Desktops as permitted in the License Agreement/Product Use Rights. In addition, for CALs, each Qualified Desktop (or, for CALs that are User-based Licenses, each Qualified User) covered by the Enrollment may access and use the associated server software.

When Licenses become perpetual. All perpetual Licenses acquired under your Microsoft Volume Licensing Agreement remain subject to the terms of these License Agreement/Product Use Rights and such terms survive expiration or termination of your Microsoft Volume Licensing Agreement or an Enrollment. If you obtain perpetual rights as provided in this Section, then you will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.

The right to run any Product licensed under an Enterprise Enrollment is temporary until:

the Government Partner has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in the Microsoft Volume Licensing Agreement.

you are otherwise eligible for perpetual Licenses upon early termination as provided in the Enterprise Agreement.

Thereafter, you will have perpetual Licenses to run the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal of the Enterprise Enrollment. The number of perpetual Licenses will be equal to:

For Enterprise Products other than CALs that are User-based Licenses, the total number of Qualified Desktops covered by the Enrollment;

For CALs that are User-based Licenses, the total number of Qualified Users covered by the Enrollment; and

For each Additional Product, the total number of Licenses ordered during the applicable initial Enrollment term or renewal term.

Subscription (Online Services) Licenses are not perpetual under any circumstances.

In the case of early termination of an Enrollment because you terminate your contract with the Government Partner for which the Enrollment was placed (“Early Termination”) then Government Partner on behalf of you and at your direction will have the following options for Licenses, excluding Subscription Licenses:

Government Partner may immediately pay to Microsoft the total remaining amount due, including all installments, in which case, you will have perpetual rights for all Licenses Government Partner has ordered for you; or

Government Partner may pay only amounts due as of the termination date, in which case you will have perpetual Licenses (including the latest version of Products ordered under Software Assurance coverage in an initial or renewal term) for (1) all copies of Products for which payment has been made in full and (2) a proportional number of copies of Products it has ordered for which payment has been made. Your election of an option above must be documented in writing with the Government Partner.

The right to run any Product licensed under an Enterprise Subscription Enrollment is temporary unless and until a Government Partner elects on your behalf and at your direction to obtain perpetual Licenses under the buy-out option, if a buy-out option is available, and pays for the License in full.

When Licenses become perpetual under a Select Enrollment and Select Plus Affiliate Registrations:

License only. Your right to run copies of any Product for which a Government Partner orders on your behalf is temporary until the Government Partner has paid for that License in full. Thereafter, you will have a perpetual License to run the number of copies ordered in the version ordered.

License and Software Assurance (“L&SA”) or Software Assurance. Your right to run copies of any Product for which Government Partner orders L&SA or Software Assurance on your behalf is temporary until:

- The Government Partner has paid all installments of the price for such coverage and the applicable initial Enrollment (or Order in the case of Select Plus) or renewal term during which such Product Licenses were ordered has expired or been renewed, or

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you are otherwise eligible for perpetual Licenses as provided in the Government Partner’s Select or Select Plus Agreement with Microsoft.

Thereafter, you will have perpetual Licenses to run the Products ordered in the latest versions available as of the date of expiration, renewal, or termination (or any prior version) for the number of copies ordered or renewed.

- In cases of Early Termination. In the case of Early Termination you will be entitled to perpetual Licenses only if the Government Partner pays to Microsoft all amounts due and payable as of the termination date.

- Subscription (Online Services) Licenses are not perpetual under any circumstances.

**Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under your Volume Licensing Agreement remain subject to the terms of your Volume Licensing Agreement and the applicable License Agreement/Product Use Rights. (References to perpetual Licenses do not apply to Licenses through Software Assurance under an Enterprise Subscription Enrollment.)

**True-Up.**

**True-Up Order.** Unless expressly stated otherwise in your Volume Licensing Agreement, you must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reduction (if permitted). Microsoft, at its discretion, may validate the true-up data submitted through a formal Product deployment assessment using an approved Microsoft partner.

**Enterprise Products.** You must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**Additional Products.** For Products that have been previously ordered, you must determine the Additional Products used and order the License difference (if any).

**Online Services.** For Online Services identified as eligible for true-up orders in the Product List, you, through Government Partner, may first reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Government Partner. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved.

**Transitions.** You must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

**True-up due date.** The true-up order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third-year anniversary true-up order is due within 30 days prior to the Expiration Date. You, through Government Partner, may true-up more often than at each Enrollment anniversary date except for Subscription License reductions.

**Late true-up.** If the true-up order is not received when due:

Microsoft will invoice Government Partner for all Reserved Licenses not previously ordered. Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

**Subscription License reductions.** You, through Government Partner, may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product List as follows:

For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.

For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

For Additional Products available as Subscription Licenses, you, through Government Partner may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate’s use of the applicable Subscription License will be cancelled.
Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
**Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, your Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by your authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

**For Application Platforms Enrollments only, notwithstanding anything to the contrary:**

License Agreement/Product Use Rights. For Application Platform Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to your use of that Product during the term.

Baseline Licenses are superseded. Baseline Licenses (as defined below) are superseded and replaced by the Licenses granted under the Application Platform Enrollment.

Transitions. The following requirements apply to Transitions:

Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. While you may Transition any time, you will not be able to reduce Licenses or associated Software Assurance prior to the end of the Transition Period.

If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance will need to be reordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by you.

If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.

If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

**Effect of Transition on Licenses.** Transition will not affect your rights in perpetual Licenses paid in full.

New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.

For L&SA not paid in full at the end of the Transition Period, you will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.

For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

**Customer Data.** Upon expiration or termination of a License for Online Services, you, through Government Partner must tell Microsoft whether you want Microsoft to:

- disable your account and then delete your Customer Data (“Data Deletion”); or
- retain your Customer Data in a limited function account for at least 90 days after expiration or termination of the License for such Online Service (the “Retention Period”) so that you may extract its Customer Data.

If Government Partner indicates that you want Data Deletion, you will not be able to extract your Customer Data. If Government Partner indicates you want a Retention Period, you will be able to extract your Customer Data through Microsoft’s standard processes and tools, and Government Partner will reimburse Microsoft if there are any applicable costs to the extent permitted by applicable law. If you do not indicate either Data Deletion or a Retention Period, Microsoft will retain your Customer Data in accordance with the Retention Period.

Following the expiration of the Retention Period, Microsoft will disable your account and then delete your Customer Data.

You agree that, other than as described above, Microsoft has no obligation to continue to hold, export or return your Customer Data. You agree Microsoft has no liability whatsoever for deletion of your Customer Data pursuant to these terms.
How to Know which License Agreement/Product Use Rights Apply.

License Agreement/Product Use Rights. Microsoft publishes License Agreement/Product Use Rights for each version of each Product. Use of any Product that Government Partner licenses from Microsoft on your behalf is governed by License

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Agreement/Product Use Rights specific to each Product and version and by the terms of the Microsoft Volume Licensing Agreement under which Government Partner licensed the Product, unless specifically agreed by Microsoft in writing. The latest version of the License Agreement/Product Use Rights is available at https://www.explore.ms or at a successor site or by some other reasonable means. Government Partner will provide you with a copy of the applicable License Agreement/Product Use Rights upon request.

License Agreement/Product Use Rights for current and future versions of Products.

The License Agreement/Product Use Rights in effect on the effective date of an Enrollment will apply to your use of then-current versions of each Product (excluding Online Services). For future versions, the License Agreement/Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the License Agreement/Product Use Rights for a particular version will not apply to your use of that version, unless you choose to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Online Services Section of these License Agreement/Product Use Rights.

License Agreement/Product Use Rights for earlier versions (downgrade).

If you run an earlier version of a Product than the version that was current on the Enrollment effective date, the License Agreement/Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any License Agreement/Product Use Rights specific to those components will apply to your use of those components.

Licenses purchased on a non-perpetual basis. Any reference in this License Agreement/Product Use Rights to a right to run Products on a perpetual basis applies to Licenses acquired under your Volume Licensing Agreement for non-perpetual Licenses only if you elect to obtain perpetual Licenses subject to any applicable terms in your Volume Licensing Agreement permitting the acquisition of perpetual Licenses.

Microsoft or your reseller or Government Partner will provide you with a copy of the applicable License Agreement/Product Use Rights or we will make them available either by publication on the World Wide Web at a site we identify or by some other reasonable means. You acknowledge that you and your Affiliates have access to the World Wide Web.

Transferring and reassigning Licenses.

Transferring Licenses to third parties. You may transfer fully-paid perpetual Licenses if you are an agency of the U.S. Government, to another agency of the U.S. Government or to an unaffiliated third party in connection with (i) a privatization of the government agency or of an operating division of you or one of your Affiliates, (ii) a reorganization, or (iii) a consolidation; or

if you are an agency of a state or local government to: (a) any other government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state’s jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts, or (b) an unaffiliated third party in connection with a privatization of an affiliate of agency as set forth in (a) above or of an operating division of you or one if your Affiliates as set forth in (a) above, a reorganization, or a consolidation.
To do so, you must complete and send to Microsoft a transfer notice in a form which can be obtained from http://microsoft.com/licensing/contracts before the transfer. All other transfers require Microsoft’s prior written consent. Guidance on what types of transfers are permissible can be found at http://microsoft.com/licensing/contracts. No License transfer will be valid unless you provide to the transferee, and the transferee accepts in writing, the applicable License Agreement/Product Use Rights, use restrictions, limitations of liability, and the transfer restrictions described in this document. Any transfer not made in compliance with this section will be void. The resale of Licenses, including any transfer by you or your Affiliate with a primary purpose to enable the transfer of those Licenses to an unaffiliated third party, is expressly prohibited.

Certain transfers not permitted.

You may not transfer any of the following:

Licenses on a short-term basis (90 days or less).

temporary rights to use Products.

Software Assurance coverage or benefits.
perpetual Licenses for any version of any Product acquired through Software Assurance separately from the underlying perpetual Licenses for which that Software Assurance coverage was ordered.

an upgrade License for a desktop operating system Product separately from the underlying desktop operating system License or from the computer system on which the Product is first installed.

full version desktop operating system Licenses, unless transferred with the sale of the device for which it operates.

Online Services Products.

any Licenses for resale to unaffiliated third parties.

Internal reassignment of Licenses and Software Assurance.

Licenses and Software Assurance must be assigned to a single user or device within your Enterprise. Licenses may be reassigned as described in these License Agreement/Product Use Rights.

Restrictions on use.

You shall not:

- separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in this License Agreement/Product Use Rights;
- reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation;
- distribute, sublicense, rent, lease, lend or host any Product or Fix, except as expressly agreed to by Microsoft in writing, these License Agreement/Product Use Rights, or in a separate written agreement.

US. Export jurisdiction. Products and Fixes are subject to U.S. export jurisdiction. You must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments as applicable. For additional information, see http://www.microsoft.com/exporting.

Warranties.

Limited Product warranty. We warrant that:

Online Services will perform in accordance with the applicable Service Level Agreement; and

Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation.

Limited warranty term. The limited warranty for:

Online Services is for the duration of your use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement; and

Products other than Online Services is one year from the date you first use the Product.
Limited warranty exclusions. This limited warranty is subject to the following limitations:

any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;

the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the License Agreement/Product Use Rights, or resulting from events beyond our reasonable control;

the limited warranty does not apply to components of Products that you are permitted to redistribute;

the limited warranty does not apply to free, trial, pre-release, or beta Products; and

the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.
**Remedies for breach of limited warranty.** If we fail to meet any of the above limited warranties and you notify us within the warranty period, then we will:

for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service; and

for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product.

These are your only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

**DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, WE PROVIDE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. WE DISCLAIM ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

**Defense of infringement, misappropriation, and third party claims.**

**Microsoft's agreement to protect.** For any claims made by an unaffiliated third party against you that any Product or Fix that is made available by us for a fee infringes that party's patent, copyright or trademark or makes intentional unlawful use of its Trade Secret, we will pay the amount of any resulting adverse final judgment (or settlement to which we consent) subject to the terms of this Section G. This section provides your exclusive remedy for these claims. Trade Secret means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

**Limitations on defense obligation.** Our obligations will not apply to the extent that the claim or award is based on:

- Your use of the Product or Fix after we notify you to discontinue that use due to a third party claim;
- Customer Data, code, or materials provided by you as part of the use of an Online Service;
- any Customer Data or non-Microsoft software we host on your behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or
- arise from your Affiliate’s or your end user’s violation of the License Agreement/Product Use Rights or these Additional Use Right and Restrictions.

Your combination of the Product or Fix with a non-Microsoft Product, data or business process;

- damages attributable to the value of the use of a non-Microsoft Product, data or business process;
- modifications that you make to the Product or Fix;
- Your redistribution of the Product or Fix to, or your use for the benefit of, any unaffiliated third party, except as expressly permitted by Microsoft in writing or this License Agreement/Product Use Rights;
- Your use of our trademark(s) without express written consent to do so; or
- any Trade Secret claim, where you acquire the Trade Secret (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

In addition, you agree that:

- any Customer Data or non-Microsoft software that we host will not infringe on any third party's patent, copyright, or trademark nor make intentional unlawful use of any third party's Trade Secret; and
- you will not:

- use a Product or Fix after we notify you to discontinue use due to a third party claim;
- violate these License Agreement /Product Use Rights;
- modify any Product or Fix;
- redistribute the Product or Fix, or use such Product or Fix for the benefit of any unaffiliated third party, except as expressly permitted by your Microsoft Volume Licensing Agreement or this License Agreement/Product Use Rights;
use our trademark(s) without our express written consent to do so; and intentionally use or disclose a third party’s Trade Secret.

**Specific rights and remedies in case of infringement.**

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Our rights in addressing possible infringement. If we receive information concerning an infringement claim related to a Product or Fix, we may, at our expense either:

- procure for you the right to continue to run the allegedly infringing Product or Fix, or
- modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case you will immediately cease use of the allegedly infringing Product or Fix after receiving notice from us.

Your specific remedy in case of injunction. If, as a result of an infringement claim, your use of a Product or Fix that is made available by us for a fee is enjoined by a court of competent jurisdiction, we will, at our option, either:

- procure the right to continue its use, or
- replace it with a functional equivalent, or
- modify it to make it non-infringing, or
- refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the License or right to access the infringing Product or Fix.

Your agreement to protect. You agree that use of Customer Data or non-Microsoft software in connection with the Online Service will not infringe, misappropriate, or otherwise violate any applicable law or regulation, including without limitation any copyright, patent, trade secret, trademark, or other legal right of any third party. A violation of the foregoing may be considered a material breach of this License Agreement/Product Use Rights which may be resolved by a court or authorized administrative authority pursuant to the Contract Disputes Act (41 U.S.C. §§7101-7109).

Obligations of protected party. You must notify us promptly in writing of a claim subject to the subsection titled “Microsoft’s agreement to protect” and allow Microsoft to assist in your defense or settlement, to the extent permitted by applicable law. We will not be bound by any settlement to which we do not agree to in writing. Microsoft must notify you promptly in writing of a claim subject to the subsection titled “Your agreement to protect.” To the extent permitted by applicable law, you must provide reasonable assistance in defending the claim. We will reimburse you for reasonable out of pocket expenses that it incurs in providing assistance.

Notwithstanding the foregoing, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

Limitation of liability.

Limitation on liability. Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of each party and its contractors arising under this License Agreement/Product Use Rights is limited to direct damages up to:

- for Products other than Online Services, the amount you or your Affiliate were required to pay for the Product giving rise to that liability and (2) for Online Services, the amount you were required to pay for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that you are authorized to redistribute to third parties without separate payment to us, our liability is limited to U.S. $5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. For Products other than Online Services, however, these monetary limitations will not apply to:

  - Our and your obligations and/or claims under the section titled “Defense of infringement, misappropriation, and third party claims”;
  - liability for damages caused by either party’s gross negligence or willful misconduct, or that of its employees or agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence,” “gross negligence” as used in this subsection shall mean “recklessness”);
  - liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation; and
  - violation by either party of the other party’s intellectual property rights. For Online Services, these monetary limitations will not apply to:
Our and your obligations and/or claims under the section titled “Defense of infringement, misappropriation, and third party claims”; and violation by either party of the other party’s intellectual property rights.

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EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS LICENSE AGREEMENT/PRODUCT USE RIGHTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES’ RESPECTIVE OBLIGATIONS IN THE SECTION TITLED “DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS.”

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InfoPath 2013
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Word for Mac 2011

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- **Universal Terms**
- **Desktop Apps**
- **Desktop OS**
- **Processor/CAL**
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Windows 8.1 Pro and Enterprise

Windows Embedded 8.1 Industry Pro and Enterprise

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SERVERS: PROCESSOR/CAL (PROCESSOR LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)

Windows Server 2012 R2 Datacenter 34
Windows Server 2012 R2 Standard 35

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You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see [http://go.microsoft.com/fwlink/?linkid=96552](http://go.microsoft.com/fwlink/?linkid=96552).

**Data Storage Technology**

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

---

**PRODUCT-SPECIFIC LICENSE TERMS**

---

### Windows Server 2012 R2 Datacenter

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**Self-Hosting of Applications Allowed:** Yes (See Appendix 2)

**Additional Software:** Yes (See Appendix 3)

**See Applicable Notices:** Data Transfer, MPEG-4, VC-1 (See Appendix 1)

**License Mobility Within Server Farms:** No (Except for External Connector licenses; See General License Terms)

**External User Access:** CALs or External Connector

**BASE CALs**
**You need:**
- Windows Server 2012 CAL, or
- Core CAL Suite¹,
- Core CAL Bridge for Office 365¹, or
- Core CAL Bridge for Office 365 User SL, or
- Core CAL Bridge for Microsoft Intune¹, or
- Core CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL²

: with active Software Assurance on or after the date the software is first available for download through Volume Licensing

: Only the full User SL satisfies the access requirement

**ADDITIVE CALs**

Product or Functionality:
- Microsoft Application Virtualization for Remote Desktop Services
- Windows Server 2012 R2 Rights Management Services
- Azure Rights Management User SL, or

List of CALs:

- Windows Server 2012 Remote Desktop Services CAL, or
- Windows Server 2012 Active Directory Rights Management Services CAL, or
- Azure Rights Management User SL, or
Windows Server 2012 R2 Remote Desktop Services functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Forefront Identity Manager 2010 R2 functionality

• Forefront Identity Manager 2010 R2 User CAL (device CALs are not available), or

Enterprise Mobility Suite User SL, or

Microsoft Azure Active Directory Premium

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<tr>
<th>ADDITIVE EXTERNAL CONNECTORS</th>
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</thead>
</table>

Product or Functionality:

Microsoft Application Virtualization for Remote Desktop External Services

Windows Server 2012 R2 Rights Management Services External Connector

Windows Server 2012 R2 Remote Desktop Services External functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Forefront Identity Manager 2010 R2 functionality

Additional Terms:
**DOWN-edITION RIGHTS**

You may Run an Instance of Windows Server Enterprise, Standard, Essentials, Web, HPC or any earlier version of the qualifying editions in place of Datacenter in any of the OSEs.

**CERTIFICATE AND IDENTITY MANAGEMENT**

A CAL is also required for any person for whom the software issues or manages identity information.

**SYNCHRONIZATION SERVICE**

A CAL is not required for users only using the Forefront Identity Manager synchronization service.

---

**Windows Server 2012 R2 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**Self-Hosting of Applications Allowed:** Yes (See Appendix 2)  
**Additional Software:** Yes (See Appendix 3)

See Applicable Notices: Data Transfer, MPEG-4, VC-1 (See Appendix 1)  
License Mobility Within Server Farms: No (Except for External Connector licenses; See General License Terms)
**External User Access: CALs or External Connector**

### BASE CALs

**You need:**
- Windows Server 2012 CAL, or
- Core CAL Suite¹, or
- Core CAL Bridge for Office 365¹, or
- Core CAL Bridge for Office 365 User SL, or
- Core CAL Bridge for Microsoft Intune¹, or
- Core CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL²

> Only the full User SL satisfies the access requirement

### ADDITIVE CALs

**List of CALs:**
- Windows Server 2012 Remote Desktop Services CAL, or
- Windows Server 2012 Active Directory Rights

**Product or Functionality:**
- Microsoft Application Virtualization for Remote Desktop Services • Windows Server 2012 Remote Desktop Services User SL
- Windows Server 2012 R2 Rights Management Services Management Services CAL, or
- Azure Rights Management User SL, or
- Azure Rights Management A User SL, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL

> Only the full User SL satisfies the access requirement

**Windows Server 2012 R2 Remote Desktop Services functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)**

- Forefront Identity Manager 2010 R2 functionality
- Forefront Identity Manager 2010 R2 User CAL (device CALs are not available), or
- Enterprise Mobility Suite User SL, or
- Microsoft Azure Active Directory Premium

### BASE EXTERNAL CONNECTORS
## ADDITIVE EXTERNAL CONNECTORS

### Product or Functionality:
- Microsoft Application Virtualization for Remote Desktop
- External Services

### List of External Connector Licenses:
- Windows Server 2012 Remote Desktop Services Connector

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</table>
Windows Server 2012 Rights Management Services

Windows Server 2012 R2 Remote Desktop Services

functionality or Windows Server 2012 R2 for purposes of hosting a graphical user interface (using the Windows Server 2012 R2 Remote Desktop Services functionality or other technology)

Forefront Identity Manager 2010 R2 functionality

Additional Terms:

**DOWN-EDITION RIGHTS**

You may Run an Instance of Windows Server Enterprise, Essentials, Web, HPC or any earlier version of the qualifying editions in place of Standard in any of the OSEs.

**CERTIFICATE AND IDENTITY MANAGEMENT**

A CAL is also required for any person for whom the software issues or manages identity information.

**SYNCHRONIZATION SERVICE**

A CAL is not required for users only using the Forefront Identity Manager synchronization service.
### SERVERS: SERVER / CAL (SERVER LICENSE + CAL + OPTIONAL EXTERNAL CONNECTOR)

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### GENERAL LICENSE TERMS

**Defined Terms in this License Model (See Universal License Terms)**
CAL, External Connector License, External User, Instance, Licensed Server, OSE, Physical OSE, Running Instance, Server, Server Farm and Virtual OSE

**Server Licenses**
You have the rights below for each license you acquire.

You must assign each license to a single Server. For each license, you may use one Running Instance of server software on the Licensed Server in either a Physical or Virtual OSE. You may use the additional software listed in Appendix 3 in conjunction with your use of server software. ACCESS

**Licenses**
Except as described here and noted in the Product-specific license terms, all server software access requires CALs. Requirements for External User access vary by product, as noted in the Product-specific license terms. Depending on the product and the functionality being accessed, External User access is permitted under CALs, External Connector Licenses or the software license assigned to the Server.

You must assign each CAL to a user or device, as appropriate, and each External Connector License to a Licensed Server. CALs and External Connector Licenses permit access to the corresponding version (including earlier versions used under downgrade rights) or earlier versions of server software.

CALs are not required for access by another Licensed Server or for up to 2 users or devices to administer the software. Your CALs and External Connector Licenses permit access only to your Licensed Servers (not a third-party’s).

**Additional Licensing Requirements and/or Use Rights**

**License Mobility -- Assigning Server and External Connector Licenses and Using Software within and across Server Farms**
For products designated as having License Mobility, you may reassign Server and External Connector Licenses to any of your Servers located within the same Server Farm as often as needed. Some products may require Software Assurance for these rights. You may reassign Server and External Connector Licenses from one server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).
Introduction

Universal Terms

Desktop Apps

Desktop OS

Processor/CAL

Server/CAL

Per Core

Mgmt

Servers

Specialty Servers

Dev Tools

Online Services

Combined Models

Appendices

Product Index
PRODUCT-SPECIFIC LICENSE TERMS

Exchange Server 2013 Enterprise

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**Self-Hosting of Applications Allowed:** Yes (See Appendix 2)

**License Mobility Within Server Farms:** Yes (See General Terms)

**Functionality requires both Base and Additive CALs**

**BASE CALs**

You need:

- Exchange Server 2013 Standard CAL, or
- BackOffice CAL1, or
- Core CAL Suite1, or
- Core CAL Bridge for Microsoft Intune1, or
- Core CAL Bridge for Enterprise Mobility Suite User SL, or
- Exchange Online Plan 1 User SL, or
- Exchange Online Plan 1G User SL, or
- Exchange Online Plan 2 User SL, or
- Exchange Online Plan 2A User SL, or
- Exchange Online Plan 2G User SL, or
- Enterprise CAL Suite1, or
- Enterprise CAL Bridge for Microsoft Intune1, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or

**ADDITIVE CALs**

**Additional Functionality:**

- Unified Messaging
- In-Place Archive
- In-Place Holds (Indefinite, Query-based, and Time-based)
- Advanced Mobile Policies
- Information Protection and Compliance
- Custom Retention Policies
- Per User/Distribution List Journaling
- Site Mailboxes – Compliance
- Data Loss Prevention

**Required Additive CAL:**

- Exchange Server 2013 Enterprise CAL, or
- Enterprise CAL Suite1, or
- Enterprise CAL Bridge for Microsoft Intune1, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Exchange Online Plan 2 User SL, or
- Exchange Online Plan 2A User SL, or
- Exchange Online Plan 2G User SL, or
- Office 365 Enterprise E3-E4 User SL, or
- Office 365 Enterprise E3-E4 without ProPlus User SL, or
- Office 365 Nonprofit E3 User SL, or
- Office 365 Education E3-E4 User SL, or
- Office 365 Government E3-E4 User SL, or
- Office 365 Government E3-E4 without ProPlus User SL
1. with active Software Assurance coverage on October 1, 2012, or later
2. with active Software Assurance on or after the date the software is first available for download through Volume Licensing

Additional Terms:
You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

---

**Exchange Server 2013 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

<table>
<thead>
<tr>
<th>Self-Hosting of Applications Allowed: Yes (See Appendix 2)</th>
<th>Additional Software: Yes (See Appendix 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Mobility Within Server Farms: Yes (See General Terms)</td>
<td>External User Access: Licensed with Server (Access to Additional Functionality requires both Base and Additive CALs)</td>
</tr>
</tbody>
</table>

### BASE CALs

**You need:**
- Exchange Server 2013 Standard CAL, or
- BackOffice CAL, or
- Core CAL Suite, or
- Core CAL Bridge for Microsoft Intune, or
- Core CAL Bridge for Enterprise Mobility Suite, or
- Core CAL Bridge for Enterprise Mobility Suite User SL, or
- Exchange Online Plan 1 User SL, or
- Exchange Online Plan 1G User SL, or
- Exchange Online Plan 2 User SL, or
- Exchange Online Plan 2A User SL, or
- Exchange Online Plan 2G User SL, or
- Enterprise CAL Suite, or
- Enterprise CAL Bridge for Microsoft Intune, or
- Enterprise CAL Bridge for Enterprise Mobility Suite, or

### ADDITIVE CALs

**Additional Functionality:**
- Unified Messaging
- In-Place Archive
- In-Place Holds (Indefinite, Query-based, and Time-based)
- Advanced Mobile Policies
- Information Protection and Compliance
- Custom Retention Policies
- Per User/Distribution List Journaling
- Site Mailboxes – Compliance
- Data Loss Prevention

**Required Additive CAL:**
- Exchange Server 2013 Enterprise CAL, or
- Enterprise CAL Suite, or
- Enterprise CAL Bridge for Microsoft Intune, or
- Enterprise CAL Bridge for Enterprise Mobility Suite, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Exchange Online Plan 2 User SL, or
- Exchange Online Plan 2A User SL, or
- Exchange Online Plan 2G User SL, or
- Office 365 Enterprise E3-E4 User SL, or
- Office 365 Enterprise E3-E4 without ProPlus User SL, or
- Office 365 Nonprofit E3 User SL, or
- Office 365 Education E3-E4 User SL, or
- Office 365 Nonprofit E3 User SL, or
- Office 365 Education E3-E4 without ProPlus User SL

---

1 with active Software Assurance coverage on October 1, 2012, or later
2 with active Software Assurance on or after the date the software is first available for download through Volume Licensing
with active Software Assurance on or after the date the software is first available for download through Volume Licensing

Microsoft Volume Licensing License Agreement/Product Use Rights (April 2015)

Additional Terms:
You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

Microsoft Dynamics AX 2012 R3 Server

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)  
License Mobility Within Server Farms: Yes (See General Terms)  
External User Access: Licensed with Server

BASE CALs

<table>
<thead>
<tr>
<th>Functionality</th>
<th>Required CAL</th>
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<tbody>
<tr>
<td>Self-Serve based limited access to Microsoft Dynamics AX 2012 R3 Server</td>
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</table>
• Microsoft Dynamics AX 2012 R3 Self-Serve CAL |

ADDITIONAL CALs

<table>
<thead>
<tr>
<th>Functionality</th>
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<td>Task use limited access to Microsoft Dynamics AX 2012 R3 Server (Additive to Self-Serve CAL)</td>
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</tr>
</tbody>
</table>
Microsoft Dynamics AX 2012 R3 Task Use Additive CAL |
| Functional use limited access to Microsoft Dynamics AX 2012 R3 Server (Additive to Task Use CAL) |  
Microsoft Dynamics AX 2012 R3 Functional Use Additive CAL |
| Enterprise use access to Microsoft Dynamics AX 2012 R3 Server (Additive to Functional Use CAL) |  
Microsoft Dynamics AX 2012 R3 Enterprise Use Additive CAL |

Additional Terms:

MODIFICATION RIGHT

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.
Microsoft Dynamics AX 2012 R3 Store Server

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2) 
Additional Software: Yes (See Appendix 3)
License Mobility Within Server Farms: Yes (See General Terms) 
External User Access: Licensed with Server

<table>
<thead>
<tr>
<th>BASE CALs</th>
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<tr>
<td><strong>Functionality:</strong></td>
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<td></td>
</tr>
<tr>
<td>Servers</td>
<td></td>
</tr>
</tbody>
</table>
Self-Serve based limited access to Microsoft Dynamics AX 2012 R3 Store Server

ADDITIVE CALs

Additional Functionality:

Required Additive CAL:

Task use limited access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Self-Serve CAL)

Required Additive CAL:

Functional use limited access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Task Use CAL)

Required Additive CAL:

Enterprise use access to Microsoft Dynamics AX 2012 R3 Store Server (Additive to Functional Use CAL)

Required Additive CAL:

Additional Terms:

MODIFICATION RIGHT

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility -- Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

Microsoft Dynamics CRM 2015 Server

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)

License Mobility Within Server Farms: Yes (See General Terms)

External User Access: Licensed with Server; CALs required for access through Microsoft Dynamics CRM 2015 Clients

BASE CALs

Functionality:

Required CAL:

Essential use access to Microsoft Dynamics CRM Server 2015

Microsoft Dynamics CRM 2015 Essential CAL, or
Microsoft Dynamics CRM Online Essential (User SL), or
Microsoft Dynamics CRM Online Basic (User SL), or
Microsoft Dynamics CRM Online Professional (User SL),
or
Microsoft Dynamics CRM Online Enterprise (User SL)

**ADDITIVE CALs**

**Additional Functionality:**
Basic use access to Microsoft Dynamics CRM Server 2015 (Additive Essential CAL)

**Required Additive CAL:**
Microsoft Dynamics CRM 2015 Basic Use Additive CAL, or
Microsoft Dynamics CRM Online Basic (User SL), or
Microsoft Dynamics CRM Online Professional (User SL), or
Microsoft Dynamics CRM Online Enterprise (User SL)
**Additional Functionality:**
Professional use access to Microsoft Dynamics CRM Server 2015
(additive to Basic Use AdditiveCAL)

**Required Additive CAL:**
Microsoft Dynamics CRM 2015 Professional Use Additive CAL, or
Microsoft Dynamics CRM Online Professional (User SL), or
Microsoft Dynamics CRM Online Enterprise (User SL)

**Additional Terms:**

**FAIL-OVER RIGHTS**
For any OSE in which you Run Instances of the server software, you may run up to the same number of passive fail-over Instances in a separate OSE for temporary support. You may Run the passive fail-over Instances on a Server other than the Licensed Server.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**
You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

### Microsoft Office Audit and Control Management Server 2013

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

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<th>Self-Hosting of Applications Allowed</th>
<th>BASE CALs</th>
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<td></td>
<td>Enterprise CAL Bridge for Microsoft Intune², or</td>
</tr>
<tr>
<td></td>
<td>Enterprise CAL Bridge for Enterprise Mobility Suite², or</td>
</tr>
<tr>
<td>License Mobility Within Server Farms</td>
<td>Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or</td>
</tr>
<tr>
<td>Yes (See General Terms)</td>
<td>Office 365 Enterprise E3-E4 User SL, or</td>
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<tr>
<td></td>
<td>Office 365 Enterprise E3-E4 without ProPlus User SL, or</td>
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<td></td>
<td>Office 365 Nonprofit E3 User SL, or</td>
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<td></td>
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</tbody>
</table>

¹ with active Software Assurance coverage on October 1, 2012, or later
² with active Software Assurance on or after the date the software is first available for download through Volume Licensing

**CAL WAIVER FOR USERS ACCESSING PUBLICLY AVAILABLE CONTENT**
CALs are not required to access content, information, and applications that you make publicly available to users over the Internet (i.e., not restricted to Intranet or Extranet scenarios).

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**
You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

Project Server 2013

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

**Self-Hosting of Applications Allowed:** No

**Additional Software:** Yes (See Appendix 3)

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<td>Online Services</td>
<td>Combined Models</td>
<td>Appendices</td>
<td>Product Index</td>
</tr>
</tbody>
</table>
### BASE CALs

You need:

- Project Server 2013 CAL, or
- Project Lite User SL, or
- Project Online User SL, or
- Project Pro for Office 365 User SL

### Additional Terms:

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

---

### SharePoint Server 2013

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

- **Self-Hosting of Applications Allowed:** No
- **License Mobility Within Server Farms:** Yes (See General Terms)

#### BASE CALs

**You need:**

- SharePoint Server 2013 Standard CAL, or
- Core CAL Suite1, or
- Core CAL Bridge for Microsoft Intune1, or
- Core CAL Bridge for Enterprise Mobility Suite2, or
- Core CAL Bridge for Enterprise Mobility Suite User SL, or
- Enterprise CAL Suite1, or
- Enterprise CAL Bridge for Microsoft Intune1, or
- Enterprise CAL Bridge for Enterprise Mobility Suite2, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Office 365 Enterprise E1, E3, or E4 User SL, or
- Office 365 Enterprise E3-E4 without ProPlus User SL, or
- Office 365 Nonprofit E3 User SL, or
- Office 365 Education E3-E4 User SL, or
- Office 365 Government E1, E3, or E4 User SL, or
- Office 365 Government E3-E4 without ProPlus User SL, or

**Additional Software:** Yes (See Appendix 3)

- SharePoint Online Plan 1 User SL, or
- SharePoint Online Plan 1G User SL, or
- SharePoint Online Plan 2 User SL, or
- SharePoint Online Plan 2A User SL, or
- SharePoint Online Plan 2G User SL

**External User Access:** Licensed with Server

---

**ADDITIVE CALs**

**Required Additive CAL:**

- SharePoint Server 2013 Enterprise CAL, or
- Enterprise CAL Suite1, or
- Enterprise CAL Bridge for Microsoft Intune1, or
- Enterprise CAL Bridge for Enterprise Mobility Suite2, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Office 365 Enterprise E3-E4 User SL, or
- Office 365 Enterprise E3-E4 without ProPlus User SL, or

**Additional Functionality:**

- Business Connectivity Services Line of Business Webparts Integration
- Office 2013 Business Connectivity Services Client
- Access Services
- Enterprise Search
- E-discovery and Compliance
- InfoPath Forms Services
- Excel Services, PowerPivot, PowerView
• Visio Services
• PerformancePoint Services
• Custom Analytics Reports

• Office 365 Nonprofit E3 User SL, or
• Office 365 Education E3-E4 User SL, or
• Office 365 Government E3-E4 User SL, or

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core
Mgmt Servers

Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index

Microsoft Volume Licensing License Agreement/Product Use Rights (April 2015)
Advanced Charting
User SL,

or
SharePoint Online Plan 2 User SL, or
SharePoint Online Plan 2A User SL, or
SharePoint Online Plan 2G User SL
1 with active Software Assurance coverage on October 1, 2012, or later
2 with active Software Assurance on or after the date the software is first available for download through Volume Licensing

Additional Terms:

CAL WAIVER FOR USERS ACCESSING PUBLICLY AVAILABLE CONTENT
CALs are not required to access content, information, and applications that you make publicly available to users over the Internet (i.e., not restricted to Intranet or Extranet scenarios).

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS
You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

Skype for Business Server 2015
The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

| Self-Hosting of Applications Allowed: No | Additional Software: Yes (See Appendix 3) |
| License Mobility Within Server Farms: Yes (See General Terms) | See Applicable Notices: Recording Notice, VC-1 (See Appendix 1) |
| Included Technologies: Windows Software Components (See Universal License Terms) | External User Access: Licensed with Server |

BASE CALs

You need:
- Skype for Business Server 2015 Standard CAL, or
- Core CAL Suite1, or
- Core CAL Bridge for Microsoft Intune1, or
- Core CAL Bridge for Enterprise Mobility Suite2, or
- Core CAL Bridge for Enterprise Mobility Suite User SL, or
- Enterprise CAL Suite1, or
- Enterprise CAL Bridge for Microsoft Intune1, or
- Enterprise CAL Bridge for Enterprise Mobility Suite2, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Skype for Business Online Plan 1 or 1G User SL, or
- Skype for Business Online Plan 2, 2A or 2G User SL, or

ADDITIVE CALs

- Office 365 Government E3-E4 without ProPlus
- Office 365 Enterprise E1, E3, or E4 User SL, or
- Office 365 Enterprise E3-E4 without ProPlus User SL, or
- Office 365 Nonprofit E3 User SL, or
- Office 365 Education E3-E4 User SL, or
- Office 365 Government E1, E3, or E4 User SL, or
- Office 365 Government E3-E4 without ProPlus User SL
1 with active Software Assurance coverage on October 1, 2012, or later
2 with active Software Assurance on or after the date the software is first available for download through Volume Licensing
**Additional Functionality:**
- Audio, Video and Web Conferencing
- Desktop Sharing
- Room Systems
- Multiple HD Video Streams

**Required Additive CAL:**
- Skype for Business Server 2015 Enterprise CAL, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Enterprise Mobility Suite², or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- Skype for Business Online Plan 2, 2A or 2G User SL, or

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Microsoft Volume Licensing License Agreement/Product Use Rights (April 2015) 46
Additional Functionality:
Voice Telephony
Call Management

Required Additive CAL:
Skype for Business Server 2015 Plus CAL, or
Office 365 Enterprise E4 User SL, or
Office 365 Enterprise E4 without ProPlus User SL, or
Office 365 Education E4 User SL, or
Office 365 Government E4 User SL, or
Office 365 Government E4 without ProPlus User SL

Additional Terms:

UNAUTHENTICATED ACCESS
You do not need CALs for any user or device that accesses your Instances of the server software without being directly or indirectly authenticated by Active Directory or Skype for Business Server.

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS
You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only under licenses with active Software Assurance.

SQL Server 2014 Business Intelligence
The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)   Additional Software: Yes (See Appendix 3)
License Mobility Within Server Farms: Yes (See General Terms)   See Applicable Notices: Automatic Updates (See Appendix 1)
Included Technologies: Windows Software Components (See Universal)   External User Access: CALs

BASE CALs
You need:

SQL Server 2014 CAL

Additional Terms:

RUNNING INSTANCES OF THE SERVER SOFTWARE
For each server license, software may be Run in only one Physical or Virtual OSE at a time, but you may use any number of Running Instances of the server software in that OSE.

DOWN-EDITION RIGHTS
In place of any permitted Instance, you may use an Instance of the 2014 or any earlier version of Standard or any version of Workgroup or Small Business.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

---

**CAL WAIVER FOR BATCH JOBS**
You do not need CALs for any user or device that accesses your instances of the server software solely through a batching process. “Batching” is an activity that allows a group of tasks occurring at different times to be processed all at the same time.

### SQL Server 2014 Enterprise

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

| Self-Hosting of Applications Allowed: Yes (See Appendix 2) | Additional Software: Yes (See Appendix 3) |
| License Mobility Within Server Farms: Yes (See General Terms) | See Applicable Notices: Automatic Updates (See Appendix 1) |
| Included Technologies: Windows Software Components (See Universal License Terms) | External User Access: CALs |

**Additional Terms:**

New server licenses for SQL Server 2014 Enterprise (Server/CAL) are not available. Existing Software Assurance customers upgrading to the 2014 version should refer to the April 2014 License Agreement/Product Use Rights for their license terms.

### SQL Server 2014 Standard

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

| Self-Hosting of Applications Allowed: Yes (See Appendix 2) | Additional Software: Yes (See Appendix 3) |
| License Mobility Within Server Farms: Yes (See General Terms) | See Applicable Notices: Automatic Updates (See Appendix 1) |
| Included Technologies: Windows Software Components (See Universal License Terms) | External User Access: CALs |

**BASE CALs**

You need:

- □ SQL Server 2014 CAL

**Additional Terms:**

**RUNNING INSTANCES OF THE SERVER SOFTWARE**

For each server license, software may be run in only one Physical or Virtual OSE at a time, but each you may use any number of Running Instances of the server software in that OSE.

**DOWN-EDITION RIGHTS**

In place of any permitted Instance, you may use an Instance of any version of Workgroup or Small Business. LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

### Visual Studio Team Foundation Server 2013 with SQL Server 2014 Technology

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

| Self-Hosting of Applications Allowed: Yes (See Appendix 2) | Additional Software: Yes (See Appendix 3) |
| License Mobility Within Server Farms: Yes (See General Terms) | External User Access: CALs |
### BASE CALs

<table>
<thead>
<tr>
<th>Introduction</th>
<th>BASE CALs</th>
<th>Server/CAL</th>
<th>Per Core</th>
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<tbody>
<tr>
<td>Mgmt</td>
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</tr>
<tr>
<td>Servers</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
You need:

Visual Studio Team Foundation Server 2013 CAL

**ADDITIVE CALs**

<table>
<thead>
<tr>
<th>Additional Functionality</th>
<th>Required Additive License (i.e. Additive CAL equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request and Manage Feedback</td>
<td>Visual Studio Test Professional 2013 with MSDN, or</td>
</tr>
<tr>
<td>Test Management</td>
<td>Visual Studio Premium 2013 with MSDN, or</td>
</tr>
<tr>
<td>Agile Portfolio Management</td>
<td>Visual Studio Ultimate 2013 with MSDN, or</td>
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<td>Work Item Char Authoring</td>
<td>MSDN Platforms</td>
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<td>Release Management</td>
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<tr>
<td>Team Rooms</td>
<td></td>
</tr>
</tbody>
</table>

**Additional Terms:**

**USAGE NOT REQUIRING A CLIENT ACCESS**

LICENS A CAL is not required:

To view, edit, or enter work items.

To access Team Foundation Server Reporting.

For accessing Visual Studio Online via a Team Foundation Server 2013 Proxy.

For providing approvals to stages as part of the Release Management pipeline.

For accessing Visual Studio Team Foundation Server through a pooled connection from another integrated application or service.

**VISUAL STUDIO TEAM FOUNDATION SERVER BUILD SERVICES**

If you have one or more Licensed Users of Visual Studio Ultimate with MSDN, Visual Studio Premium with MSDN, or Visual Studio Professional with MSDN, then you may also install the Visual Studio software and permit access and use of it as part of Team Foundation Server 2013 Build Services by your Licensed Users and Licensed Devices of Team Foundation Server 2013.

**LICENSE TERMS FOR MICROSOFT SHAREPOINT FOUNDATION 2013**

The software is accompanied by Microsoft SharePoint Foundation 2013 which is licensed to you under its own terms. A copy of those separate license terms are located in the “Licenses” folder.

**THIRD PARTY SOFTWARE**

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

**TECHNICAL LIMITATIONS**

You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.

**LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

You have the right to reassign server licenses as described in “License Mobility – Assigning Server and External Connector Licenses and Using Software within and across Server Farms” only for licenses with active Software Assurance.

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**Windows MultiPoint Server 2012 Premium**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:
Self-Hosting of Applications Allowed: No
License Mobility Within Server Farms: No
Unwanted Software (Notice I) (See Appendix 1)

External User Access: CALs

**BASE CALs**

*You need:* Windows MultiPoint Server 2012 CAL with active Software Assurance on or after the date Windows Server 2012 is first available for download through Volume Licensing

- Introduction
- Universal Terms
- Desktop Apps
- Desktop OS
- Processor/CAL
- Server/CAL
- Per Core

- Specialty Servers
- Dev Tools
- Online Services
- Combined Models
- Appendices
- Product Index
And:
- Windows Server 2012 CAL, or
- Core CAL Suite¹, or
- Core CAL Bridge for Microsoft Intune¹, or
- Core CAL Bridge for Office 365¹, or
- Core CAL Bridge for Office 365 User SL, or
- Core CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL²

ADDITIVE CALs

Product or Functionality: Windows Server 2012 Rights Management Services

List of CALs:
- Windows Server 2012 Active Directory Rights Management Services CAL, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL

Additional Terms:

RUNNING INSTANCES OF THE SOFTWARE

You have the corresponding rights below for each server license you acquire and assign. You may run on the licensed server at any one time:

One instance of the server software in the physical OSE¹, and
One instance of the server software in one virtual OSE

*If you run the maximum permitted number of instances (physical and virtual), the instance of the server software running in the physical OSE may be used only to host and manage virtual OSEs.

ACCESS LICENSES

CALs are not required to access server software running a Web or HPC Workload.
CALs not required for access in a physical OSE used solely for hosting and managing virtual OSEs.

VALIDATION

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see [http://go.microsoft.com/fwlink/?linkid=39157](http://go.microsoft.com/fwlink/?linkid=39157).

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see
If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software,

or you may not be able to obtain certain updates or upgrades from Microsoft.
- **Windows MultiPoint Server 2012 Connector**

You may install and use the Windows Server 2012 MultiPoint Connector software on any device that is licensed to access Windows Server 2012. You may use this software only to access the MultiPoint Server software. If you access the server software from this device solely to use the MultiPoint Dashboard you do not need a MultiPoint Server CAL.

**Data Storage Technology**

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.

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**Windows MultiPoint Server 2012 Standard**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

| Self-Hosting of Applications Allowed: | No |
| Additional Software: | Yes (See Appendix 3) |
| License Mobility Within Server Farms: | No |
| See Applicable Notices: | Data Transfer, MPEG-4, VC-1, Potentially Unwanted Software (Notice I) (See Appendix 1) |

**External User Access: CALs**

**BASE CALs**

You need:

- Windows MultiPoint Server 2012 CAL

And:

- Windows Server 2012 CAL, or
- Core CAL Suite¹, or
- Core CAL Bridge for Microsoft Intune¹, or
- Core CAL Bridge for Office 365¹, or
- Core CAL Bridge for Office 365 User SL, or
- Core CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise Mobility Suite User SL²

**ADDITIVE CALs**

- **Product or Functionality:** Windows Server 2012 Rights Management Services

  **List of CALs:**
  - Windows Server 2012 Active Directory Rights Management Services CAL, or
  - Enterprise CAL Suite¹, or
  - Enterprise CAL Bridge for Office 365¹, or
  - Enterprise CAL Bridge for Office 365 User SL, or
  - Enterprise CAL Bridge for Microsoft Intune¹, or
  - Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
  - Enterprise Mobility Suite User SL²

  ¹ with active Software Assurance on or after the date Windows Server 2012 is first available for download through Volume Licensing
  ² Only the full User SL satisfies the access requirement
### Additional Terms:

<table>
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<tr>
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RUNNING INSTANCES OF THE SOFTWARE

You have the corresponding rights below for each server license you acquire and assign. You may run on the licensed server at any one time:

One Instance of the server software in the Physical OSE, and
One Instance of the server software in one Virtual OSE

1 If you run the maximum permitted number of Instances (physical and virtual), the Instance of the server software running in the Physical OSE may be used only to host and manage Virtual OSEs.

ACCESS LICENSES

CALs are not required to access server software running a Web or HPC Workload.
CALs not required for access in a Physical OSE used solely for hosting and managing Virtual OSEs.

VALIDATION

The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see http://go.microsoft.com/fwlink/?linkid=39157.

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see http://go.microsoft.com/fwlink/?linkid=96551. If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

need to reactivate the software, or
receive reminders to obtain a properly licensed copy of the software,
or you may not be able to obtain certain updates or upgrades from Microsoft.

You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see http://go.microsoft.com/fwlink/?linkid=96552.

WINDOWS MULTIPLEX SERVER 2012 CONNECTOR

You may install and use the Windows Server 2012 MultiPoint Connector software on any device that is licensed to access Windows Server 2012. You may use this software only to access the MultiPoint Server software. If you access the server software from this device solely to use the MultiPoint Dashboard you do not need a MultiPoint Server CAL.

DATA STORAGE TECHNOLOGY

The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.
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<th>Processor/CAL</th>
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<th>Per Core</th>
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### SERVERS: PER CORE (CORE LICENSE)

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<th>Product Description</th>
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<td>BizTalk Server 2013 R2 Branch</td>
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<tr>
<td>SQL Server 2014 Parallel Data Warehouse Core</td>
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<tr>
<td>SQL Server 2014 Enterprise Core</td>
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<tr>
<td>SQL Server 2014 Standard Core</td>
<td>54</td>
</tr>
</tbody>
</table>

### DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)

- Core Factor
- Hardware Thread
- Instance
- Licensed Server
- OSE
- Physical Core
- Physical OSE
- Physical Processor
- Running Instances
- Server
- Server Farm
- Virtual Core
- Virtual OSE

You have the rights below for each server you properly license.

#### Server Licenses

- You must assign each license to a single Server.
- You may license by Physical Cores on a Server or by individual Virtual OSE.
- You may use additional software listed in Appendix 3 in conjunction with your use of server software.

#### LICENSING BY PHYSICAL CORE ON A SERVER

- The number of licenses required equals the number of Physical Cores on the Licensed Server multiplied by the applicable Core Factor located at [http://go.microsoft.com/fwlink/?LinkID=229882](http://go.microsoft.com/fwlink/?LinkID=229882).
- You may use any number of Running Instances of the server software in the Physical OSE on the Licensed Server.
- For enterprise and parallel data warehouse editions, you may use any number of Running Instances of the server software on the Licensed Server in a number of Physical and/or Virtual OSEs equal to the number of licenses assigned to it.
- For each additional enterprise edition license that you assign, you may use Running Instances of the server software in one additional OSE on the Licensed Server.

#### LICENSING BY INDIVIDUAL VIRTUAL OSE

- The number of licenses required equals the number of Virtual Cores in each Virtual OSE in which you will Run the server software, subject to a minimum of four licenses per Virtual OSE.
- If any Virtual Core is at any time mapped to more than one hardware thread, you need a license for each additional hardware thread.
- You may use any number of Running Instances of the software in any Virtual OSE for which you have assigned the required number of licenses.

#### Additional Licensing Requirements and/or Use Rights

**LICENSE MOBILITY -- ASSIGNING CORE LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS**

- You may reassign licenses for which you have active Software Assurance coverage to any of your Servers located within the same Server Farm as often as needed. You may reassign licenses from one server farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment).
## PRODUCT-SPECIFIC LICENSE TERMS

### BizTalk Server 2013 R2 Branch

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

<table>
<thead>
<tr>
<th>Self-Hosting of Applications Allowed: No</th>
<th>Additional Software: Yes (See Appendix 3)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Introduction</th>
<th>Universal Terms</th>
<th>Desktop Apps</th>
<th>Desktop OS</th>
<th>Processor/CAL</th>
<th>Server/CAL</th>
<th>Per Core</th>
</tr>
</thead>
</table>


License Mobility Within Server Farms: **Yes** (See General Terms)

Included Technologies: **Windows Software Components** (See Universal License Terms)

See Applicable Notices: **Data Transfer** (See Appendix 1)

---

### Additional Terms:

#### OFFICE WEB COMPONENT

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

### LIMITATIONS ON USE

You may Run Instances of the software on Licensed Servers only at the endpoint of your internal network (or edge of your organization) to connect business events or transactions with activities processed at that endpoint; provided, the Licensed Server may not:

- act as the central node in a “hub and spoke” networking model,
- centralize enterprise-wide communications with other servers or devices; or automate business processes across divisions, business units, or branch offices.

You may not use the server software, including the Master Secret Server, on a server that is part of a networked cluster or in an operating system environment that is part of a networked cluster of OSEs on the same server.

---

### BizTalk Server 2013 R2 Enterprise

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See Appendix 2)

License Mobility Within Server Farms: **Yes** (See General Terms)

Additional Software: **Yes** (See Appendix 3)

Included Technologies: **Windows Software Components** (See Universal License Terms)

See Applicable Notices: **Data Transfer** (See Appendix 1)

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### Additional Terms:

#### OFFICE WEB COMPONENT

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

---

### BizTalk Server 2013 R2 Standard

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: **Yes** (See Appendix 2)

License Mobility Within Server Farms: **Yes** (See General Terms)

Additional Software: **Yes** (See Appendix 3)

Included Technologies: **Windows Software Components** (See Universal License Terms)

See Applicable Notices: **Data Transfer** (See Appendix 1)

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### Additional Terms:
OFFICE WEB COMPONENT

You may use the component only to view and print copies of static documents, text and images created with the software and you do not need separate licenses for copies of the component.

LIMITATIONS ON USE

You may not use the server software, including the Master Secret Server, on a server that is part of a networked cluster or in an operating system environment that is part of a networked cluster of OSEs on the same server.
Microsoft Dynamics AX 2012 R3 Standard Commerce Server Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)  Additional Software: Yes (See Appendix 3)

License Mobility Within Server Farms: Yes (See General Terms)

Additional Terms:

MODIFICATION RIGHT

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow you to extend its functionality. You may modify or create derivative works of these components and use those derivative works, but solely internally with the software.

SQL Server 2012 Parallel Data Warehouse Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)  Additional Software: Yes (See Appendix 3)

License Mobility Within Server Farms: No

Additional Terms:

Included Technologies: Windows Software Components (See Universal License Terms)

THIRD PARTY SOFTWARE

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

FAIL-OVER SERVERS

The Parallel Data Warehouse (PDW) Appliance is a single unit made up of two or more compute nodes (Licensed Servers) all controlled by a single PDW control virtual machine (Virtual OSE). Technology is built in to the appliance which allows the software to fail-over to another compute node on the appliance. You do not need additional licenses for the software running in fail-over OSEs as executed by the PDW Appliance technology.

SQL Server 2014 Enterprise Core

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Self-Hosting of Applications Allowed: Yes (See Appendix 2)  Additional Software: Yes (See Appendix 3)

License Mobility Within Server Farms: Yes (See General Terms)  Included Technologies: Windows Software Components (See Universal License Terms)

See Applicable Notices: Automatic Updates (See Appendix 1)

Additional Terms:

DOWN-EDITION RIGHTS
In place of any permitted Instance, you may use an Instance of either the 2008 R2 version of Datacenter, the 2008 R2 or any earlier version of Enterprise, or the 2014 or any earlier version of Business Intelligence, Standard, Workgroup, or Small Business.

**SQL Server 2014 Standard Core**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

- Self-Hosting of Applications Allowed: Yes (See Appendix 2)
- Additional Software: Yes (See Appendix 3)
License Mobility Within Server Farms: **Yes** (See General Terms)  
Included Technologies: **Windows Software Components** (See Universal License Terms)

**Additional Terms:**

**DOWN-EDITION RIGHTS**

In place of any permitted instance, you may use an instance of either the 2012 or earlier version of Standard, or any version of Workgroup or Small Business.
MANAGEMENT SERVERS (MANAGEMENT LICENSE [SERVER OR CLIENT])

System Center 2012 R2 Client Management Suite 57
System Center 2012 R2 Configuration Manager 57
System Center 2012 R2 Datacenter 57

GENERAL LICENSE TERMS

DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS, DEFINITIONS)
Instance, Licensed Server, Managing an OSE, OSE, Physical OSE, Running Instances, Server Farm and Virtual OSE

Management Licenses permit Management of OSEs by the corresponding version of the software or earlier versions. Management License version determines the version of applicable license terms (including use under downgrade rights notwithstanding terms to the contrary).

SERVER MANAGEMENT LICENSES:
You have the rights below for each Server you properly license.

Server Management Licenses are required for OSEs running server operating systems.
You must assign one license for every two processors on the managed Server.
The licenses assigned to the managed Server must be the same edition.

For standard edition licenses, you may use the software to Manage up to two OSEs per license on the managed Server.
For standard edition licenses, you may also Manage the Physical OSE on the managed Server if it is used solely to host and Manage a Virtual OSE.
For standard edition licenses, you may assign additional standard licenses to your managed Server and Manage two additional OSEs per license.
For datacenter edition licenses, you may use the software to Manage an unlimited number of OSEs on the managed Server.

CLIENT MANAGEMENT LICENSES:
Client Management Licenses are required for all other OSEs.
You may use the software to Manage your OSEs (number permitted and users and devices covered per license depends on license type assigned).
Management of an OSE accessed by more than one user requires an OSE Client Management License or User Client Management Licenses for each user.

MANAGEMENT LICENSES ARE NOT REQUIRED FOR:
OSEs in which there are no Running Instances of software.
Any of your network infrastructure devices functioning solely for the purpose of transmitting network data and not running Windows Server software.
Conversion of OSEs from Physical to Virtual.
Any device solely monitored or managed for hardware components’ status with respect to system temperature, fan speed, power on/off, system reset or CPU availability.
The physical OSE on your server when it is being used solely to run hardware virtualization software, provide hardware virtualization services, and run software to manage and service OSEs on that device.

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**PRODUCT-SPECIFIC LICENSE TERMS**

System Center 2012 R2 Client Management Suite

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**CLIENT MANAGEMENT LICENSES**

You need:

- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Enterprise CAL Bridge for Office 365 and Microsoft Intune¹, or
- Enterprise CAL Bridge for Microsoft Intune¹, or
- Enterprise CAL Bridge for Enterprise Mobility Suite¹, or
- Enterprise CAL Bridge for Enterprise Mobility Suite User SL, or
- System Center 2012 R2 Client Management Suite (User or OSE Client ML)

¹ with active Software Assurance coverage on or after the date the software is first available for download through Volume Licensing

System Center 2012 R2 Configuration Manager

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**CLIENT MANAGEMENT LICENSES**

You need:

- Core CAL Suite¹, or
- Core CAL Bridge for Office 365¹, or
- Core CAL Bridge for Office 365 User SL, or
- Enterprise CAL Suite¹, or
- Enterprise CAL Bridge for Office 365¹, or
- Enterprise CAL Bridge for Office 365 User SL, or
- Microsoft Intune User SL, or
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2 Only the full User SL satisfies the access requirement

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License Mobility Within Server Farms: No
Self-Hosting of Applications Allowed: Yes (See Appendix 2)

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core
Mgmt → Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index

Servers

Microsoft Volume Licensing License Agreement/Product Use Rights (April 2015) 58
See Applicable Notices: Data Transfer, Bing Maps (See Appendix 1) Included Technologies: SQL Server Technology, Windows Software Components (See Universal License Terms)

SERVER MANAGEMENT LICENSES

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System Center 2012 R2 Standard

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Self-Hosting of Applications Allowed: Yes (See Appendix 2)

See Applicable Notices: Data Transfer, Bing Maps (See Appendix 1) Included Technologies: SQL Server Technology, Windows Software Components (See Universal License Terms)

SERVER MANAGEMENT LICENSES

Required Server Management Licenses:

System Center 2012 R2 Standard
SPECIALTY SERVERS (SERVER LICENSE)

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Instance, Licensed Server, OSE, Physical OSE, Running Instance, Server Farm and Virtual OSE. You have
the rights below for each server license you acquire.

SERVER LICENSES

You must assign each license to a single Server.

For each license, you may use one Running Instance of server software on the Licensed Server in either a Physical or Virtual OSE.

You may use the additional software listed in Appendix 3 in conjunction with your use of server software.

Additional Licensing Requirements and/or Use Rights

LICENSE MOBILITY -- ASSIGNING SERVER LICENSES AND USING SOFTWARE WITHIN AND ACROSS SERVER FARMS

For products designated as having License Mobility, you may reassign licenses to any of your Servers located within the same Server Farm
as often as needed. Some products may require Software Assurance for these rights. You may reassign licenses from one server farm to
another, but not on a short-term basis (i.e., not within 90 days of the last assignment).

PRODUCT-SPECIFIC LICENSE TERMS

Forefront Identity Manager 2010 - Windows Live Edition

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Self-Hosting of Applications Allowed: No

Additional Software: Yes (See Appendix 3)

See Applicable Notices: No

License Mobility Within Server: No

Additional Terms:

You may use the software to import identity data, and changes to those data, from one or more connected data sources and to facilitate the
synchronization and transfer of those data, between your connected data sources and the Microsoft Passport Network / Windows Live ID
service (“Service”). You may not use the software for any other purpose. For example, you may not use the software to synchronize or
facilitate transfer of data from one of your connected data sources to another. Your use of the Service remains subject to any and all
applicable terms of use and these rights do not change or supplement such terms.
Microsoft Dynamics CRM Workgroup Server 2015

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Self-Hosting of Applications Allowed: No
Additional Software: Yes (See Appendix 3)
See Applicable Notices: Data Transfer, Bing Maps, and Yammer (See Appendix 1)
License Mobility Within Server Farms: No

Introduction → Universal Terms → Desktop Apps → Processor/CAL → Server/CAL → Per Core
Desktop OS → Mgmt → Specialty Servers → Combined Models → Appendices → Product Index
Dev Tools → Online Services
Servers
System Center Virtual Machine Manager 2008 R2 Workgroup Edition

License Mobility Within Server Farms: No
Self-Hosting of Applications Allowed: No
Additional Software: Yes (See Appendix 3)

Windows Server 2012 R2 Essentials

Self-Hosting of Applications Allowed: No
Additional Software: Yes (See Appendix 3)
See Applicable Notices: Data Transfer, MPEG-4, VC-1, Potentially Unwanted Software (Notice I) (See Appendix 1)
License Mobility Within Server Farms: No

Additional Terms:

LIMITATIONS ON USE

At any one time, you may Run an instance of the server software in One Physical OSE, and One Virtual OSE.

You must run the server software within a domain where the Server’s Active Directory is configured:
As the domain controller (a single server which contains all the flexible single master operations (FSMO) roles),
As the root of the domain forest,
Not to be a child domain, and
To have no trust relationship with any other domains.

If both permitted Instances are running, the Instance in the Physical OSE may be used only to run hardware virtualization software, provide hardware virtualization services, or run software to manage and service operation system environments on the licensed server. That Instance does not need to meet the requirements in (2) above. That is the only configuration that does not require the Instance to be a domain controller.

30 days after the initial installation of the server software, the software will from time to time verify that Active Directory is configured as above. If the configuration verification fails, the following will occur:
Failure warnings will be presented to the server administrator. The failure warnings are also viewable in the health alert section in the Windows Server 2012 R2 Essentials Dashboard.
On the 22nd day of continued non-compliance, the server will shut down until the administrator reboots the server;
Once rebooted, the server can be run for another 21 days before it shuts down again. This will continue until you have corrected your configuration. During any 21 day period, you are able to make the necessary corrections to your configuration to become compliant with these license terms.

Once you have corrected your configuration, the warnings and automatic shutdowns will cease.

USING THE SERVER SOFTWARE

A User Account is a unique user name with its associated password created through the Windows Server 2012 R2 Essentials Console. You may use up to 25 user accounts. Each user account permits a named user to access and use the server software on that server. You
may reassign a user account from one user to another provided that the reassignment does not occur within 90 days of the last assignment.

**WINDOWS SERVER 2012 R2 ESSENTIALS CONNECTOR**
You may install and use the Windows Server 2012 R2 Essentials Connector software on no more than 50 devices at any one time. You may use this software only with the server software.

**WINDOWS SERVER 2012 R2 ACTIVE DIRECTORY RIGHTS MANAGEMENT SERVICES ACCESS**
You must acquire a Windows Server 2012 R2 Active Directory Rights Management Services CAL for each User Account through which a user directly or indirectly accesses the Windows Server 2012 R2 Active Directory Rights Management Services functionality.
VALIDATION
The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see http://go.microsoft.com/fwlink/?linkid=39157.

During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you, except that Microsoft may use and share the information to prevent unlicensed use of the software. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see http://go.microsoft.com/fwlink/?linkid=96551.

If the software is not properly licensed, the functionality of the software may be affected. For example, you may:

- need to reactivate the software, or
- receive reminders to obtain a properly licensed copy of the software, or
you may not be able to obtain certain updates or upgrades from Microsoft.

You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see http://go.microsoft.com/fwlink/?linkid=96552.

DATA STORAGE TECHNOLOGY
The server software may include data storage technology called Windows Internal Database or Microsoft SQL Server Desktop Engine for Windows. Components of the server software use these technologies to store data. You may not otherwise use or access these technologies under these License Agreement/Product Use Rights.
DEVLEOPER TOOLS (USER LICENSE)

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To run software on Microsoft Azure Platform Services you must:
Activate your MSDN subscription by linking your Microsoft account to the MSDN subscription.
Deploy your licenses only with Microsoft Azure Platform Services.
Agree that you will remain responsible for the obligations under your Volume Licensing Agreement with regards to software deployed and managed on your behalf on Microsoft Azure Platform Services.

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Your end users may access the software to perform acceptance tests or to provide feedback on your programs.
SUPERSEDING USE TERMS
Your use of software development kits (SDKs), driver development kits (DDKs), feature packs, agents, remote tools, and patterns and practices releases that come with separate license terms is subject to those separate license terms.

WINDOWS SERVER 2012 R2 REMOTE DESKTOP SERVICES
Up to 200 anonymous users at a time may use the Remote Desktop Services feature of the Windows Server software to access online demonstrations of your programs.
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SQL Server 2012 Parallel Data Warehouse Developer
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See Applicable Notices: Data Transfer, Bing Maps, Location Framework, Mapping APIs, Microsoft Accounts in Visual Studio, H.264/MPEG-4 AVC and/or VC-1 (See Appendix 1)
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The software is accompanied by Microsoft SharePoint software, including SharePoint Windows Identity Foundation Extensions, Microsoft Office Software, including Office Primary Interop Assemblies and Windows SDKs, which are all licensed to you under their own terms. The license terms for these software components are located in the “Licenses” folder of the software installation directory. If you do not agree to the license terms for these software components, you may not use them.

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If you pass precise location data or other user related data (e.g., user identifier, profile data, behaviorally tracked user data, etc.) to the Microsoft Advertising SDK for Windows Phone, then your program must (a) notify users that it will be collecting and using user related information and providing this information to Microsoft for Microsoft’s advertising use, and (b) explicitly obtain affirmative user consent (e.g. the user must click an “Accept” or continue “Install” button) for this upon download of the software and/or application. In addition, you agree to: (a) comply with certification and other requirements for Windows Phone; (b) comply with Microsoft’s privacy and other policies in your collection and use of any user data; (c) not collect or use any user identifier created or provided to you by Microsoft for any purpose other than passing such identifier to a Microsoft advertising service as part of your use of the service; and (d) provide in your privacy policy and/or terms of use a link that provides users with the ability to opt out of Microsoft interest based advertising at the following location https://choice.live.com/AdvertisementChoice/.

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The software includes the Extension Manager, New Project Dialog, Web Platform Installer, Microsoft NuGet-Based Package Manager, and Microsoft ASP.NET Web Pages package manager features, each of which enables you to obtain software applications or packages through the Internet from other sources. Those software applications and packages are offered and distributed in some cases by third parties and in some cases by Microsoft, but each such application or package is under its own license terms. Microsoft is not distributing or licensing any of the third-party applications or packages to you. You acknowledge and agree: that you are obtaining the applications or packages from such third parties and under separate license terms applicable to each application or package including any license terms or embedded notices applicable to software dependencies that may be included in the package; and that Microsoft makes no representations, warranties or guarantees regarding any aspect of any such third-party applications or packages.

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MICROSOFT SYSTEM CENTER VIRTUAL MACHINE MANAGER (SCVMM)

Visual Studio Premium with MSDN customers may install and run SCVMM with the Visual Studio Premium software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.

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TECHNICAL LIMITATIONS

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**EXTENSION AND PACKAGE MANAGER FEATURES**

The software includes the Extension Manager, New Project Dialog, Web Platform Installer, Microsoft NuGet-Based Package Manager, and Microsoft ASP.NET Web Pages package manager features, each of which enables you to obtain software applications or packages through the Internet from other sources. Those software applications and packages are offered and distributed in some cases by third parties and in some cases by Microsoft, but each such application or package is under its own license terms. Microsoft is not distributing or licensing any of the third-party applications or packages to you. You acknowledge and
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Additional Terms:

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Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

BUILDSERVER.TXT FILE

BuildServer Lists can be found at http://go.microsoft.com/fwlink/?LinkId=286955. You may install copies of the files listed in it, onto your build machines. You may do so solely for the purpose of compiling, building, verifying and archiving your programs or to run quality or performance tests as part of the build process on your build machines. We may list additional files at http://go.microsoft.com/fwlink/?LinkId=286955 to use for this same purpose.

UTILITIES

Utilities Lists can be found at http://go.microsoft.com/fwlink/?LinkId=286955. The software contains certain components identified in that list. The components contained in the software vary by edition. You may copy and install the Utilities you receive with the software on to other third party machines. You may use the Utilities only to debug and deploy your programs and databases you develop with the software. You must delete all the Utilities installed onto a device when you finish debugging your program, but no later than 30 days after you install them on that device.

TECHNICAL LIMITATIONS

You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.
MICROSOFT SHAREPOINT, WINDOWS SDK AND MICROSOFT OFFICE COMPONENTS:

The software is accompanied by Microsoft SharePoint software, including SharePoint Windows Identity Foundation Extensions, Microsoft Office Software, including Office Primary Interop Assemblies and Windows SDKs, which are all governed by their own license terms. The license terms for these software components are located in the “Licenses” folder of the software installation directory.
agree: that you are obtaining the applications or packages from such third parties and under separate license terms applicable to each application or package including any license terms or embedded notices applicable to software dependencies that may be included in the package; and that Microsoft makes no representations, warranties or guarantees regarding any aspect of any such third-party applications or packages.

**SYSTEM CENTER – VIRTUAL MACHINE MANAGER (SCVMM)**

Visual Studio Test Professional with MSDN customers may install and run SCVMM with the Visual Studio Test Professional software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.

**Visual Studio Ultimate 2013 with MSDN**

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

See Applicable Notices: Data Transfer, Bing Maps, Location Framework, Mapping APIs, Microsoft Accounts in Visual Studio, H.264/MPEG-4 AVC and/or VC-1 (See Appendix 1)

Included Technologies: Windows Software Components and SQL Server Technology (See Universal License Terms)

**Additional Terms:**

**THIRD PARTY SOFTWARE**

Additional legal notices and license terms applicable to portions of the software are set forth in the ThirdPartyNotices file accompanying the software. In addition to any terms and conditions of any third party license identified in the ThirdPartyNotices file, the disclaimer of warranty and limitation on and exclusion of damages provisions of your Volume Licensing Agreement shall apply to all of the software.

**BUILDSERVER.TXT FILE**

BuildServer Lists can be found at http://go.microsoft.com/fwlink/?LinkId=286955. You may install copies of the files listed in it, onto your build machines. You may do so solely for the purpose of compiling, building, verifying and archiving your programs or to run quality or performance tests as part of the build process on your build machines. We may list additional files at http://go.microsoft.com/fwlink/?LinkId=286955 to use for this same purpose.

**UTILITIES**

Utilities Lists can be found at http://go.microsoft.com/fwlink/?LinkId=286955. The software contains certain components identified in that list. The components contained in the software vary by edition. You may copy and install the Utilities you receive with the software on to other third party machines. You may use the Utilities only to debug and deploy your programs and databases you develop with the software. You must delete all the Utilities installed onto a device when you finish debugging your program, but no later than 30 days after you install them on that device.

**TECHNICAL LIMITATIONS**

You may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software except, and solely to the extent: (i) permitted by applicable law, despite this limitation; or (ii) required to debug changes to any libraries licensed under the GNU Lesser General Public License which may be included with and linked to by the software.

**MICROSOFT SHAREPOINT, WINDOWS SDK AND MICROSOFT OFFICE COMPONENTS**

The software is accompanied by Microsoft SharePoint software, including SharePoint Windows Identity Foundation Extensions, Microsoft Office Software, including Office Primary Interop Assemblies and Windows SDKs, which are all governed by their own license terms. The license terms for these software components are located in the “Licenses” folder of the software installation directory.

**MICROSOFT ADVERTISING SDK**

If you pass precise location data or other user related data (e.g., user identifier, profile data, behaviorally tracked user data, etc.) to the Microsoft Advertising SDK for Windows Phone, then your program must (a) notify users that it will be collecting and using user related
information and providing this information to Microsoft for Microsoft’s advertising use, and (b) explicitly obtain affirmative user consent (e.g. the user must click an “Accept” or continue “Install” button) for this upon download of the software and/or application. In addition, you agree to: (a) comply with certification and other requirements for Windows Phone; (b) comply with Microsoft’s privacy and other policies in your collection and use of any user data; (c) not collect or use any user identifier created or provided to you by Microsoft for any purpose other than passing such identifier to a Microsoft advertising service as part of your use of the service; and (d) provide in your privacy policy and/or terms of use a link that provides users with the ability to opt out of Microsoft interest based advertising at the following location https://choice.live.com/AdvertisementChoice/.

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EXTENSION AND PACKAGE MANAGER FEATURES

The software includes the Extension Manager, New Project Dialog, Web Platform Installer, Microsoft NuGet-Based Package Manager, and Microsoft ASP.NET Web Pages package manager features, each of which enables you to obtain software applications or packages through the Internet from other sources. Those software applications and packages are offered and distributed in some cases by third parties and in some cases by Microsoft, but each such application or package is under its own license terms. Microsoft is not distributing or licensing any of the third-party applications or packages to you. You acknowledge and agree: that you are obtaining the applications or packages from such third parties and under separate license terms applicable to each application or package including any license terms or embedded notices applicable to software dependencies that may be included in the package; and that Microsoft makes no representations, warranties or guarantees regarding any aspect of any such third-party applications or packages.

OFFICE PROFESSIONAL PLUS 2013

The Licensed User may also install and use one copy of Office Professional Plus 2013 on one device for production use. Except as provided here, the Desktop Applications section of these License Agreement/Product Use Rights applies to the Licensed User’s use of this software.

SYSTEM CENTER – VIRTUAL MACHINE MANAGER (SCVMM)

Visual Studio Ultimate with MSDN customers may install and run SCVMM with the Visual Studio Ultimate software for the purpose of creating, deploying and managing lab environment(s). A lab environment is a virtual operating system environment used solely for the purpose of developing and testing your programs. You do not need management licenses for that use. No other production use rights of SCVMM are given under this license, such as managing virtualized production servers.
Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core

Mgmt → Specialty Servers → Dev Tools → Online Services → Combined Models → Appendices → Product Index
ONLINE SERVICES (USER OR DEVICE SUBSCRIPTION LICENSE, SERVICES SUBSCRIPTION LICENSE, AND/OR ADD-ON SUBSCRIPTION LICENSE)

All terms of service for Online Services are published in the Microsoft Online Services Terms (OST) document, at http://go.microsoft.com/fwlink=9840733 and are incorporated into these License Agreement/Product Use Rights by this reference. The OST describes the process for updating the terms of service that apply to Online Services.

To the extent a Product or other offering consists of Online Services and another product, the Online Services will be governed by the terms in the OST and all other products will be governed by these License Agreement/Product Use Rights.
Combined Licensing Models

Core Infrastructure Server (CIS) Suite Datacenter  
Core Infrastructure Server (CIS) Suite Standard  
Virtual Desktop Infrastructure (VDI) Suite

GENERAL LICENSE TERMS

The product suites covered under this section include the rights to use multiple products. The licenses for these product suites provide rights to use software on a server and to manage software running on that server. The same software is also available under individual software and management licenses as described in other sections of these License Agreement/Product Use Rights. You are entitled to the use of the products included in the suite only as permitted in this section.

By acquiring a license for one of the product suites, you are acquiring a single license that may be assigned to a single device or server. You are not acquiring a set of individual software and management licenses for the individual products included in the product suite.

DEFINED TERMS IN THIS LICENSE MODEL (SEE UNIVERSAL LICENSE TERMS)

CAL, CIS Software, Client OSE, External Connector License, Instance, Licensed Server, Management License, Managing an OSE, OSE, Physical OSE, Physical Processor, Qualifying Third Party Device, Server, VDI Host, VDI Licensed Device, VDI Software and Virtual OSE

PRODUCT-SPECIFIC LICENSE TERMS

Core Infrastructure Server (CIS) Suite Datacenter

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Additional Terms:

APPLICABLE USE RIGHTS

Your access and use of CIS software is governed by the applicable license terms for the individual products comprising the CIS software as modified by these license terms. Despite anything to the contrary in the license terms for the individual Microsoft products comprising the CIS software, one CIS Suite license is required for every two physical processors. You need to license each Physical Processor on each Server on which you Run CIS Software.

CIS SOFTWARE INCLUDED

Windows Server Datacenter
System Center Datacenter

Windows Server Datacenter: You may use any number of Running Instances of the Windows Server Datacenter in any number of OSEs on each Licensed Server.
Management Licenses: For purposes of applying the license terms for System Center Datacenter to your use of the CIS Software, you are deemed to have assigned to the licensed server System Center Datacenter licenses equal to the number of CIS Suite Datacenter licenses assigned to the server.

ADDITIONAL TERMS

Despite anything to the contrary in your volume license agreement and the Universal License Terms in these License Agreement/Product Use Rights about upgrading and downgrading components separately, you may run a prior version or a lower edition of any of the individual products included in the CIS Suite as permitted in the license terms for that product in the License Agreement/Product Use Rights.

All other requirements to acquire and assign External Connector Licenses, CALs and Management Licenses to users or devices for access and management, as set forth in the License Agreement/Product Use Rights, remain in full force and effect.

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Core Infrastructure Server (CIS) Suite Standard

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Additional Terms:

Applicable Use Rights

Your access and use of CIS software is governed by the applicable license terms for the set of individual Microsoft products comprising the CIS software as modified by these license terms. Despite anything to the contrary in the license terms for the individual Microsoft products comprising the CIS software, one license is required for every two physical processors. You need to license each Physical Processor on each Server on which you run CIS Software.

CIS Software Included

Windows Server Standard
System Center Standard

Windows Server Standard: For each license of CIS Suite Standard that you assign to a Server, you may Run on the Licensed Server, at any one time:

One Instance of Windows Server Standard in one Physical OSE
One Instance of Windows Server Standard each in up to two Virtual OSEs

If you use the maximum permitted number of Running Instances (physical and virtual), the Instance Running in the Physical OSE may be used only to host and manage the Virtual OSEs.

Management Licenses: For purposes of applying the license terms for System Center Standard to your use of the CIS software, you are deemed to have assigned to the licensed server System Center Standard licenses equal to the number of CIS Suite Standard licenses assigned to the server.

Additional Terms

Despite anything to the contrary in your Volume Licensing Agreement and the Universal License Terms in these License Agreement/Product Use Rights about upgrading and downgrading components separately, you may run a prior version or a lower edition of any of the individual products included in the CIS Suite as permitted in the license terms for that product in the License Agreement/Product Use Rights. All other requirements to acquire and assign External Connector Licenses, CALs and Management Licenses to users or devices for access and management, as set forth in the License Agreement/Product Use Rights, remain in full force and effect.

Virtual Desktop Infrastructure (VDI) Suite

The license terms that apply to your use of this product are the Universal License Terms, the General License Terms for this Licensing Model, and the following:

Additional Terms:

Subscription License

VDI suite licenses are subscription licenses. The right to use software under a Subscription License expires upon expiration or termination of the enrollment or Volume Licensing Agreement under which you acquired the license. Despite anything to the contrary in your Volume Licensing Agreement, your right to use or access software or Manage OSEs under a VDI suite license ends when that license expires.

Roaming Use Rights

Except as provided below, the single primary user of the VDI Licensed Device may remotely access the virtual Client OSEs from any Qualifying Third Party Device without acquiring a separate VDI suite license for that device. Despite anything in your Volume Licensing
Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any enterprise products solely under Roaming Use Rights.

When the primary user is on your or your affiliates’ premises, Roaming Use Rights are not applicable. The limitations against accessing Windows Server software to host a graphical user interface (using RDS functionality or other technology) continue to apply when the Roaming Use Rights are invoked.

You may not permit access to the virtual Client OSEs from the VDI Licensed Device and a third party device at the same time. All access under the Roaming Use Rights must be for work-related purposes.
The primary user’s right to access the virtual Client OSEs under the Roaming Use Rights terminates when the corresponding rights on the VDI Licensed Device expire, there is a change in the primary user status or when the primary user leaves your organization. At that time, you must ensure that that user is no longer accessing the virtual Client OSEs under Roaming Use Rights.

**APPLICABLE USE RIGHTS**

Your access and use of VDI software and management of virtual Client OSEs accessed by your VDI Licensed Device are governed by the license terms for VDI software, as modified by these license terms. VDI suite licenses are per device only. The prohibition against separation of software components stated in your Volume Licensing Agreement does not apply to your use of VDI software.

**SOFTWARE RIGHTS**

The VDI Suite provides rights to use or access any version of the following VDI software during the term of your enrollment or Volume Licensing Agreement:

- [ ] Windows Server Remote Desktop Services (“RDS”)
- [ ] System Center – Virtual Machine Manager (“VMM”)

**REMOTE DESKTOP SERVICES**

You may directly or indirectly access RDS from your VDI Licensed Device except as follows. You may not access Windows Server software to host a graphical user interface (using RDS functionality or other technology) either:

- [ ] directly from your VDI Licensed Device or
- [ ] indirectly through a virtual OSE on your VDI host.

Despite anything to the contrary in the license terms for Windows Server, you do not need an RDS CAL for either the VDI Licensed Device or the VDI host to permit this access. You must, however, acquire and assign a base Windows Server CAL to both devices or to the accessing user.

**SYSTEM CENTER – VIRTUAL MACHINE MANAGER**

You may use VMM under your VDI suite license to manage, at any one time, up to four virtual Client OSEs in which software you are using remotely from your VDI Licensed Device is running. Those virtual OSEs may be on up to four different VDI hosts. You may not manage OSEs that are not on VDI hosts.
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APPENDIX 1: NOTICES

BING MAPS

The Product includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Your use of Bing Maps is governed by the Bing Maps End User Terms of Use available at http://go.microsoft.com/?linkid=9710837 and the Bing Maps Privacy Statement available at http://go.microsoft.com/fwlink/?LinkID=248686.

LOCATION FRAMEWORK

The software may contain a location framework component that enables support of location services in programs. In addition to the other limitations in your Volume Licensing Agreement, you must comply with all applicable local laws and regulations when using the location framework component or the rest of the software.

MAPPING APIs

The software may include application programming interfaces that provide maps and other related mapping features and services that are not provided by Bing (the “Additional Mapping APIs”). These Additional Mapping APIs are subject to additional terms and conditions and may require payment of fees to Microsoft and/or third party providers based on the use or volume of use of such APIs. These terms and conditions will be provided when you obtain any necessary product keys to use such Additional Mapping APIs or when you review or receive documentation related to the use of such Additional Mapping APIs.

MICROSOFT ACCOUNTS IN VISUAL STUDIO

If you are running the software on Windows 8.1, Windows 8, or Windows 7 with sign-in assistant, or any other version of Windows that supports providing a Microsoft Account directly to the software and you are signed into a Microsoft Account in those versions of Windows, you may automatically be signed into the software and VisualStudio.com services accessed by the software using the same Microsoft Account. This allows you to access services within the software and roam the software’s settings without being asked to re-enter your Microsoft Account credentials each time you start the software. For more information about signing into the software and the services available therein with a Microsoft Account, see the privacy statement http://go.microsoft.com/fwlink/?LinkId=286720.

NOTICE OF AUTOMATIC UPDATES TO PREVIOUS VERSIONS OF SQL SERVER

If the software is installed on servers or devices running any supported editions of SQL Server prior to SQL Server 2012 (or components of any of them) this software will automatically update and replace certain files or features within those editions with files from this software. This feature cannot be switched off. Removal of these files may cause errors in the software and the original files may not be recoverable. By installing this software on a server or device that is running such editions you consent to these updates in all such editions and copies of SQL Server (including components of any of them) running on that server or device.

NOTICE OF DATA TRANSFER

The product contains one or more software features that connect to Microsoft or service provider computer systems over the Internet. These features are identified in the Data Transfer Notices document at http://microsoft.com/licensing/contracts. Microsoft provides
services with products through these features. You will not always receive a separate notice when a feature connects. In some cases, you may switch off a feature or not use it.

**Computer Information**

The features use Internet protocols, which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software.

**Use of Information**

Microsoft does not use the information to identify or contact you. Microsoft uses this information to make services available to you when you use the software. Microsoft may use the computer information, accelerator information, search suggestions information, error reports, Malware reports and URL filtering reports to improve our software and services. We may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Microsoft software.
Consent for Data Transfer

By using these software features, you consent to the transmission of computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you run the software.

NOTICE ABOUT THE H.264/AVC VISUAL STANDARD, THE VC-1 VIDEO STANDARD, AND THE MPEG-4 PART 2 VISUAL STANDARD

This software may include H.264/AVC, VC-1, and MPEG-4 Part 2 visual compression technology. MPEG LA, L.L.C. requires this notice:

THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE ("VIDEO STANDARDS") AND/OR (ii) DECODE AVC, VC-1, MPEG-4 PART 2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE www.mpegla.com

POTENTIALLY UNWANTED SOFTWARE (NOTICE I)

If turned on, Windows Defender will search your computer for many types of malicious software ("malware"), including viruses, worms, bots, rootkits, spyware, "adware" and other potentially unwanted software. If you choose the recommended security settings when you first start using the software, such malware and other potentially unwanted software rated “high” or “severe” will automatically be removed. This removal may result in other software on your computer ceasing to work or your breaching a license to use that software.

It is possible that software that is not unwanted may be removed or disabled. If you use Windows Defender and Windows Update, Windows Defender is regularly updated through Windows Update.

POTENTIALLY UNWANTED SOFTWARE (NOTICE II)

The software will search your computer for low to medium severity Malware, including but not limited to, spyware, and other potentially unwanted software ("Potentially Unwanted Software"). The software will only remove or disable low to medium severity Potentially Unwanted Software if you agree. Removing or disabling this Potentially Unwanted Software may cause other software on your computer to stop working, and it may cause you to breach a license to use other software on your computer, if the other software installed this Potentially Unwanted Software on your computer as a condition of your use of the other software. You should read the license agreements for other software before authorizing the removal of this Potentially Unwanted Software.

By using the software, it is possible that you or the system will also remove or disable software that is not Potentially Unwanted Software.

RECORDING NOTICE

The laws of some jurisdictions require notice to or the consent of individuals prior to intercepting, monitoring and/or recording their communications and/or restrict collection, storage, and use of personally identifiable information. You agree to comply with all applicable laws and to obtain all necessary consents and make all necessary disclosures before using the online service and/or the recording feature(s).
**NOTICE ABOUT THE VISUAL AND AUDIO CODEC STANDARDS**

The Windows Embedded 8.1 Industry software may include visual and audio encoding and decoding technology. It is not licensed for any implementation or distribution in any commercial product or service. You are responsible for determining and securing license rights to include the technology in any commercial products and services that you develop or use with the software.

**YAMMER**

The software connecting Microsoft Dynamics CRM with Yammer will enable certain data to be shared between the two services. At the direction of you or your end users, the following data will be transmitted to Yammer through Microsoft Dynamics CRM: (i) posts; (ii) links to CRM records; (iii) information contained in the description field of the CRM records; and (vi) any other activity or content
you or your end users share with Yammer. Yammer’s Terms of Use are available at https://www.yammer.com/about/terms/. Its Privacy Statement is available at https://www.yammer.com/about/privacy/ apply to Customer Data sent to Yammer.
APPENDIX 2: SOFTWARE ASSURANCE BENEFITS

These benefits require Software Assurance coverage, and in some cases Software Assurance Membership. Please see the Product List for details and a complete list of Software Assurance benefits. Except as noted below, these benefits expire when your Software Assurance coverage ends.

Desktop Applications -- E-Learning

The Desktop Applications section of the License Agreement/Product Use Rights provides your license terms for eLearning Training Kits. However, you may not have more users than you have E-Learning licenses.

Microsoft Desktop Optimization Pack (MDOP) for Software Assurance

See Applicable Notices: Data Transfer, Potentially Unwanted Software (Notice II)

Active Software Assurance for the Windows Desktop Operating System, Active Software Assurance for Windows Industry, or an active VDA license provides you with eligibility to acquire licenses for MDOP. These licenses are an optional and separate purchase from Software Assurance. See the Product List for details and other eligibility options. MDOP includes the following:

- Microsoft Application Virtualization for Windows Desktops (App-V)
- Microsoft Advanced Group Policy Management (AGPM)
- Microsoft Diagnostics and Recovery Toolset (DaRT)
- Microsoft Enterprise Desktop Virtualization (MED-V)
- Microsoft BitLocker Administration and Monitoring (MBAM)
- Microsoft User Experience Virtualization (UE-V)

If you invoke this benefit, you have the rights below for each MDOP for Software Assurance license you acquire. See Universal License Terms, Definitions for meanings of "Qualifying Third Party Device."³

INSTALLATION AND USE RIGHTS

The “Licensed Device” is the device to which you have assigned your corresponding qualifying license (and Active Software Assurance coverage, if applicable).

You may install and use the software on the Licensed Device. Some functionality in the software is designed to manage software on the Licensed Device. You may use that functionality on other devices solely to manage software running on the Licensed Device.

You may also use the following components to manage software on servers within your domain, so long as the desktops within that domain are licensed for MDOP:

- AGPM DaRT
- UE-V

REMOTE ACCESS

You may access and use the MDOP for Software Assurance software running on the Licensed Device remotely from another device as described below.

Primary user¹: The single primary user of a device may access and use the software remotely from any other device. No other person may use the software under the same license at the same time, except to provide support services.

Non-primary users: Any user may access and use the software remotely from a separately Licensed Device.

Remote assistance: You may allow other devices to access the software to provide you with support services. You do not need additional licenses for this access.

¹ as that term is defined in the Desktop Operating Systems section ROAMING

USE RIGHTS
Except as provided below, the single primary user of the Licensed Device may use the MDOP for Software Assurance software on a Qualifying Third Party Device (See Universal License Terms, Definitions) to support permitted use or remote access of your licensed software on that Qualifying Third Party Device.

Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights.

When the primary user is on your or your affiliates’ premises, Roaming Use Rights are not applicable.

These rights are granted subject to the limitation on the number of users in the “Primary User” section, and all use must be for work-related purposes.
The primary user’s right to use the MDOP for Software Assurance software under these Roaming Use Rights terminates when either the corresponding rights on the Licensed Device expire or there is a change in the primary user status. At that time, you must ensure that that user is no longer using the MDOP for Software Assurance software under the Roaming Use Rights.

**BENCHMARK TESTING**

You must obtain Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of the MDOP for Software Assurance software.

**TERM OF LICENSE**

You may not access or use the software after your corresponding Windows Software Assurance coverage, Windows Software Assurance coverage, Windows Virtual Desktop Access subscription license, or MDOP license expires.

**Microsoft Dynamics CRM 2015 Professional Use Additive CAL – Unified Service Desk**

Each Microsoft Dynamics CRM 2015 Professional Use Additive CAL with active Software Assurance provides you the right to install and use Unified Service Desk (USD). The right to use USD is limited to the user or device to whom the qualifying CAL is assigned. You may not access or use USD after your Software Assurance coverage expires.

**Microsoft Dynamics AX 2012 R3 Servers — Fail-over Servers**

For any OSE in which you use Running Instances of the server software, you may use up to the same number of passive fail-over Running Instances in a separate OSE on any Server in anticipation of a fail-over event.

In order to utilize this benefit, you must comply with the following terms:

Maintain Software Assurance coverage on the server licenses and core licenses under which you run your licensed software and for all CALs under which you access your licensed software.

Your right to run the passive fail-over instances ends when your Software Assurance coverage ends.

Fail-over server rights do not apply in the case of software moved to shared third party servers under License Mobility through Software Assurance.

**Microsoft Dynamics AX — Localization and Updates**

Microsoft provides updates to the licensed software from time to time, which include revisions to help organizations remain current with applicable government tax and regulatory requirements (please refer to ‘Country Availability’ section in the Product List for more details). You are eligible to receive these updates and use them on licensed servers and the CALs permitting access to those licensed servers provided you have active Software Assurance for the licensed server and CALs.

**Office 2013, Project 2013 or Visio 2013 — Roaming Use Rights**

The Desktop Applications section of the License Agreement/Product Use Rights, as supplemented below, provides your license terms for use of the software under all editions of Office 2013, Project 2013 and Visio 2013 licenses with active Software Assurance coverage. In the case of any conflict between the terms in the Desktop Applications section and this section, these license terms govern. These rights are granted subject to the limitation on the number of users in the General License Terms of the Desktop Applications section, and all use must be for work-related purposes.

**USE OF SOFTWARE ON QUALIFYING THIRD PARTY DEVICE**

Except as provided below, the single primary user of the Licensed Device may:

- remotely access the software running on your servers (e.g., in your datacenter) from a Qualifying Third Party Device,
- run the software in a virtual OSE on a Qualifying Third Party Device, and
install and use the software on an USB drive on a Qualifying Third Party Device. Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops do not include any Qualifying Third Party Device from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights. (See Universal License Terms, Definitions).

When the primary user is on your or your affiliates’ premises, Roaming Use Rights are not applicable.

You may not run the software in the physical OSE on the third party device under the Roaming Use Rights. Making and storing copies on your servers or storage media

You have the additional rights below for each of your Office 2013, Project 2013 and Visio 2013 licenses with active Software Assurance coverage:

You may make any number of copies of the software.

You may store copies of the software on any of your servers or storage media.

**Introduction** → **Universal Terms** → **Desktop Apps** → **Desktop OS** → **Processor/CAL** → **Server/CAL** → **Per Core**
You may make and store copies of the software solely to exercise your right to access and use the software under your licenses as described above (e.g., you may not distribute copies of the software to third parties).

**TERM OF LICENSE**

The primary user's right to use the software under these Roaming Use Rights terminates when either the corresponding rights on the Licensed Device expire, Software Assurance coverage expires or there is a change in the primary user status. At that time, you must ensure that that user is no longer using the software under the Roaming Use Rights.

Despite anything to the contrary in your Volume Licensing Agreement, these Roaming Use Rights are non-perpetual. You may not access or use the software under the license terms of this Roaming Use Rights section after your Software Assurance coverage expires.

**Remote Desktop Services (“RDS”) User CAL -- Extended Rights**

You may use your RDS User CALs with active Software Assurance coverage, as described in the Windows Server license terms in these License Agreement/Product Use Rights, with Windows Server software running on a third party’s shared servers.

**Requirements:**

Maintain Software Assurance coverage on your CALs under which you exercise RDS User CAL – Extended Rights.

For each CAL used in this manner, either (i) exercise these rights on Microsoft Azure Platform Services or (ii) designate a qualified License Mobility through Software Assurance Partner through which you will exercise these rights. A list of qualified License Mobility through Software Assurance Partners is available at [http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx](http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx). You may designate a new License Mobility through Software Assurance Partner or elect to move from a License Mobility through Software Assurance Partner to Microsoft Azure Platform Services, but you must wait at least 90 days following a designation or election to make a new designation or election.

Complete and submit the License Mobility Validation form with each License Mobility through Software Assurance Partner who will run your licensed software on their shared servers. The License Mobility Validation form will be made available to you by the qualified License Mobility through Software Assurance Partner.

The OSE(s) in which you exercise RDS User CAL – Extended Rights must be dedicated to and accessed only by you. Other than administrative access by your designated License Mobility through Software Assurance Partner, no other party may access the OSE(s).

RDS User CAL – Extended Rights permit access by your users only for your internal benefit. They do not permit access by other users, such as users of solutions you make available to third parties.

You may continue to access RDS functionality running on your servers and otherwise exercise use rights under your RDS User CALs outside of these RDS User CAL – Extended Rights; however, each CAL must be assigned to the same single user accessing RDS functionality under the Extended Rights. You may reassign your CALs only as permitted in the “License Reassignment” section of the Universal License Terms. If you reassign a RDS User CAL, the former user may no longer exercise RDS User CAL – Extended Rights on the third party’s shared servers.

RDS User CAL – Extended Rights are intended to facilitate access to a graphical user interface hosted on Windows Server using RDS functionality or similar technology (sometimes referred to as “RDS Sessions.” They do not convey any right to deploy Windows desktop operating system via virtual desktop infrastructure on the third party’s shared servers.

Your rights to exercise RDS User CAL – Extended Rights on the third party’s shared servers expires with the expiration of the Software Assurance coverage on your RDS User CALs.

**Servers -- Disaster Recovery Rights**

For each instance of eligible server software you run in a physical or virtual OSE on a licensed server, you may temporarily run a backup instance in physical or virtual OSE on either, (a) servers dedicated to disaster recovery and to your use, or, (b) for instances of eligible software other than Windows Server, on Microsoft Azure Services, provided the backup instance is managed by Azure Site Recovery to Azure. The license terms for the software and the following limitations apply to your use of the backup instance.

The backup instance can run only during the following exception periods:

For brief periods of disaster recovery testing within one week every 90 days

During a disaster, while the production server being recovered is down

Around the time of a disaster, for a brief period, to assist in the transfer between the primary production server and the disaster recovery
In order to use the software under disaster recovery rights, you must comply with the following terms:
The OSE on the disaster recovery server must not be running at any other times except as above.
The OSE on the disaster recovery server may not be in the same cluster as the production server.
Other than backup instances run on Microsoft Azure Services, Windows Server license is not required for the disaster recovery server if the following conditions are met:

The Hyper-V role within Windows Server is used to replicate virtual OSEs from the production server at a primary site to a disaster recovery server.

The disaster recovery server may be used only to run hardware virtualization software, such as Hyper-V, provide hardware virtualization services, run software agents to manage the hardware virtualization software, serve as a destination for replication, receive replicated virtual OSEs, test failover, and await failover of the virtual OSEs.

run disaster recovery workloads as described above

The disaster recovery server may not be used as a production server.

Use of the software backup instance should comply with the license terms for the software.

Once the disaster recovery process is complete and the production server is recovered, the backup instance must not be running at any other times except those times allowed here.

Maintain Software Assurance coverage for all CALs, External Connector licenses and Server Management Licenses under which you access the backup instance and manage the OSEs in which that software runs.

Your right to run the backup instances ends when your Software Assurance coverage ends.

Servers -- License Mobility through Software Assurance

License Mobility through Software Assurance lets you move certain on-premises licenses covered by Software Assurance to third party shared servers subject to the terms below. See Universal License Terms, Definitions for meanings of "CALs," "manage," "OSEs," "server farm," and "virtual OSEs."

Applicable Products:

All Products that are currently eligible for “License Mobility within Server Farms” and covered by Software Assurance are eligible for License Mobility through Software Assurance. In addition, the following Products are also eligible for License Mobility through Software Assurance:

System Center – all Server Management Licenses (MLs), including SMSE and SMSD

Permitted Use:

With License Mobility through Software Assurance, you may:

Move your licensed software from your servers to a third party’s shared servers;
Access your licensed software running on the third party’s shared servers under the appropriate access licenses (the CALs and External Connector licenses identified in the license terms for the individual Products subject to the requirement that you maintain Software Assurance coverage on those licenses as described below, and the User and Device SLs identified in the license terms for the individual Products);
Run your software in virtual OSEs on the third party’s shared servers; and/or
Manage your OSEs that you use on the third party’s shared servers; and/or
Manage your OSEs that you use on your servers using software that you run on the third party’s shared servers.

Use of Licensed Software with Microsoft Online Services:

Furthermore, solely in support of your joint use of (i) licensed software on a third party’s shared servers (as described here) and (ii) a related, but separately licensed Microsoft Online Service, and despite anything to the contrary in the “Use of Software with the Online Service” section in the Online Services Use Rights, your right to use incidental software provided with that related Microsoft Online Service (software that allows the servers on which your software is run, as described here, to communicate with the Online Service Microsoft provisions) deemed to extend to that third party’s shared servers. Except as expresssly provided here, your right to run such software on the third party’s shared servers remains subject to the license terms for the Online Service, and expires upon the earlier of (i) the expiration of the corresponding Online Service subscription or (ii) your right to use licensed software on the third party’s shared servers.

Requirements:

To use License Mobility through Software Assurance, you must:

Maintain Software Assurance coverage for licenses under which you run software on third party shared servers;
Maintain Software Assurance coverage for all CALs and External Connector licenses under which you access your licensed software running on third party shared servers;

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Bien que vous ayez souscrit à la garantie de logiciels de base, vous pouvez utiliser les logiciels de base de Microsoft à compter de la date de réception à votre adresse. Une liste détaillée de ces logiciels peut être trouvée à l’adresse suivante : http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx.

Pour faciliter l’utilisation des logiciels de base, Microsoft a développé un système de gestion de ces logiciels. Ce système est essentiellement une plate-forme de gestion de logiciels dédiée qui gère efficacement la distribution et la gestion des licences de logiciels de base. Cette plate-forme est accessible en ligne et est accessible à partir de n’importe quel ordinateur équipé d’un navigateur web. Elle permet de gérer les licences de logiciels de base de Microsoft de manière simple et intuitive.

La plate-forme de gestion de logiciels de base propose une fonctionnalité de prévisualisation qui permet de vérifier les licences et informations relatives aux logiciels de base de Microsoft. Cette fonctionnalité est essentielle pour assurer la conformité des licences et informations de logiciels de base de Microsoft.

La plate-forme de gestion de logiciels de base est également dotée d’une fonctionnalité de suivi des modifications qui permet d’enregistrer les modifications apportées aux licences de logiciels de base de Microsoft. Cette fonctionnalité est très utile pour suivre les modifications apportées aux licences de logiciels de base de Microsoft et pour enregistrer les modifications apportées aux licences de logiciels de base de Microsoft.

La plate-forme de gestion de logiciels de base est également dotée d’une fonctionnalité de suivi des utilisateurs qui permet d’enregistrer les utilisateurs autorisés à utiliser les logiciels de base de Microsoft. Cette fonctionnalité est très utile pour suivre les utilisateurs autorisés à utiliser les logiciels de base de Microsoft et pour enregistrer les utilisateurs autorisés à utiliser les logiciels de base de Microsoft.

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<th>8 Managed OSEs per license</th>
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<tbody>
<tr>
<td>Specialty Servers</td>
<td>HPC Pack Enterprise</td>
<td>Each Server license with active Software Assurance coverage</td>
<td>1 OSE per license</td>
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**Servers -- Self-Hosted Applications**

The following additional licensing requirements and/or use rights apply to Self-Hosted Applications.

Self-Hosted Applications means those products for which the Product-Specific License Terms that indicate “Self-Hosted Applications: Yes”.

Despite any terms to the contrary in your Volume Licensing Agreement including these License Agreement/Product Use Rights, you may run licensed copies of Self-Hosted Applications that interact directly or indirectly with your own software to create a unified solution (“Unified Solution”) and permit third parties to use it, subject to the terms below.

**Requirements**

You must have the required Microsoft licenses and maintain Software Assurance coverage for:

- the Self-Hosted Applications run as part of the Unified Solution; and
- all access licenses used to make the Unified Solution available to external users (See Universal License Terms, Definitions). All Microsoft software used to create and deliver the Unified Solution must:
  - be licensed through a Volume Licensing program that is subject to these license terms (e.g., Enterprise Agreement, Select Plus Agreement, Open License Agreement) and not any other (e.g., Services Provider License Agreement, Independent Software Vendor Royalty License and Distribution Agreement); and
  - be marked as ‘Yes’ for ‘Self Hosting of Applications Allowed’ in these license terms. Your software must:
    - add significant and primary functionality to the Self-Hosted Applications that are part of the Unified Solution (dashboards, HTML editors, utilities, and similar technologies alone are not a primary service and/or application of a Unified Solution);
    - be the principal service and/or application of the Unified Solution, and must not allow direct access to the Self-Hosted Applications by any end user of the Unified Solution;
    - be delivered to end users over the Internet, a telephone network, or a private network from servers physically dedicated to you and under the day to day control of you or a third party other than the end user of the Unified Solution (the Unified Solution may not be loaded onto the end user’s device); and
    - be owned, not licensed, by you, except that your software may include non-substantive third party software that is embedded in, or operates in support of, your software.

All use of the Self-Hosted Applications remains governed by the license terms for those products. You may not transfer licenses acquired under your Volume Licensing Agreement except as permitted in that agreement.

**Changes to Use Rights**

Despite the terms of your Volume Licensing Agreement, we may modify or discontinue the above use rights at any time. However, if we do so, these use rights and the terms and conditions of your license agreement continue to apply to your use of the Self-Hosted Applications under licenses acquired before the effective date of that change until the end of your current term of Software Assurance coverage.

---

**Servers -- TechNet Subscription Media**

See Applicable Notices: Data Transfer

The Licensed User assigned a TechNet Subscription may install copies of the software on the user devices solely for evaluation. You may not use the software in a live operating environment, in a staging environment, in an application development environment.

Except as provided here, the General License terms of the Developer Tools section of the License Agreement/Product Use Rights applies to the use of the TechNet Subscription Media. Please see the Product List for additional TechNet Software Assurance benefits.

**Step-Up Licenses**

A Step-Up License permits you to run a premium edition in place of the qualifying product. When your Step-Up License becomes perpetual, it permanently replaces your rights to the qualifying product.
Software Assurance Product Support Services

The way you use the software may not be supportable. It may also require you to buy more support services. Each of us may use information acquired in connection with support services as long as that use does not disclose the other’s confidential information. The license terms for the underlying product apply to your use of any fixes.
SQL Server — Fail-over Servers

For any OSE in which you use Running Instances of the server software, you may use up to the same number of passive fail-over Running Instances in a separate OSE on any Server in anticipation of a fail-over event.

The following additional requirements apply if you have licensed the software by Physical Core or individual Virtual OSE under the Per Core licensing model:

If you license based on Physical Cores and the OSE in which you use the passive fail-over Running Instances is on a separate Server, the number of Physical Cores on the separate Server must not exceed the number of Physical Cores on the Licensed Server and the Core Factor for the Physical Processors in that Server must be the same or lower than the Core Factor for the Physical Processors in theLicensed Server.

If you license by individual Virtual OSE, the number of Hardware Threads used in that separate OSE must not exceed the number of Hardware Threads used in the OSE in which the active Running Instances are used.

In order to utilize this benefit, you must comply with the following terms:

Maintain Software Assurance coverage on the server licenses and core licenses under which you run your licensed software and for all CALs under which you access your licensed software.

Your right to run the passive fail-over instances ends when your Software Assurance coverage ends.

Fail-over server rights do not apply in the case of software moved to shared third party servers under License Mobility through Software Assurance.

SQL Server 2014 Enterprise and Biz Talk Server 2013 Enterprise -- Unlimited Virtualization

The license terms for SQL Server 2014 Enterprise and Biz Talk Server 2013 Enterprise in the Servers – Per Core section of the License Agreement/Product Use Rights, as supplemented below, provide your license terms for the software under core licenses with active Software Assurance coverage. In the case of any conflict between the applicable terms in the Servers – Per Core section and the license terms below, the license terms below govern.

For each server to which you have assigned the required number of licenses as provided in the “Physical Cores of a Server” section, you may run on the licensed server any number of instances of the server software in any number of physical and/or virtual OSEs, provided you have active Software Assurance coverage for those licenses.

SQL Server 2012 Parallel Data Warehouse — Feature Updates

We may make feature releases (e.g., appliance updates) available between major product releases. Feature releases will be available only to customers with Software Assurance coverage for the product. The License Agreement/Product Use Rights for the product, as supplemented in this Appendix 2: Software Assurance Benefits, govern your use of feature releases for which you are eligible.

System Center Configuration Manager -- VDI Rights

See the Universal License Terms, Definitions for meanings of “virtual OSE” and “manage.” The license terms applicable to System Center Configuration Manager Client Management Licenses (“CMLs”) as set forth in the Management Server section of these License Agreement/Product Use Rights, and supplemented here, apply to your use of System Center Configuration Manager software under the following licenses with active Software Assurance coverage: System Center Configuration Manager CMLs, Core CALs, and Enterprise CALs (each, a “VDI qualifying license”). You may use the software to manage, at any one time, up to four virtual OSEs in which software used remotely from the device or by the user to which that VDI qualifying license has been assigned, is running. Those virtual OSEs may be on up to four different virtual desktop infrastructure hosts. Your right to use the software as permitted here expires when Software Assurance on your System Center Configuration Manager CMLs, Core CALs or Enterprise CALs expires.
Visual Studio -- MSDN

The Developer Tools section of the License Agreement/Product Use Rights provides your license terms for MSDN. Your rights to use any software licensed through MSDN become perpetual when your right to use Visual Studio becomes perpetual.

Windows Desktop Operating System -- Rights to run “Clustered HPC Applications”

The Desktop Operating System section of the License Agreement/Product Use Rights, as supplemented below, provides your license terms for use of the software under licenses for the Windows desktop operating system with active Software Assurance coverage. See Universal License Terms, Definitions for meanings of "Cycle Harvesting node" and "clustered HPC application."
Despite anything to the contrary in the license terms for the Windows desktop operating system, more than one user may use the software at one time when the additional users use the Licensed Device as a Cycle Harvesting node to run clustered HPC applications.

The rights provided under this section do not permit you to use the Licensed Devices as a general purpose server, database server, web server, e-mail server, print server or file server, for other multi-user access purposes, or for any other similar resource sharing purpose.

Your right to use the software as permitted here expires when Software Assurance coverage on your Windows desktop operating system license expires.

**Windows Enterprise (Per User and Per Device), Windows Embedded Industry Enterprise (Per Device), and Windows Virtual Desktop Access (VDA) (Per User and Per Device)**

**DEFINED TERMS IN THIS SECTION (SEE UNIVERSAL LICENSE TERMS)**

"Instance", "Licensed Device", "OSE", "Physical OSE", "Running Instances", and "Virtual OSE" “Software,” as used here, refers to Windows 8.1 Enterprise or Windows 8.1 Embedded Industry Enterprise. “Licensed Device,” as used here, refers to the device to which you assign active coverage.

“Licensed User”, as used here, refers to the user to which you assign active coverage. If the underlying user license is transferred from one person to another, the original user of the license is no longer licensed.

Use of the Software in this section is governed by the General License Terms in the Desktop Operating System (Per Copy Per Device) section of these License Agreement/Product Use Rights, the Product-Specific License Terms for Windows Enterprise or Windows Embedded Industry Enterprise and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System sections.

Your right to use the Software as described here is non-perpetual; you may not access or use the Software, as permitted here, after your Software Assurance or VDA coverage expires.

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<th>Win Emb. Ind. Ent. SA</th>
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<tr>
<td></td>
<td>Per Device</td>
<td>Per User</td>
<td>Per Device</td>
</tr>
<tr>
<td>1</td>
<td>Any user of a Licensed Device, or any device used by a Licensed User; may remotely access up to four Instances of the Software Running in Virtual OSEs or one Instance of the Software Running in one Physical OSE on (a) device(s) in your datacenter.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2A</td>
<td>In addition to item 1, you may run up to four Instances in Virtual OSEs and one Instance in the Physical OSE locally on the Licensed Device. If all of the Instances permitted to run in Virtual OSEs locally are used, you may use the Instance in the Physical OSE only to host and manage the Virtual OSEs. For Windows VDA (Per Device), the Licensed Device must also be licensed for Windows 8/8.1 Pro or Enterprise, or Windows 7 Professional or Enterprise.</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>2B</td>
<td>In addition to item 1, you may run up to four instances in virtual OSEs and one instance in the physical OSE locally on devices licensed for Windows 8/8.1 Pro or Enterprise, or Windows 7 Professional or Enterprise. If all of the instances permitted to run in virtual OSEs locally are used, you may use the instance in the physical OSE only to host and manage the virtual OSEs.</td>
<td>X</td>
<td></td>
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<tr>
<td>3</td>
<td>In addition to items 1 and 2B above, you may install the Software on devices with integrated screens 10.1” diagonally or less.</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Windows To Go: You may create and store an instance of the software on up to two USB drives and use them on Licensed</td>
<td>X</td>
<td>X</td>
</tr>
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Roaming Use Rights (under Windows Desktop Operating System Software Assurance (Per Device), Windows VDA (Per Device), and Windows Embedded Industry Software Assurance (Per Device)

Defined Terms in this Section (See Universal License Terms)

"instance", "Licensed Device", "OSE", “qualifying third-party device”, "running instances", “server”, and "virtual OSE"

“Software,” as used here, refers to Windows 8.1 Enterprise or Windows Embedded 8.1 Industry Enterprise.

Use of the software is subject to the Desktop Operating System section, the corresponding Windows 8.1 Enterprise section or the Windows Embedded 8.1 Industry section and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System section. Ongoing use of Windows 8.1 Enterprise or Windows Embedded 8.1 Industry Enterprise under a perpetual Windows license, after Software Assurance coverage expires, is subject to the Desktop Operating System section without the additional rights and limitations here.

The single primary user1 of the Licensed Device may remotely access the permitted instances running on servers in your datacenter from a Qualifying Third Party Device2 from anywhere off your or your affiliates’ premises. The same user may also run one instance of the software in a virtual OSE on a Qualifying Third Party Device while off your and your affiliates’ premises. The same user may also run the instance on a USB drive (subject to Windows to Go Rights) on a Qualifying Third Party Device while off your and your affiliates’ premises.

All Roaming Rights use must be for work-related purposes.

No other user may use the software under the same license at the same time except for purposes of technical support, using Remote Assistance or similar technology, or administering the software.

Your right to use the software under Roaming Rights is non-perpetual; you may not access or use the software, as permitted here, after your Windows Software Assurance coverage or Windows VDA subscription expires.

1 as that term is defined in the Desktop Operating Systems section

2 Despite anything in your Volume Licensing Agreement to the contrary, Qualified Desktops and Devices do not include any Qualifying Third Party Devices from which your users access and use the software and any (other) enterprise product solely under Roaming Use Rights.

Companion Devices

For the purposes of this section:

“Primary User” means the user who uses a Windows Software Assurance, Windows Embedded Industry Software Assurance, or Windows VDA Licensed Device more than 50% of the time in any 90 day period.

“Companion Device” means any additional device that is used by the Primary User, and either (i) is not capable of running an Instance of Windows 8.1 Pro locally (in a Physical or Virtual OSE), or (ii) is both capable of running an Instance of Windows 8.1 Pro locally (in a Physical or Virtual OSE) and personally owned by the Primary User.

Windows RT Companion Devices (under Windows Desktop Operating System Software Assurance, Windows Industry Software Assurance, or Windows VDA)

“Window RT Companion Device” means a Companion Device you (not a third party) have licensed for Windows RT or Windows RT 8.1.
Use of the software is subject to the Desktop Operating System section, the corresponding Windows 8.1 Enterprise or Windows 8.1 Industry Enterprise section and the license terms here. The license terms in this section govern in the case of any conflict with the terms in the Desktop Operating System section.

Introduction → Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core
The Primary User may remotely access any permitted Instance of the software Running on servers in your datacenter as provided in the corresponding Windows 8.1 Enterprise and Windows 8.1 Industry Enterprise section from a Windows RT Companion Device. No other user may use the software under the same license at the same time except for purposes of technical support, using Remote Assistance or similar technology, or administering the software.

Your right to use the software on a Windows RT Companion Device is non-perpetual; you may not access or use the software, as permitted here, after your Windows Software Assurance coverage, Windows Industry Software Assurance, or Windows VDA subscription expires.

**Windows Companion Subscription License (SL)**

Beginning December 1, 2014, all Windows Companion Subscription Licenses have the same use rights as if they were Windows Enterprise SA Per User Add-on. See the Product List for license assignment rules.

**Windows Desktop Operating System -- Windows Thin PC**

The Desktop Operating System section of the License Agreement/Product Use Rights provides your license terms for Windows Thin PC. However, you may use the software only to run the types of applications listed below:

- security
- management
- terminal emulation
- Remote Desktop and similar technologies
- web browser
- media player
- instant messaging client
- document viewers
- NET Framework and Java Virtual Machine

You may choose not to install the media player. If so, the sections of the Desktop Operating System section of the License Agreement/Product Use Rights listed below do not apply to your use of the software.

**Windows Media Digital Rights Management**

**Windows Media Player**

You may use the software on a device other than the one on which it was first installed if you move the corresponding Software Assurance coverage to that other device.
### APPENDIX 3: ADDITIONAL SOFTWARE

#### BizTalk Server 2013 R2 Branch

- Administration and Monitoring Tools
- Development Tools
- Software Development Kit(s)
- HTTP Receive Adapter
- SOAP Receive Adapter
- Windows SharePoint Services Adapter Web Service
- Windows Communication Foundation Adapters
- Business Activity Monitoring ("BAM") Event APIs and Interceptors & Administration Tools
- BAM Alert Provider for SQL Notification Services
- BAM Client
- BizTalk Server Related Schemas and Templates
- Business Activity Services
- Master Secret Server/Enterprise Single Sign-On
- MQHelper.dll
- **ADOMD.NET**
- MSXML
- SQLXML
- Business Rules Component
- MQSeries Agent
- UDDI

#### BizTalk Server 2013 R2 Enterprise

- Administration and Monitoring Tools
- Development Tools
- Software Development Kit(s)
- HTTP Receive Adapter
- SOAP Receive Adapter
- Windows SharePoint Services Adapter Web Service
- Windows Communication Foundation Adapters
- Business Activity Monitoring ("BAM") Event APIs and Interceptors & Administration Tools
- BAM Alert Provider for SQL Notification Services
- BAM Client
- BizTalk Server Related Schemas and Templates
- Business Activity Services
- Master Secret Server/Enterprise Single Sign-On
- MQHelper.dll
- **ADOMD.NET**
- MSXML
- SQLXML
- Business Rules Component
- MQSeries Agent
- UDDI

#### BizTalk Server 2013 R2 Standard

- Administration and Monitoring Tools
- Development Tools
- Software Development Kit(s)
- HTTP Receive Adapter
- SOAP Receive Adapter
- Windows SharePoint Services Adapter Web Service
- Windows Communication Foundation Adapters
- Business Activity Monitoring ("BAM") Event APIs and Interceptors & Administration Tools
- BAM Alert Provider for SQL Notification Services
- BAM Client
- BizTalk Server Related Schemas and Templates
- Business Activity Services
- Master Secret Server/Enterprise Single Sign-On
- MQHelper.dll
- **ADOMD.NET**
- MSXML
- SQLXML
- Business Rules Component
- MQSeries Agent
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**Exchange Server 2013 Enterprise**

**Exchange Management Tools**

https://www.immixgroup.com/contract-vehicles/gsa/it-70/0511T/
### Exchange Server 2013 Standard

**Exchange Management Tools**

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Software Development Kit

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Universal Terms → Desktop Apps → Desktop OS → Processor/CAL → Server/CAL → Per Core
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Software Development Kit

SharePoint Server 2013

Software Development Kit

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- Central Management Server Role
- Director Role
- Edge Server Role
- Persistent Chat Server Role
- Skype for Business 2015 Web App Server Role
- Mediation Server Role
- Reach Application Sharing Server Role
- Mobility Service Role
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- Survivable Branch Appliance Role
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- PowerShell Snap-In

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HDInsight Server
Parallel Data Warehouse Control Virtual Machine

SQL Server 2014 Business Intelligence

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Client Quality Connectivity
Client Tools Backwards Compatibility
Client Tools Connectivity
Client Tools SDK

Reporting Services Add-in For SharePoint Products
Documentation Components
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SQL Client Connectivity SDK

- Management Tools – Basic
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- Virtual Machine Manager Self Service Portal
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- Team Explorer for Visual Studio 2013
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- Visual Studio Team Foundation Server SharePoint Extensions
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Windows MultiPoint Server 2012 Premium

For a list of additional software go to  
http://go.microsoft.com/fwlink/?LinkId=245856

Windows MultiPoint Server 2012 Standard

For a list of additional software go to  
http://go.microsoft.com/fwlink/?LinkId=245856

Windows Server 2012 R2 Datacenter

For a list of additional software go to  
http://go.microsoft.com/fwlink/?LinkId=290987

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http://go.microsoft.com/fwlink/?LinkId=290989

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Online Services Terms
October 1, 2014

Microsoft
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INTRODUCTION

Beginning July 1, 2014 these Online Services Terms (OST) replace the Online Services Use Rights (OLSUR). The OST contains terms that apply to Customer’s use of Online Services. Separate terms, including different privacy and security terms, govern Customer’s use of Non-Microsoft Products (as defined below), as well as other products and services from Microsoft.

Most Online Services offer a Service Level Agreement (SLA). For more information regarding the Online Services SLAs, please refer to http://microsoft.com/licensing/contracts.

Prior Versions

The OST provides terms for Online Services that are currently available. For earlier versions Customer may refer to http://go.microsoft.com/?linkid=9840733 or contact its reseller or Microsoft Account Manager.

Clarifications and Summary of Changes

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Changes

General Terms
In the Compliance with Laws section, clarified Microsoft does not determine whether Customer Data is subject to any specific law or regulation.

Privacy and Security Terms
In the General Privacy and Security Terms section, added Parature, from Microsoft, to the list of Online Services that are not covered.
In the Data Processing Terms section, added Parature to the list of what’s excluded from “Online Services” with Microsoft Dynamics CRM Online.
In the Data Processing Terms section, added Exchange Online Protection to the list of what’s included with “Online Services” for Office 365.

Instance and Storage Add-ons
Information related to Instance Add-on SLs and Storage Add-ons may be found in product support materials.

Enterprise Mobility Services
Created a new family of Online Services that includes Online Services available for purchase as the Enterprise Mobility Suite as well as other Online Services that are not part of the Suite.

Microsoft Azure Services
Corrected Clerical Error in July OST: changed hyperlink in the definition of “Microsoft Azure Services” back to what it had been in April Online Services Use Rights (OLSUR) document.

Microsoft Dynamics Online
Changed the family name from Microsoft Dynamics Online to Microsoft Dynamics Online Services.
Organized family into subsets of Online Services, and clarified which terms apply to all Products and which apply only to subsets.

Office 365 Services
Added Office 365 ProPlus to the list of Office 365 Services covered by the Service Level Agreement.
In Office 365 Applications Installation and Use Rights section, added right of users to install software with Shared Computer Activation (SCA) on a network server or Microsoft Azure Platform Services.

Other Online Services
Changed the name from Microsoft Azure Directory Premium to Azure Active Directory Premium and moved under Enterprise Mobility Services family.
Changed the name from Microsoft Rights Management to Azure Rights Management Service and moved under Enterprise Mobility Services family.

Windows Intune
Moved under Enterprise Mobility Services family.

Yammer
Removed prohibition against use by children under age 13.

Attachment 1, Notices

Attachment 2, Subscription License Suites
Added Office 365 Business Essentials, Office 365 Business Premium, Microsoft Dynamics CRM Online Professional, and Microsoft Dynamics CRM Online Enterprise Suite SLs.
GENERAL TERMS

Customer may use the Online Services and related software as expressly permitted in Customer’s Volume Licensing Agreement. Microsoft reserves all other rights. Customer must acquire and assign the appropriate Subscription Licenses required for its use of each Online Service. A User SL is required for each user that accesses the Online Service unless specified otherwise in the Online Service-specific Terms. Attachment 2 describes SL Suites that also fulfill requirements for User SLs. Customer has no right to use an Online Service after the SL for that Online Service ends.

Definitions
If any of the terms below are not defined in Customer’s Volume Licensing Agreement, they have the definitions below. “Customer” means the government entity that has ordered the Microsoft Online Services from an authorized Microsoft reseller or Government Partner under the terms of a Volume License Agreement.

“Customer Data” means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service.

“External User” means a user of an Online Service that is not an employee, onsite contractor, or onsite agent of Customer or its Affiliates. “Instance” means an image of software that is created by executing the software’s setup or install procedure or by duplicating such an image.

“Licensed Device” means the single physical hardware system to which a license is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

“Non-Microsoft Product” means any third-party-branded software, data, service, website or product.

“Online Service” means a Microsoft-hosted service to which Customer subscribes under a Microsoft Volume Licensing Agreement, including any service identified in the Online Services section of the Product List. The Product List is located at http://go.microsoft.com/?linkid=9839207.

“Operating System Environment” (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance, that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and Instances of applications, if any, configured to run on all or part of that operating system Instance. There are two types of OSEs, physical and virtual. A physical hardware system can have one physical OSE and/or one or more virtual OSEs. The operating system Instance used to run hardware virtualization software or to provide hardware virtualization services is considered part of the physical OSE.

“SL” means Subscription License.

Online Service Term Updates
When Customer renews or purchases a new subscription to an Online Service, the then-current OST will apply and will not change during Customer’s subscription for that Online Service. When Microsoft introduces features, supplements or related software that are new (i.e., that were not previously included with the subscription), Microsoft may provide terms or make updates to the OST that apply to Customer’s use of those new features, supplements or related software.

Regulatory Changes & International Availability
Microsoft may make commercially reasonable changes to each Online Service from time to time. Microsoft may terminate an Online Service in any country where Microsoft is subject to a government regulation, obligation or other requirement that is not generally applicable to businesses operating there. Availability, functionality, and language versions for each Online Service may vary by country. For information on availability, Customer may refer to www.microsoft.com/online/international-availability.aspx.

Data Retention
Microsoft will retain Customer Data stored in the Online Service in a limited function account for 90 days after expiration or termination of Customer’s subscription so that Customer may extract the data. After the 90 day retention period ends, Microsoft will disable Customer’s account and delete the Customer Data.

The Online Service may not support retention or extraction of software provided by Customer. Microsoft has no liability for the deletion of Customer Data as described in this section.
Use of Software with the Online Service
Customer may need to install certain Microsoft software in order to use the Online Service. If so, the following terms apply:

Microsoft Software License Terms
Customer may install and use the software only for use with the Online Service. The Online Service-specific Terms may limit the number of copies of the software Customer may use or the number of devices on which Customer may use it. Customer’s right to use the software begins
when the Online Service is activated and ends when Customer’s right to use the Online Service ends. Customer must uninstall the software when Customer’s right to use it ends. Microsoft may disable it at that time.

Validation, Automatic Updates, and Collection for Software
Microsoft may automatically check the version of any of its software. Devices on which the software is installed may periodically provide information to enable Microsoft to verify that the software is properly licensed. This information includes the software version, the end user’s user account, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. Customer may only obtain updates or upgrades for the software from Microsoft or authorized sources. By using the software, Customer consents to the transmission of the information described in this section. Microsoft may recommend or download to Customer’s devices updates or supplements to this software, with or without notice. Some Online Services may require, or may be enhanced by, the installation of local software (e.g., agents, device management applications) (“Apps”). The Apps may collect data about the use and performance of the Apps, which may be transmitted to Microsoft and used for the purposes described in this OST.

Third-party Software Components
The software may contain third party software components. Unless otherwise disclosed in that software, Microsoft, not the third party, licenses these components to Customer under Microsoft’s license terms and notices.

Non-Microsoft Products
Microsoft may make Non-Microsoft Products available to Customer through Customer’s use of the Online Services (such as through a store or gallery). If Customer installs or uses any Non-Microsoft Product with an Online Service, Customer may not do so in any way that would subject Microsoft’s intellectual property or technology to obligations beyond those expressly included in Customer’s Volume Licensing Agreement. For Customer’s convenience, Microsoft may include charges for the Non-Microsoft Product as part of Customer’s bill for Online Services. Microsoft, however, assumes no responsibility or liability whatsoever for the Non-Microsoft Product. Customer is solely responsible for any Non-Microsoft Product that it installs or uses with an Online Service.

Acceptable Use Policy
Neither Customer, nor those that access an Online Service through Customer, may use an Online Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Online Service or impair anyone else’s use of it; or
- in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

Violation of the terms in this section may result in suspension of the Online Service. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service.

Technical Limitations
Customer must comply with, and may not work around, any technical limitations in an Online Service that only allow Customer to use it in certain ways.

Compliance with Laws
Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

Customer must comply with all laws and regulations applicable to its use of Online Services, including laws related to privacy, data protection and confidentiality of communications. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls (such as devices enrolled with Windows Intune or within a Microsoft Azure customer’s virtual machine or application), and for determining whether the Online Services are appropriate for storage and processing of information subject to any specific law or regulation. Customer is responsible for responding to any request from a third party regarding Customer’s use of an Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws.
Acquired Rights
Microsoft and Customer agree that the provision and use of the Online Services is not intended to result in any liability under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) (collectively, the “ARD”). Microsoft will defend Customer against any claim arising under the ARD alleging the transfer (or alleged transfer) of any employee or contractor to Customer as a result of the termination of any Online Service, provided Customer (i) notifies Microsoft promptly in writing, not later than 30 days after Customer receives notice of the claim; (ii) gives Microsoft control of the defense, with input from Customer; and any settlement negotiations, provided that for the U.S. Government the control of the defense and settlement is subject to 28 U.S.C. 516; and (iii) gives Microsoft the information, authority, and assistance Microsoft needs to defend against or settle the claim.

Electronic Notices
Microsoft may provide Customer with information and notices about Online Services electronically, including via email, through the portal for the Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

License Reassignment
Most, but not all, SLs may be reassigned. Except as permitted in this paragraph or in the Online Service-specific Terms, Customer may not reassign an SL on a short-term basis (i.e., within 90 days of the last assignment). Customer may reassign an SL on a short-term basis to cover a user’s absence or the unavailability of a device that is out of service. Reassignment of an SL for any other purpose must be permanent. When Customer reassigns an SL from one device or user to another, Customer must block access and remove any related software from the former device or from the former user’s device.

Font Components
While Customer uses an Online Service, Customer may use the fonts installed by that Online Service to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

Multiplexing
Hardware or software that Customer uses to pool connections; reroute information; reduce the number of devices or users that directly access or use the Online Service (or related software); or reduce the number of OSEs, devices or users the Online Service directly manages (sometimes referred to as “multiplexing” or “pooling”) does not reduce the number of licenses of any type (including SLs) that Customer needs.

Supplemental Terms
If any document or provision referenced in a URL included in these OST contains terms that (a) allow for the automatic termination of the Online Services; (b) allow for the automatic renewal of fees; (c) require the governing law to be anything other than Federal law; (d) require Customer to indemnify Microsoft or any third party; and/or (e) otherwise violate applicable law, then such provision shall not apply.

Disputes
Violation of any of the terms and/or provisions in this OST document may be considered a material breach and shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).
PRIVACY AND SECURITY TERMS

This section of the Online Services Terms has two parts:

General Privacy and Security Terms, which apply to all Online Services; and
Data Processing Terms, which are additional commitments for certain Online Services.

General Privacy and Security Terms

Scope
The terms in this section apply to all Online Services except Bing Maps Enterprise Platform, Bing Maps Mobile Asset Management Platform, Translator API, Yammer, and Parature, from Microsoft, which are governed by the privacy and/or security terms referenced below in the applicable Online Service-Specific Terms.

Use of Customer Data
Customer Data will be used only to provide Customer the Online Services including purposes compatible with providing those services. Microsoft will not use Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Customer retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Customer grants to Microsoft to provide the Online Services to Customer. This paragraph does not affect Microsoft’s rights in software or services Microsoft licenses to Customer.

Disclosure of Customer Data
Microsoft will not disclose Customer Data outside of Microsoft or its controlled subsidiaries and affiliates except (1) as Customer directs, (2) with permission from an end user, (3) as described in the OST, or (4) as required by law.

Microsoft will not disclose Customer Data to law enforcement unless required by law. Should law enforcement contact Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, then Microsoft will promptly notify Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third party request for Customer Data (such as requests from Customer’s end users), Microsoft will promptly notify Customer unless prohibited by law. If Microsoft is not required by law to disclose the Customer Data, Microsoft will reject the request. If the request is valid and Microsoft could be compelled to disclose the requested information, Microsoft will attempt to redirect the third party to request the Customer Data from Customer.

Except as Customer directs, Microsoft will not provide any third party: (1) direct, indirect, blanket or unfettered access to Customer Data; (2) the platform encryption keys used to secure Customer Data or the ability to break such encryption; or (3) any kind of access to Customer Data if Microsoft is aware that such data is used for purposes other than those stated in the request.

In support of the above, Microsoft may provide Customer’s basic contact information to the third party.

Educational Institutions
If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) apply, Microsoft acknowledges that for the purposes of the OST, Microsoft is a “school official” with “legitimate educational interests” in the Customer Data, as those terms have been defined under FERPA and its implementing regulations, and Microsoft agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials.

Customer understands that Microsoft may possess limited or no contact information for Customer’s students and students’ parents. Consequently, Customer will be responsible for obtaining any parental consent for any end user’s use of the Online Service that may be required by applicable law and to convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student’s parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Data in Microsoft’s possession as may be required under applicable law.

Security
Microsoft is committed to helping protect the security of Customer’s information. Microsoft has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.
Security Incident Notification

If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft’s equipment or in Microsoft’s facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a “Security Incident”), Microsoft will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

Notification(s) of Security Incidents will be delivered to one or more of Customer’s administrators by any means Microsoft selects, including via email. It is Customer’s sole responsibility to ensure Customer’s administrators maintain accurate contact information on each applicable Online Services portal. Microsoft’s obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service.

Location of Data Processing

Except as described elsewhere in the OST, Customer Data that Microsoft processes on Customer’s behalf may be transferred to, and stored and processed in, the United States or any other country in which Microsoft or its affiliates or subcontractors maintain facilities. Customer appoints Microsoft to perform any such transfer of Customer Data to any such country and to store and process Customer Data in order to provide the Online Services. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

Preview Releases

Microsoft may offer preview, beta or other pre-release features and services (“Previews”) for optional evaluation. Previews may employ lesser or different privacy and security measures than those typically present in the Online Services. Unless otherwise provided, Previews are not included in the SLA for the corresponding Online Service.

Use of Subcontractors

Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations in the OST. Customer has previously consented to Microsoft’s transfer of Customer Data to subcontractors as described in the OST.

How to Contact Microsoft

If Customer believes that Microsoft is not adhering to its privacy or security commitments, Customer may contact customer support or use Microsoft’s Privacy web form, located at http://go.microsoft.com/?linkid=9846224. Microsoft’s mailing address is:

Microsoft Enterprise Service Privacy
Microsoft Corporation
Microsoft Way
Redmond, Washington 98052 USA

Microsoft Ireland Operations Limited is Microsoft’s data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

Microsoft Ireland Operations, Ltd.
Attn: Data Protection
Carmenhall Road
Sandyford, Dublin 18, Ireland

Data Processing Terms

The Data Processing Terms (DPT) include the terms in this section.

The Data Processing Terms also include the “Standard Contractual Clauses,” pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under the EU Data Protection Directive. The Standard Contractual Clauses are in Attachment 3. In addition,

Execution of the Volume Licensing Agreement includes execution of Attachment 3, which is countersigned by Microsoft Corporation;
The terms in Customer’s Volume Licensing Agreement, including the DPT, constitute a data processing agreement under which Microsoft is the data processor; and
The DPT control over any inconsistent or conflicting provision in Customer’s Volume Licensing Agreement and, for each subscription, will remain in full force and effect until all of the related Customer Data is deleted from Microsoft’s systems in accordance with the DPT.

Customer may opt out of the “Standard Contractual Clauses” or the Data Processing Terms in their entirety. To opt out, Customer must send the following information to Microsoft in a written notice (under terms of the Customer’s Volume Licensing Agreement):

the full legal name of the Customer and any Affiliate that is opting out;

if Customer has multiple Volume Licensing Agreements, the Volume Licensing Agreement to which the Opt Out applies;

if opting out of the entire DPT, a statement that Customer (or Affiliate) opts out of the entirety of the Data Processing Terms; and

if opting out of only the Standard Contractual Clauses, a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses only.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

In the DPT, the term “Online Services” applies only to the services in the table below, excluding any Preview features or services, and “Customer Data” includes only Customer Data that is provided through use of those Online Services.

<table>
<thead>
<tr>
<th>Online Services</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microsoft Dynamics Online Services</td>
<td>Microsoft Dynamics Online Services made available through volume licensing or the Microsoft online services portal, excluding (1) Microsoft Dynamics CRM for supported devices, which includes but is not limited to Microsoft Dynamics CRM Online Services for tablets and/or smartphones and (2) any separately-branded service made available with or connected to Microsoft Dynamics CRM Online, such as Microsoft Social Listening, Parature, from Microsoft, and Microsoft Dynamics Marketing.</td>
</tr>
<tr>
<td>Office 365 Services</td>
<td>Exchange Online, Exchange Online Archiving, Exchange Online Protection, SharePoint Online, OneDrive for Business, Lync Online, and Office Online included in Office 365 Enterprise Plans E1, E2, E3, E4, K1 and K2; and Exchange Online Plans 1, 2, Basic and Kiosk; SharePoint Online Plans 1, 2 and Kiosk; OneDrive for Business, Office Online Plans 1 and 2; and Lync Online Plans 1, 2 and 3. Office 365 Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or Yammer service or a service branded “For Office 365.”</td>
</tr>
<tr>
<td>Microsoft Azure Core Services</td>
<td>Cloud Services (web and worker roles), Virtual Machines (including with SQL Server), Storage (Blobs, Tables, Queues), Virtual Network, Traffic Manager, Web Sites, BizTalk Services, Media Services, Mobile Services, Service Bus, Multi-Factor Authentication, Active Directory, Rights Management Service, SQL Database, and any other features identified as included on the Microsoft Azure Trust Center.</td>
</tr>
<tr>
<td>Windows Intune Online Services</td>
<td>The cloud service portion of Windows Intune such as the Windows Intune Add-on Product (Volume Licensing SKU number U7U-00007). It does not include any on-premises software made available with a Windows Intune subscription.</td>
</tr>
</tbody>
</table>

Location of Customer Data at Rest
Microsoft will store Customer Data at rest within certain major geographic areas (each, a Geo) as follows:

Office 365 Services. If Customer provisions its tenant in the United States or the EU, Microsoft will store the following Customer Data at rest within that Geo: (1) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments) and (2) SharePoint Online site content and the files stored within that site.

Windows Intune Online Services. When Customer provisions a tenant account, Customer selects an available Geo where Customer Data at rest will be stored. Microsoft will not transfer the Customer Data outside of Customer’s selected Geo except as noted in the “Data Location” section of the Windows Intune Trust Center.

Microsoft Azure Core Services. If Customer configures a particular service to be deployed within a Geo then, for that service, Microsoft will store Customer Data at rest within the specified Geo. Certain services may not enable Customer to configure deployment in a particular Geo or outside the United States and may store backups in other locations, as detailed in the Microsoft Azure Trust Center (which Microsoft may update from time to time, but Microsoft will not add exceptions for existing Services in general release).

Microsoft Dynamics CRM Online Services. For entities managed by the Microsoft Dynamics CRM Online Service, if Customer provisions its tenant in the United States or EU, Microsoft will store Customer Data at rest in the United States or EU, as applicable.

Microsoft does not control or limit the regions from which Customer or Customer’s end users may access or move Customer Data.
Privacy

Customer Data Deletion or Return. No more than 180 days after expiration or termination of Customer’s use of an Online Service, Microsoft will disable the account and delete Customer Data from the account.

Transfer of Customer Data. Microsoft will, during the term designated under Customer’s Volume Licensing Agreement, remain certified under the EU and Swiss Safe Harbor programs, provided that they are maintained by the United States government. In addition, unless Customer has opted out of the Standard Contractual Clauses, all transfers of Customer Data out of the European Union, European Economic Area, and Switzerland shall be governed by the Standard Contractual Clauses.

Microsoft Personnel. Microsoft personnel will not process Customer Data without authorization from Customer. Microsoft personnel are obligated to maintain the security and secrecy of any Customer Data as provided in the DPT and this obligation continues even after their engagements end.

Subcontractor Transfer. Any subcontractors to whom Microsoft transfers Customer Data, even those used for storage purposes, will have entered into written agreements with Microsoft that are no less protective than the DPT. Microsoft has previously consented to Microsoft’s transfer of Customer Data to subcontractors as described in the DPT. Except as set forth in the DPT, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) personal data Customer provides to Microsoft through the use of the Online Services. Each Online Service has a website that lists subcontractors that are authorized to access Customer Data. At least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the applicable website and provide Customer with a mechanism to obtain notice of that update. If Customer does not approve of a new subcontractor, then Customer may terminate the affected Online Service without penalty by providing, before the end of the notice period, written notice of termination that includes an explanation of the grounds for non-approval. If the affected Online Service is part of a suite (or similar single purchase of services), then any termination will apply to the entire suite. After termination, Microsoft will remove payment obligations for the terminated Online Services from subsequent Customer invoices.

Additional European Terms.

These Additional European Terms apply only if Customer has end users in the European Economic Area ("EEA") or Switzerland.

End Users in EEA or Switzerland. Terms used in the DPT that are not specifically defined will have the meaning in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the "EU Data Protection Directive").

Intent of the Parties. For the Online Services, Microsoft is a data processor (or sub-processor) acting on Customer's behalf. As data processor (or sub-processor), Microsoft will only act upon Customer’s instructions. The OST and Customer’s Volume Licensing Agreement (including the terms and conditions incorporated by reference therein) are Customer’s complete and final instructions to Microsoft for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the process for amending Customer’s Volume Licensing Agreement.

Duration and Object of Data Processing. The duration of data processing shall be for the term designated under Customer’s Volume Licensing Agreement. The objective of the data processing is the performance of the Online Services.

Scope and Purpose of Data Processing. The scope and purpose of processing of Customer Data, including any personal data included in the Customer Data, is described in the DPT and Customer’s Volume Licensing Agreement.

Customer Data Access. For the term designated under Customer’s Volume Licensing Agreement Microsoft will, at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on Customer’s behalf.

Security

General Practices. Microsoft has implemented and will maintain and follow for the Online Services the following security measures, which, in conjunction with the security commitments in the OST, are Microsoft’s only responsibility with respect to the security of Customer Data.

<table>
<thead>
<tr>
<th>Domain</th>
<th>Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization of Information Security</td>
<td>Security Ownership. Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.</td>
</tr>
<tr>
<td></td>
<td>Security Roles and Responsibilities. Microsoft personnel with access to Customer Data are subject to confidentiality obligations.</td>
</tr>
<tr>
<td></td>
<td>Risk Management Program. Microsoft performed a risk assessment before processing the Customer Data or launching the Online Services service. Microsoft retains its security documents pursuant to its retention requirements after they are no longer in effect.</td>
</tr>
<tr>
<td>Asset Management</td>
<td>Asset Inventory. Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.</td>
</tr>
</tbody>
</table>

Microsoft will remove payment obligations for the terminated Online Services from subsequent Customer invoices.

Asset Handling
<table>
<thead>
<tr>
<th>Domain</th>
<th>Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domain</td>
<td>Practices</td>
</tr>
<tr>
<td></td>
<td>Microsoft classifies Customer Data to help identify it and to allow for access to it to be appropriately restricted.</td>
</tr>
<tr>
<td></td>
<td>Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.</td>
</tr>
<tr>
<td></td>
<td>Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft’s facilities.</td>
</tr>
<tr>
<td>Human Resources Security</td>
<td>Security Training. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures. Microsoft will only use anonymous data in training.</td>
</tr>
<tr>
<td>Physical and Environmental Security</td>
<td>Physical Access to Facilities. Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.</td>
</tr>
<tr>
<td></td>
<td>Physical Access to Components. Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.</td>
</tr>
<tr>
<td></td>
<td>Protection from Disruptions. Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.</td>
</tr>
<tr>
<td>Communications and Operations Management</td>
<td>Component Disposal. Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.</td>
</tr>
<tr>
<td></td>
<td>Operational Policy. Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.</td>
</tr>
<tr>
<td></td>
<td>Data Recovery Procedures</td>
</tr>
<tr>
<td></td>
<td>On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered.</td>
</tr>
<tr>
<td></td>
<td>Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.</td>
</tr>
<tr>
<td></td>
<td>Microsoft has specific procedures in place governing access to copies of Customer Data.</td>
</tr>
<tr>
<td></td>
<td>Microsoft reviews data recovery procedures at least every six months.</td>
</tr>
<tr>
<td></td>
<td>Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.</td>
</tr>
<tr>
<td></td>
<td>Malicious Software. Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.</td>
</tr>
<tr>
<td></td>
<td>Beyond Boundaries. Microsoft encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks.</td>
</tr>
<tr>
<td></td>
<td>Microsoft restricts access to Customer Data in media leaving its facilities (e.g., through encryption).</td>
</tr>
<tr>
<td></td>
<td>Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.</td>
</tr>
<tr>
<td>Access Control</td>
<td>Access Policy. Microsoft maintains a record of security privileges of individuals having access to Customer Data.</td>
</tr>
<tr>
<td></td>
<td>Access Authorization. Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.</td>
</tr>
<tr>
<td></td>
<td>Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.</td>
</tr>
<tr>
<td></td>
<td>Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.</td>
</tr>
<tr>
<td></td>
<td>Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.</td>
</tr>
<tr>
<td></td>
<td>Least Privilege. Technical support personnel are only permitted to have access to Customer Data when needed.</td>
</tr>
<tr>
<td></td>
<td>Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.</td>
</tr>
</tbody>
</table>

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- Privacy and Security
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- Attachments
Certifications and Audits
Microsoft has established and agrees to maintain a data security policy (Online Information Security Policy) for each Online Service that complies with the ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System and the ISO/IEC 27002 code of best practices for information security management. On a confidential need-to-know basis, and subject to Customer's agreement to non-disclosure obligations Microsoft specifies, Microsoft will make the Online Information Security Policy available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies. Customer is solely responsible for reviewing the Online Information Security Policy, making an independent determination as to whether the Online Information Security Policy meets Customer’s requirements, and for ensuring that Customer’s personnel and consultants follow the guidelines they are provided regarding data security. If Customer is subject to the Standard Contractual Clauses, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

Microsoft will audit the security of the computers and computing environment that it uses in processing Customer Data (including personal data) on the Online Services and the physical data centers from which Microsoft provides the Online Services. This audit: (1) will be performed at least annually; (2) will be performed according to ISO 27001 standards; (3) will be performed by qualified, independent third party security professionals at Microsoft’s selection and expense; (4) will result in the generation of an audit report (Microsoft Audit Report), which will be Microsoft’s confidential information; and (5) may be performed for other purposes in addition to satisfying this section (e.g., as part of Microsoft’s regular internal security procedures or to satisfy other contractual obligations).

If Customer requests in writing, Microsoft will provide Customer with a confidential summary of the Microsoft Audit Report (Summary Report) so that Customer can reasonably verify Microsoft’s compliance with the security obligations under the DPT. The Summary Report will clearly disclose the scope of the audit and any material findings by the auditor. The Summary Report is Microsoft confidential information.

If the Standard Contractual Clauses apply, then Customer agrees to exercise its audit right by instructing Microsoft to execute the audit as described in this section of the DPT. If Customer has not opted out of the Standard Contractual Clauses and desires to change this instruction
regarding exercising this audit right, then Customer has the right to change this instruction as mentioned in the Standard Contractual Clauses, which shall be requested in writing.

If the Standard Contractual Clauses apply, then nothing in this section of the DPT varies or modifies the Standard Contractual Clauses nor affects any supervisory authority’s or data subject’s rights under the Standard Contractual Clauses. Microsoft Corporation is an intended third-party beneficiary of this section.
ONLINE SERVICE SPECIFIC TERMS

If an Online Service is not listed below, it does not have any Online Service-specific terms.

Microsoft Azure Services

Notices

Service Level Agreement

Definitions
“Customer Solution” means an application or any set of applications that adds primary and significant functionality to the Microsoft Azure Services and that is not primarily a substitute for the Microsoft Azure Services.

“Managed Service Solution” means a managed IT service provided by Customer to a third party that consists of the administration of and support for Microsoft Azure Services.

“Microsoft Azure Services” means one or more of the Microsoft services and features identified at http://azure.microsoft.com/en-us/services, except where identified as licensed separately.

Limitations
Customer may not
resell or redistribute the Microsoft Azure Services, or
allow multiple users to directly or indirectly access any Microsoft Azure Service feature that is made available on a per user basis (e.g., Active Directory Premium). Specific reassignment terms applicable to a Microsoft Azure Service feature may be provided in supplemental documentation for that feature.

Retirement of Services or Features
Microsoft will provide Customer with 12 months’ notice before removing any material feature or functionality or discontinuing a service, unless security, legal or system performance considerations require an expedited removal. This does not apply to Previews.

Data Retention after Expiration or Termination
The expiration or termination of Customer’s Online Service subscription will not change Customer’s obligation to pay for hosting of Customer Data during any Extended Term.

Hosting Exception
Customer may create and maintain a Customer Solution and, despite anything to the contrary in Customer’s Volume Licensing Agreement, combine Microsoft Azure Services with Customer Data owned or licensed by Customer or a third party, to create a Customer Solution using the Microsoft Azure Service and the Customer Data together. Customer may permit third parties to access and use the Microsoft Azure Services in connection with the use of that Customer Solution. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer’s Volume Licensing Agreement are met by that use.

Managed Service Exception
Customer may provide a Managed Service Solution provided (i) Customer has the sole ability to access, configure, and administer the Microsoft Azure Services; (ii) Customer has administrative access to the virtual OSE(s), if any, in the Managed Service Solution, and (iii) the third party has
administrative access only to its application(s) or virtual OSE(s). Customer is responsible for the third party's use of Microsoft Azure Services in accordance with the terms of the Volume Licensing Agreement.

**Virtual Machines**
Microsoft Azure Services may provide Customer with the option of running Windows Server and other Microsoft software in a Virtual Machine. Customer agrees to secure the rights necessary to run all software (including the operating system) within Customer's Virtual Machines. Customer may use that software only within the Microsoft Azure Services and only in conjunction with Customer's permitted use of any applicable Microsoft Azure role, and subject to the Universal and General Terms for the software detailed in the License Agreement/Product Use Rights document found at [http://go.microsoft.com/fwlink%3Flinkid%3D9839206](http://go.microsoft.com/fwlink%3Flinkid%3D9839206) or its successor site.
Sharing
The Microsoft Azure Services may provide the ability to share a Customer Solution and/or Customer Data with other Azure users and communities, or other third parties. If Customer chooses to engage in such sharing, Customer agrees that it is giving a license to all authorized users, including the rights to use, modify, and repost its Customer Solution and/or the Customer Data, and Customer is allowing Microsoft to make them available to such users in a manner and location of its choosing.

Import/Export Services
Customer’s use of the Import/Export Service is conditioned upon its compliance with all instructions provided by Microsoft with respect to the preparation, treatment and shipment of the physical media containing its data (storage media), which will be provided via email or at www.go.microsoft.com/fwlink/?linkid=301900&CLCID=0X409. Customer is solely responsible for ensuring the storage media and data are provided in compliance with all laws and regulations. All incoming storage media will be shipped DAP Microsoft DCS Data Center (INCOTERMS 2010).

Exported storage media will be shipped DAP Customer Dock (INCOTERMS 2010). Customer is responsible for ensuring that the data exported on storage media is permitted to be shipped to the location Customer provides.

Customer agrees that Microsoft has no duty with respect to the storage media and the data contained therein and no liability for lost, damaged or destroyed storage media. Customer is solely responsible for taking any precautions to protect the storage media and data contained therein, including without limitation: encrypting data, tamper-proof packaging, shipping insurance, data backup, and data redundancy.

Store
Microsoft Azure enables Customer to access or purchase Non-Microsoft Products through features such as Microsoft Azure Store and the Virtual Machine Gallery, subject to separate terms available at http://azure.microsoft.com/en-us/support/legal/microsoft-azure-store-terms/.

Enterprise Mobility Services

Notices
The Bing Maps Notices in Attachment 1 apply.

Subscription License Suites
In addition to User SLs, refer to Attachment 2 for other SLs that fulfill requirements for Azure Active Directory Premium, Azure Rights Management, and Windows Intune.

Azure Active Directory Basic
Customer may, using Single Sign-On, pre-integrate up to 10 SaaS Applications/Custom Applications per User SL. All Microsoft as well as third party applications count towards this application limit.

Azure Active Directory Premium
Customer may, using Single Sign-On, pre-integrate SaaS Applications/Custom Applications. Customer may not copy or distribute any data set (or any portion of a data set) included in the Forefront Identity Manager software that is included with a Microsoft Azure Active Directory Premium User SL.

Azure Rights Management Service
Windows Intune

Windows Intune (per user)  Windows Intune Add-on for System Center Configuration Manager and System Center Endpoint Protection (per user)  (“Windows Intune Add-On”)

Manage Devices
Each user to whom Customer assigns a User SL may access and use the Online Service and related software (including System Center software) to manage up to five devices.

Storage Add-on SL
A Storage Add-on SL is required for each gigabyte of storage in excess of the storage provided with the base subscription.

Windows Software Components in System Center Software
The System Center software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, Powershell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JAVAScript, Debgelp.dll, and Web Deploy technologies.

SQL Server Technology and Benchmarking
The Software included with the Online Service includes SQL Server-branded components other than a SQL Server Database. Those components are licensed to Customer under the terms of their respective licenses, which can be found in the installation directory or unified installer of the software. Customer must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of these components or the software that includes them.

The following additional terms apply to Windows Desktop Operating System Service that customers receive with Windows Intune with Windows Desktop Operating System Service:

Notices

Access to Online Service
Each user to whom Customer assigns a Windows Intune with Windows Desktop Operating System User SL may access and use the Online Service and other related software (including System Center software) to manage the user’s Windows Device and up to four additional devices.

Assigning the Windows Desktop Operating System License
Each user who has been assigned a User SL (the Primary User) may use the Windows software (as described in the “Windows Desktop Operating System” section below) on a single device, which must have an assigned and installed qualifying operating system license. That device is the Primary User’s Windows Device for purposes of these license terms and the Microsoft Desktop Optimization Pack (MDOP) license terms Product Use Rights. The License Agreement/Product Use Rights is located at http://go.microsoft.com/?linkid=9839206.

Qualifying operating system licenses (both 32 and 64-bit) include the following:
Windows 8 and 8.1 Enterprise or Pro, (diskless, N, K and KN editions)
Windows 7 Enterprise or Professional (diskless) (including the N, K and KN editions), or Ultimate
Windows Vista Enterprise (N, K, KN editions), Business (N, K, KN, Blade editions) or Ultimate
Windows XP Professional or Tablet Editions (including the N, K, KN and Blade editions), Windows XP Pro N or Windows XP Pro Blade PC
Windows 2000 Professional
Windows NT Workstation 4.0
Windows 98 (including 2nd Edition)
Apple Macintosh

Windows Desktop Operating System
The License Agreement/Product Use Rights for the Windows Enterprise Operating System apply to the Windows desktop operating system software included with the User SL, except as provided in this section. Software, as used here, refers to Windows Enterprise.

Customer may install one copy of Windows 8.1 Enterprise, 8.1 Pro, or any earlier supported version of the software on the Windows Device on up to two processors. The Primary User may use the software for work-related purposes locally or remotely.
Assigning Licenses
operating system licenses acquired under the Windows Intune with Windows Desktop Operating System buy-out option to replacement devices. Notwithstanding anything to the contrary in Customer’s Volume Licensing Agreement, Customer may not reassign perpetual Windows desktop Buy-Out Option governing Customer’s ongoing use of the Windows Enterprise Software survive expiration or termination of Customer’s Volume Licensing Agreement. Limitations), and supersede and replace Customer’s underlying perpetual Licenses for a qualifying Microsoft desktop operating system. The terms Enterprise Software for the number of Licenses specified in the buy-out order. Perpetual Licenses received under the buy-out option remain subject licensed by Customer (not a third party) for Windows RT or Windows RT 8.1.
Customer may connect up to 20 devices to the Windows Device for file sharing, printing, Internet Information Services, Internet Connection Sharing or telephony services. An unlimited number of connections are allowed for Key Management Services activation or similar technology. Customer may create any number of Instances of the software and store them on any of Customer’s servers or storage media solely to exercise Customer’s right to run Instances of the software under any of Customer’s Windows Intune with Windows Desktop Operating System (per user) licenses. Other users may access the software solely to provide technical support using Remote Assistance (or similar technology) or administering the software.

Reassignment of Windows Desktop OS
Subject to the general rule against short-term reassignment of licenses, Customer may reassign its license to a qualifying replacement device. A qualifying replacement device is a device to which Customer has assigned a license and upon which Customer has installed the latest version of the Windows desktop operating system. Customer may reassign its license sooner if it retires the licensed device due to permanent hardware failure. Customer may replace a Windows Device with another device, but not on a short-term basis (90 days or less) and only if that replacement device is licensed for a supported qualifying version of the Windows desktop operating system. Licenses that are granted or acquired in connection with other qualifying licenses (e.g., MDOP) generally must be reassigned as and when the qualifying license is reassigned.

Windows Operating System Buy-out option
A buy-out option is available to obtain perpetual Licenses for the latest version of Windows Enterprise that is made available to Customer under its Windows Intune with Windows Desktop Operating System subscription on or before the date Customer exercises the buy-out option (the "Windows Enterprise Software"). A buy-out order may be submitted during or any time after the 12th calendar month of an active Windows Intune with Windows Desktop Operating System subscription or up to 90 days after Customer’s subscription expires or is cancelled. Customer will be required to pay any outstanding subscription and/or cancellation fees upon or in advance of exercising the buy-out option. Customer’s buy-out order for Windows Enterprise Software may include a number of Licenses up to but not exceeding the number of active SLs Customer currently has (or had up to 90 days prior to buy-out) for Windows Intune with Windows Desktop Operating System. For pricing, payment terms, and information about how to exercise the buy-out option Customer should contact its local support center: www.microsoft.com/online/help/en-us/help/howto/0d8eb4c2-77c5-4dd8-b66c-9f1de7451e24.htm.

Perpetual Licenses
Upon Microsoft’s acceptance of Customer’s buy-out order and receipt of payment in full, Customer will have perpetual Licenses for the Windows Enterprise Software for the number of Licenses specified in the buy-out order. Perpetual Licenses received under the buy-out option remain subject to the terms of Customer’s Volume Licensing Agreement (including these Online Services Terms, as further specified below, and all License limitations), and supersede and replace Customer’s underlying perpetual Licenses for a qualifying Microsoft desktop operating system. The terms governing Customer’s ongoing use of the Windows Enterprise Software survive expiration or termination of Customer’s Volume Licensing Agreement.

Buy-Out Option
Notwithstanding anything to the contrary in Customer’s Volume Licensing Agreement, Customer may not reassign perpetual Windows desktop operating system licenses acquired under the Windows Intune with Windows Desktop Operating System buy-out option to replacement devices.

Assigning Licenses
Customer must assign the perpetual licenses Customer acquires under the buy-out option to Windows Devices on which Customer used the software under Customer's corresponding Windows Intune with Windows Desktop Operating System (per user) SLs.

**Product Use Rights**
The License Agreement/Product Use Rights for the Windows Enterprise Operating System apply to Customer’s use of Windows Enterprise Software under the perpetual Licenses Customer acquires under the buy-out option. The License Agreement/Product Use Rights is located at http://go.microsoft.com/fwlink?linkid=9839206. The Virtualization Rights, Roaming Use Rights, Windows to Go Rights and Companion Devices described above in this section do not apply.

**Microsoft Dynamics Online Services**

**Notices**
The Bing Maps and Customer Support Notices in Attachment 1 apply.

**Subscription License Suites**
In addition to User SLs, refer to Attachment 2 for other offerings that fulfill SL requirements.

**Microsoft Dynamics CRM Online**

**Microsoft Dynamics CRM Online Essentials**
Microsoft Dynamics CRM Online Basic
Microsoft Dynamics CRM Online Professional

**External Users**
Microsoft Dynamics CRM Online Enterprise

External Users of all editions of Microsoft Dynamics CRM Online do not need an SL to access the Online Service unless using Microsoft Dynamics CRM clients. This exemption does not apply to access of the Microsoft Dynamics Marketing, Microsoft Social Listening, or Parature, from Microsoft.

**Microsoft Dynamics Marketing**

**Microsoft Dynamics Marketing Enterprise**
Microsoft Dynamics Marketing Sales

**Collaboration**

**Service Level Agreement**
There is no SLA for Microsoft Dynamics Marketing.

**Web User Profile**
Users configured and accessing this Online Service as Web Portal Users do not need User SLs.

**Microsoft Social Listening**

**Microsoft Social Listening Professional**

**Service Level Agreement**
There is no SLA for Microsoft Social Listening.

**Social Content Obtained through Microsoft Social Listening**
“Social Content” is publicly-available content collected from social media networks (such as Twitter, Facebook and YouTube) and data indexing or data aggregation services in response to Customer’s search queries executed in Microsoft Social Listening. Social Content is not Customer Data. Microsoft reserves the right to:
store Social Content in a database commingled with content aggregated from other sources by other licensees;
access, edit or delete Social Content in response to a request from a social media network, data indexing or data aggregation service, Social Content owner or a takedown request under the Digital Millennium Copyright Act;
instruct Customer to edit or delete Social Content, if Customer exports Social Content; and
delete or restrict further access to Social Content after the Online Service has been terminated or expires.
Parature, from Microsoft

Service Level Agreement
There is no SLA for Parature, from Microsoft.

Customer may use Parature in accordance with the privacy and/or security terms located at http://www.parature.com/privacylegal/.

Office 365 Services

Notices
The Bing Maps Notices in Attachment 1 apply.

Core Features for Office 365 Services
During the term of Customer’s subscription, the Office 365 Services will substantially conform to the Core Features description provided (if any) in the Office 365 service-specific sections below, subject to Product restrictions or external factors (such as the recipient, message rate, message size and mailbox size limits for e-mail; default or Customer-imposed data retention policies; search limits; storage limits; Customer or end user configurations; and meeting capacity limits). Microsoft may permanently eliminate a functionality specified below only if it provides Customer a reasonable alternative functionality.

Administration Portal
Customer will be able to add and remove end users and domains, manage licenses, and create groups through the Microsoft Online Services Portal or its successor site.

Subscription License Suites
In addition to User SLs, refer to Attachment 2 for other SLs that fulfill requirements for Exchange Online Plans 1 and 2, Lync Online Plans 1 and 2 and SharePoint Online Plans 1 and 2.

Exchange Online

Data Loss Prevention
Exchange Online Archiving for Exchange Online Exchange
Online Archiving for Exchange Server

Core Features for Office 365 Services – Exchange Online

Exchange Online or its successor service will have the following Core Features capabilities:

Emails
An end user will be able to send email messages, receive email messages that originate from within and outside of Customer’s organization, and access the end user’s mailbox.

Mobile and Web Browser Access
Through the Microsoft Exchange ActiveSync protocol or a successor protocol or technology, Exchange Online will enable an end user to send and receive emails and update and view calendars from a mobile device that adequately supports such a protocol or technology. An end user will be able to send email messages, receive email messages that originate from within and outside of Customer’s organization, and access the end user’s mailbox, all from within a compatible web browser.

Retention Policies
Customer will be able to establish archive and deletion policies for email messages.

Deleted Item and Mailbox Recovery
Customer will be able to recover the contents of a deleted non-shared mailbox and an end user will be able to recover an item that has been deleted from one of the end user’s email folders.

Multi-Mailbox Search
Customer will be able to search for content across multiple mailboxes within its organization.

**Calendar**
An end user will be able to view a calendar and schedule appointments, meetings, and automatic replies to incoming email messages.

**Contacts**
Through an Exchange Online-provided user interface, Customer will be able to create and manage distribution groups and an organization-wide directory of mail-enabled end users, distribution groups, and external contacts.

**Core Features for Office 365 Services – Exchange Online Archiving**
Exchange Online Archiving or its successor service will have the following Core Features capabilities:

**Storage**
Customer will be able to allow an end user to store email messages.

**Retention Policies**
Customer will be able to establish archive and deletion policies for email messages distinct from policies that an end user can apply to the end user’s own mailbox.

**Deleted Item and Mailbox Recovery**
Customer, through Office 365 support services, will be able to recover a deleted archive mailbox, and an end user will be able to recover an item that has been deleted from one of the end user’s email folders in the end user’s archive.

**Multi-Mailbox Search**
Customer will be able to search for content across multiple mailboxes within its organization.

**Legal Hold**
Customer will be able to place a “legal hold” on an end user’s primary mailbox and archive mailbox to preserve the content of those mailboxes.

**Archiving**
Archiving may be used for messaging storage only with Exchange Online Plans 1 and 2.

**Archiving for Exchange Server**
Users licensed for Exchange Server 2013 Standard Client Access License may access the Exchange Server 2013 Enterprise Client Access License features necessary to support use of Exchange Online Archiving for Exchange Server.

**Exchange Online Plan 2 from Exchange Hosted Archive Migration**
Exchange Online Plan 2 is a successor Online Service to Exchange Hosted Archive. If Customer renews from Exchange Hosted Archive into Exchange Online Plan 2 and has not yet migrated to Exchange Online Plan 2, Customer’s licensed users may continue to use the Exchange Hosted Archive service subject to the terms of the March 2011 Product Use Rights until the earlier of Customer’s migration to Exchange Online Plan 2 or the expiration of Customer’s Exchange Online Plan 2 User SLs. The License Agreement/Product Use Rights is located at...

**Data Loss Prevention Device License**
If Customer is licensed for Data Loss Prevention by Device, all users of the Licensed Device are licensed for the Online Service.

**Lync Online**

**Lync Online Plan 1**
LyncOnline Plan 2

**Notices**
The Recording and the H.264/MPEG-4 AVC and/or VC-1 Notices in Attachment 1 apply.

**Core Features for Office 365 Services**
Lync Online or its successor service will have the following Core Features capabilities:
An end user will be able to transfer a text message to another end user in real time over an Internet Protocol network.

**Presence**
An end user will be able to set and display the end user's availability and view another end user's availability.

**Online Meetings**
An end user will be able to conduct an Internet-based meeting that has audio and video conferencing functionality with other end users.

**Office 365 Applications**
- **Office 365 Business**
- **Project Pro for Office 365**
- **Visio Pro for Office 365**

**Service Level Agreement**
There is no SLA for Project Pro for Office 365 and Visio Pro for Office 365.

**Installation and Use Rights**
Each user to whom Customer assigns a User SL must have a Microsoft Account in order to use the software provided with the subscription. These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install the software, with Shared Computer Activation (SCA), on a network server or Microsoft Azure Platform Services and use the software to create, edit, or save documents. For the purpose of this use right “network server” means a physical hardware server solely dedicated to Customer use. This SCA provision does not apply to Customers license for Office 365 Business; and
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected.

**The following terms apply only to Office 365 Business and Office 365 ProPlus Smartphone and Tablet Devices**
Each user to whom Customer assigns a User SL may also activate Microsoft Office Mobile software to create, edit, or save documents on up to five of user’s smartphones and five of user’s tablets.

**The following terms apply only to Office 365 ProPlus Office Home & Student 2013 RT Commercial Use**
Each User SL for Office 365 ProPlus modifies the user’s right to use the software under a separately acquired Office Home & Student 2013 RT license by waiving the prohibition against commercial use. Except for this allowance for commercial use of the software, all use is subject to the terms and use rights provided with the Office Home & Student 2013 RT License.

**Office Web Apps Server 2013**
Each Office 365 ProPlus user may use the Office Web Apps Server 2013 software. This provision does not apply to Customers that license this Product under the Microsoft Online Subscription Agreement or other Microsoft agreement that cover Online Services only.

**Subscription License Suites**
In addition to Office 365 ProPlus User SLs, Customer may fulfill the SL requirement for this Product by purchasing a Suite SL (refer Attachment 2).

**Office Online**

**Core Features for Office 365 Services**
Office Online or its successor service will have the following Core Features capabilities:

An end user will be able to create, view, and edit documents in Microsoft Word, Excel, PowerPoint, and OneNote file types that are supported by Office Online or its successor service.

**External Users**
External Users invited to site collections via Share-by-Mail functionality do not need User SLs with Office Online.
OneDrive for Business

External Users
External Users invited to site collections via Share-by-Mail functionality do not need User SLs with OneDrive for Business.

Project Online

Project Lite
Project Online

SharePoint Online

Duet Enterprise Online for Microsoft SharePoint and SAP
SharePoint Online Kiosk
SharePoint Online Plan 1
SharePoint Online Plan 2

Core Features for Office 365 Services
SharePoint Online or its successor service will have the following Core Features capabilities:

Collaboration Sites
An end user will be able to create a web browser-accessible site through which the end user can upload and share content and manage who has permission to access that site.

Storage
Customer will be able to set storage capacity limits for a site created by an end user.

External Users
External Users invited to site collections via Share-by-Mail functionality do not need User SLs with SharePoint Online Kiosk, Plan 1 and Plan 2.

Storage Add-on SLs
Office 365 Extra File Storage is required for each gigabyte of storage in excess of the storage provided with User SLs for SharePoint Online Plans 1 and 2.

Other Online Services

Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform

Service SLs
A Service SL is required to provide access to the services. Each Service SL must be purchased with at least one of the following qualifying Add-On SLs:

- a Website usage Add-On SL, which is required for unauthenticated users to access Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform through Customer’s programs based on the number of billable transactions per month,
- a public website usage SL, which is available for a specified number of billable transactions for use on a website that is available publicly without restriction,
- an Internal Website Usage Add-on, which is available for a specified number of billable transactions for use on an internal website (e.g., intranet) on a private network,
- Bing Maps Unlimited Add-on,
- Bing Maps Known User SL, or
- Bing Maps Light Known User SL.

Qualifying Bing Maps Mobile Asset Management Platform Service SL Add-on SLs
For the Bing Maps Mobile Asset Management Platform, an Add-on SL is required for each tracked Asset whose GPS or other sensor based position can be monitored, displayed, reverse geocoded or used to perform calculations using Bing Maps Mobile Asset Management Platform. “Asset” is defined as any vehicle, device or other mobile object. These Add-on SLs are for a specified number of tracked Assets.

Authenticated Users
Users that are authenticated by Customer’s programs that access Bing Maps Enterprise Platform and Bing Maps Mobile Asset Management Platform must have a SL.

Bing Maps APIs
Customer may use all Bing Maps APIs in accordance with the Microsoft Bing Maps Platform API Terms of Use and Bing Maps Platform SDKs, including any successors thereto, located at https://go.microsoft.com/fwlink/p/?LinkID=66121 and https://go.microsoft.com/fwlink/p/?LinkID=223436.

Bing Maps Privacy
The Bing Privacy Statement and privacy terms in the Microsoft Bing Maps Platform API Terms of Use located at: http://go.microsoft.com/fwlink/?LinkId=248686 apply to Customer’s use of the Bing Maps Services.

Microsoft Learning E-Reference Library
Any person that has valid access to Customer’s computer or internal network may copy and use the documentation for Customer’s internal reference purposes. Documentation does not include electronic books.

Microsoft Learning IT Academy

Service SL
A Service SL is required for each Location that accesses or uses any Microsoft Learning IT Academy service or benefit. Location is defined as a physical site with staff under the same administrator, such as a principal, in a single building or group of buildings located on the same campus.

IT Academy Program Guidelines
The IT Academy program guidelines, located at http://www.microsoft.com/itacademy, apply to Customer’s use of the Microsoft Learning IT Academy and its benefits.

Program Benefits Provided by Third-Party
Program benefits may only be used by a licensed institution’s faculty, staff and students currently enrolled in the licensed institution.

Office 365 Developer

No Production Use of Office 365 Developer
Each user to whom Customer assigns a User SL may use the Online Service to design, develop, and test Customer’s applications to make them available for Customer’s Office 365 Online Services, on-premises deployments or for the Microsoft Office Store. The Online Service is not licensed for production use.

Office 365 Developer End Users
Customer’s end users do not need a SL to access Office 365 Developer to perform acceptance tests or provide feedback on Customer programs.

Power BI for Office 365

Notices
The Bing Maps Notices in Attachment 1 apply.
System Center Endpoint Protection

**Device SLs**
An SL is required for each device that accesses System Center Endpoint Protection or related software, excluding Servers, which require Server Management Licenses.

**Server Management SLs**
In addition to User SL requirements, Server Management Licenses are required for each Server in the number specified in the System Center 2012 R2 Datacenter and Standard license terms in the Management Servers section of the Product Use Rights. The License Agreement/Product Use Rights is located at http://go.microsoft.com/fwlink=9839206. For purposes of this statement, OSEs running server operating systems that access System Center Endpoint Protection or related software are managed OSEs. For this paragraph, a “Servers” is a device on which Customer runs server operating system software.

**Substitution of Scan Engines**
Microsoft may substitute comparable software and files for the Online Service’s:
- anti-virus and anti-spam software; and
- signature files and content filtering data files.

**Translator API**
Customer may use Translator API in accordance with the Translator API Terms of Use, including successor Terms, located at http://aka.ms/translatortou and the Translator Privacy Statement located at http://aka.ms/translatorprivacy.

**Yammer Enterprise**

**External Users**
External Users invited to Yammer via external network functionality do not need User SLs.

**Microsoft’s use of Customer Data**
Despite anything to the contrary in Customer’s Volume Licensing Agreement or the OST, Microsoft’s use of Customer Data in the Yammer Enterprise online service, both before and after Customer’s Online Service subscription terminates, will be governed by the Yammer Privacy Statement at www.yammer.com/about/privacy.
Attachment 1 – Notices

Bing Maps

The Online Service or its included software includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Customer’s use of Bing Maps is governed by the Bing Maps End User Terms of Use available at go.microsoft.com/fwlink/?linkid=9710837 and the Bing Maps Privacy Statement available at go.microsoft.com/fwlink/?LinkId=248686.

Customer Support

If Customer’s volume licensing agreement incorporates a Master Business Agreement dated before September 1, 2007 (and Customer has not signed any other master-level Microsoft Professional Services agreement) or if Customer licenses under the Microsoft Online Subscription Agreement or other Microsoft agreement that cover Online Services only, Customer Support is provided subject to these additional terms.

Definitions

Terms used in this Customer Support Notice but not defined will have the definition provided in Customer’s volume licensing agreement. “Customer Support” means all support or advice provided to Customer under Customer’s volume licensing agreement.

“Fixes” means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs), or that Microsoft provides to Customer when performing Customer Support to address a specific issue.

Fixes

If Microsoft provides Fixes to Customer in the course of performing Customer Support, those Fixes are licensed according to the license terms applicable to the Product to which those Fixes relate unless the Fixes include separate terms, in which case those terms will govern. If Fixes are provided for Microsoft Azure Services, Microsoft Dynamics CRM Online, Microsoft Dynamics Marketing or Microsoft Social Listening, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, Customer shall have a non-exclusive, temporary, fully-paid-up license to use and reproduce the Fixes solely for Customer’s internal use. Customer may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code.

Pre-Existing Work

All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates independent of Customer’s volume licensing agreement (Pre-Existing Work) shall remain the sole property of the party providing the Pre-Existing Work. During the performance of Customer Support, each party grants to the other party (and Microsoft’s contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-Existing Work provided to the other party, solely as needed to perform its obligations in connection with the Customer Support. Except as may be otherwise expressly agreed by the parties in writing, upon payment in full Microsoft grants Customer a non-exclusive, perpetual, fully-paid-up license to use, reproduce and modify (if applicable) any Microsoft Pre-Existing Work provided as part of a Customer Support deliverable, solely in the form delivered to Customer, and solely for Customer’s internal business purposes. The license to Microsoft’s Pre-Existing Work is conditioned upon Customer’s compliance with the terms of Customer’s volume licensing agreement. If Customer is located in the Czech Republic, Customer represents that the author has granted relevant approvals to modify Customer’s pre-existing work. Any violation of conditions of Customer’s volume licensing agreement, or any other statements regarding customer support under that agreement, by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft’s Pre-Existing Work that Microsoft leaves to Customer at the end of Microsoft’s performance of Customer Support.

Materials

Microsoft shall own all rights in any materials developed by Microsoft (other than software code) and provided to Customer in connection with Customer Support (“Materials”), except to the extent such Materials constitute Customer’s Pre-Existing Work. Microsoft grants Customer a non-exclusive, perpetual, fully-paid-up license to use, reproduce and modify the Materials solely for Customer’s internal business operations and without any obligation of accounting or payment of royalties.
Sample Code
Microsoft grants Customer a nonexclusive, perpetual, royalty-free right to use and modify any software code provided by Microsoft for the purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code, provided that Customer agrees:

- to not use Microsoft's name, logo, or trademarks to market Customer's software product in which the Sample Code is embedded; and (ii) to include a valid copyright notice on Customer's software product in which the Sample Code is embedded. Customer authorizes and consents to the use or distribution of any Sample Code and Customer software product in accordance with 28 U.S.C. 1498.
Affiliates’ Rights
Customer may sublicense the rights contained in this section to Affiliates, but Customer’s Affiliates may not sublicense these rights and their use must be consistent with the license terms contained in Customer’s volume licensing agreement.

Warranty for Customer Support
Microsoft warrants that all Customer Support will be performed with professional care and skill.


This software may include H.264/AVC, VC-1, MPEG-4 Part 2, and MPEG-2 visual compression technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 AND MPEG-2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE (VIDEO STANDARDS) AND/OR

DECODE AVC, VC-1, MPEG-4 PART 2 AND MPEG-2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. REFER TO www.mpegla.com.

For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content compliant with the VIDEO STANDARDS technologies for distribution to third parties.
## ATTACHMENT 2 – SUBSCRIPTION LICENSE SUITES

Online Services may be available for purchase as Suites of Online Services. If, in the table below, a cell is shaded blue in an Online Service’s row, the Suite SL for the column the cell is in fulfills the SL requirements for the cell’s Online Services.

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<tr>
<th>Online Service</th>
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<td>Office 365 Enterprise E1 E3 E4</td>
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<td>Exchange Online</td>
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<td>Exchange Online Kiosk</td>
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<td>SharePoint Online</td>
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<td>Lync Online</td>
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<td>Lync Online Plan 1</td>
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<td>Yammer Enterprise</td>
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<td>Enterprise Mobility Suite E1 E3</td>
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Add-on Suite SLs that include “without ProPlus” in the title do not include rights to Office 365 ProPlus.
ATTACHMENT 3 – THE STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

To the extent Customer is subject to Article 26(2) of Directive 95/46/EC and to the extent not prohibited by applicable law, then, for the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, Customer (as data exporter) and Microsoft Corporation (as data importer, whose signature appears below), each a “party,” together “the parties,” have agreed on the following Contractual Clauses (the “Clauses” or “Standard Contractual Clauses”) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1: Definitions

‘personal data’, ‘special categories of data’, ‘process/processing’, ‘controller’, ‘processor’, ‘data subject’ and ‘supervisory authority’ shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

‘the data exporter’ means the controller who transfers the personal data;

‘the data importer’ means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

‘the subprocessor’ means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

‘the applicable data protection law’ means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

‘technical and organisational security measures’ means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2: Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 below.

Clause 3: Third-party beneficiary clause

The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce them against such entity.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.
Clause 4: Obligations of the data exporter

The data exporter agrees and warrants:

that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 below;

that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

that it will ensure compliance with the security measures;

that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

that it will ensure compliance with Clause 4(a) to (i).

Clause 5: Obligations of the data importer

The data importer agrees and warrants:

to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

that it will promptly notify the data exporter about:

any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

any accidental or unauthorised access, and

any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority; to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter; that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent; that the processing services by the subprocessor will be carried out in accordance with Clause 11; and to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6: Liability

The parties agree that any data subject who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7: Mediation and jurisdiction

The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; to refer the dispute to the courts in the Member State in which the data exporter is established. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8: Cooperation with supervisory authorities

The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9: Governing Law.

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10: Variation of the contract

The parties agree that any variations to the Clauses must be in writing and signed by both parties.
The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

**Clause 11: Subprocessing**

The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter’s data protection supervisory authority.

**Clause 12: Obligation after the termination of personal data processing services**

The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**Appendix 1 to the Standard Contractual Clauses**

**Data exporter:** Customer is the data exporter. The data exporter is a user of Online Services as defined in the section of the OST entitled “Security and Data Processing: Additional Technical and Organizational Measures.”

**Data importer:** The data importer is MICROSOFT CORPORATION, a global producer of software and services.

**Data subjects:** Data subjects include the data exporter’s customer’s representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.

**Categories of data:** The personal data transferred includes e-mail, documents and other data in an electronic form in the context of the Online Services.

**Processing operations:** The personal data transferred will be subject to the following basic processing activities:

- **Duration and Object of Data Processing:** The duration of data processing shall be for the term designated under the applicable Volume Licensing Agreement between data exporter and the Microsoft entity to which these Standard Contractual Clauses are annexed (“Microsoft”). The objective of the data processing is the performance of Online Services.

- **Scope and Purpose of Data Processing:** The scope and purpose of processing personal data is described in the DPT. The data importer operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its subprocessors operate such facilities.

- **Customer Data Access:** For the term designated under the applicable Volume Licensing Agreement data importer will at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide data exporter with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on its behalf.

- **Data Exporter’s instructions:** For Online Services, data importer will only act upon data exporter’s instructions as conveyed by Microsoft.
Customer Data Deletion or Return. Upon expiration or termination of data exporter’s use of Online Services, it may extract Customer Data and data importer will delete Customer Data, each in accordance with the OST applicable to the agreement.

Subcontractors: The data importer may hire other companies to provide limited services on data importer’s behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services the data importer has retained them to provide, and they are prohibited from using Customer Data for any other purpose.

Appendix 2 to the Standard Contractual Clauses

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

Personnel. Data importer’s personnel will not process Data without authorization. Personnel are obligated to maintain the confidentiality of any Data and this obligation continues even after their engagement ends.

Data Privacy Contact. The data privacy officer of the data importer can be reached at the following address:
Microsoft Corporation
Attn: Chief Privacy Officer 1
Microsoft Way Redmond, WA
98052 USA

Technical and Organization Measures. The data importer has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data, as defined in the DPT, against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful destruction as follows: The technical and organizational measures, internal controls, and information security routines set forth in the DPT are hereby incorporated into this Appendix 2 by this reference and are binding on the data importer as if they were set forth in this Appendix 2 in their entirety.

Signature of Microsoft Corporation appears on the following page.
Signing the Standard Contractual Clauses, Appendix 1 and Appendix 2 on behalf of the data importer:

Rajesh Jha, Corporate Vice President Microsoft Corporation
One Microsoft Way, Redmond WA, USA 98052
EC AMERICA RIDER TO PRODUCT SPECIFIC LICENSE TERMS AND CONDITIONS
(for U.S. Government End Users)

1. Scope. This Rider and the attached MicroStrategy Incorporated ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order GGP 4800.2i, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing government indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement ("Agreement") applies to an order entered into between Contractor acting by and through its supplier, MicroStrategy Incorporated ("we," "us," "our") and the eligible Ordering Activity under GSA Schedule contracts identified on the order ("you," "your," or "Ordering Activity"), and specifies the terms and conditions under which we will license and supply Products and Services to you.

I. GENERAL TERMS

The terms of this Section I ("General Terms") apply generally to all Products and Services supplied under this Agreement.

1. Definitions

Unless otherwise defined in this Agreement, capitalized terms used in the body of this Agreement will have the meanings set forth below.

"Applicable Data Protection Law" means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality or security of Protected Data, including the European Union Directives and regulations governing general data protection and all applicable industry standards concerning privacy, data protection, confidentiality or information security.

"CPU" means a physical core (in a physical computing environment) or a virtual core (in a virtual computing environment) to which an instance of a Product is assigned, as identified by the operating system in which the Product is installed.

"Customer Content" means software (including machine images), data, text, audio, video, images, or other content of yours or a third-party that you or your Representative utilize with a Product.

"Designated Software Instance," or "DSI" means a single MicroStrategy metadata database or a set of related MicroStrategy metadata databases (e.g., for production, development, testing, etc.) that will be accessed by the Products specified on an order.

"Documentation" means the user documentation or manuals normally distributed or made available in connection with a Product.

"Named User" means a single individual designated by you as a user of a Product on a non-temporary basis.

"Product" means a generally available MicroStrategy software product identified on an order that is licensed to you pursuant to the terms of this Agreement, and any tools included with such software product (including, in the case of the "Cloud Platform" version of our Products, the MicroStrategy Cloud provisioning console).

"Protected Data" means any data or information that is subject to regulation under Applicable Data Protection Law.

"Representative" means any of your affiliates, your third-party contractors and anyone else accessing or using a Product or Service on your behalf or through your systems, including any Named Users.

"Service" means any service provided by us pursuant to this Agreement, including technical support, education, and consulting (or any portion thereof).

"Technical Support Services" means the technical support and maintenance Services provided by us according to our then current technical support policy listed at https://www.microstrategy.com/getmedia/20f15098-14b2-432d-afa42e14189c492c/COLL-1909-0618-TS-policy-with-GDPR-section_final ("Technical Support Policy") when the Services are purchased. "Third-Party Solution" means any product, service, content or item of a third-party.

"Update" means a later commercial release of a Product made available after you license the Product.

2. Certain Obligations and Restrictions

You are responsible for compliance with this Agreement by your Representatives. You are also responsible for the proper operation of your network and your equipment used to connect to the Products. You and your Representatives will not (a) copy, display, distribute, or otherwise use a Product in any manner or for any purpose not expressly authorized by this Agreement; or (b) create derivative works of or otherwise modify any Product or any portion thereof except as expressly provided in the Documentation; or (c) modify, tamper with or repair any Product; or (d) reverse engineer, decompile or disassemble any Product or such software or the metadata created by a Product or such software, or apply any other process or procedure to derive the source code of any Product or such software; or (e) interfere with or disrupt the integrity or performance of a Product; or (f) attempt to gain unauthorized access to a Product; or (g) access or use any Product in a way intended to avoid incurring fees or exceeding usage limits or quotas; or (h) use a Product to develop any product or service that is in any way competitive with any of our product or service offerings; or (i) make available to any third-party any analysis of the operation of a Product, including any benchmarking results, without our prior written consent; or (j) use any Product to provide time-sharing services, software-as-a-service offering, service bureau services or similar services; or (k) use a Product to store or transmit (1) material in violation of third-party privacy rights; or (2) libelous, or otherwise unlawful or tortious material; or (3) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (4) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs.

As required for our performance pursuant to this Agreement and an order, you are also required to (A) provide us with reliable, accurate and complete information; and (B) make decisions and obtain required management approvals in a timely manner; and (C) obtain all consents, approvals and licenses...
necessary for use of any software, services, data or other items provided by you or on your behalf; and (D) cause your third-party contractors and licensors to cooperate with us.

3. Intellectual Property Ownership

We, our affiliates and our licensors will own all right, title and interest in and to all Products. You will be and remain the owner of all rights, title and interest in and to Customer Content. Each party will own and retain all rights in its trademarks, logos and other brand elements (collectively, “Trademarks”). To the extent a party grants any rights or licenses to its Trademarks to the other party in connection with this Agreement, the other party’s use of such Trademarks will be subject to the reasonable trademark guidelines provided in writing by the party that owns the Trademarks.

4. Limited Warranties and Remedies

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY PRODUCT OR SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NONINFRINGEMENT. WE DO NOT WARRANT AND ARE NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES AND YOUR SOLE AND EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR SERVICES ARE AS PROVIDED BY THE THIRD-PARTY PROVIDER AND NOT BY US.

5. Data Protection

You will not transfer to us or provide us any access to any Protected Data in connection with this Agreement, including Personal Data, Protected Health Information and Personally Identifiable Information (as such terms are defined in Applicable Data Protection Law), except for Protected Data related to your contact persons.

We have implemented appropriate technical, organizational, and security measures designed to safeguard and protect Protected Data provided by you to us and we may access, use and transfer such Protected Data to our affiliates and third parties (including those located outside of the European Economic Area) only for the purposes of fulfilling our obligations and exercising our rights, providing information to you and complying with our legal and auditing requirements.

6. Third-Party Solution Connectors

When you access any Third-Party Solution (including third-party data sources) with connectors included as part of the Products, you agree and acknowledge that (a) you may download content from the servers of the Third-Party Solution provider; and (b) your access to the ThirdParty Solution with such connectors will be for the purpose of utilizing the Third-Party Solution in conjunction with the Products; and (c) we are not responsible for interruptions of service caused by the ThirdParty Solution provider; and (d) if we have a business relationship with the Third-Party Solution provider, that relationship is subject to termination and cancellation; (e) you may not remove or obscure any patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any output of the Products and (f) you are solely responsible for licensing the use of third-party data sources accessed by our Products.

7. Other Provisions

Our security Products are not designed to manage physical or logical access to facilities or systems where delay in or failure of such access could threaten health or safety, or cause property, environmental or similar damage. You represent that your decision to license a Product is not based on (a) any oral or written comments made by us with respect to functionality or features not currently offered in our latest generally available version of our Products; or (b) any expectation that any additional features or functionality presented as part of a demonstration, beta evaluation or roadmap presentation of a Product may be included in a future update or release of a Product; or (c) demonstrations of any software that is not currently generally available. You further acknowledge that the development, release and timing of any additional features or functionality for the Products remain at our sole discretion. If you deploy our Products or Services as part of an extranet application, you agree to display “Powered by MicroStrategy” or certain other similar trademarks designated by us.

II. ENTERPRISE PLATFORM LICENSE TERMS

The terms of this Section II (“Enterprise Platform License Terms”) apply exclusively to the licensing and provision of the “Enterprise Platform” version of our Products. Products licensed under these Enterprise Platform License Terms will be designated for use in an “Enterprise Platform for Windows” or “Enterprise Platform for Linux” operating environment on an order.

License Grant. We grant you a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

License Type. Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license to a Product entitles a Named User to access and use that Product in one production environment and up to two non-production environments. Each CPU license to a Product entitles you to assign the Product to a single CPU in one production environment and up to two non-production environments, for use in support of an unspecified number of Named Users.

License Duration. The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a “Perpetual” interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a “Term” interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.
Deployment Method. You may only install the Products on servers and workstations under your control in your enterprise data center or under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the “Enterprise Platform for Windows” operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in a Microsoft Windows environment. If the “Enterprise Platform for Linux” operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Linux environment.

Additional Limited Warranties and Remedies. We warrant that (a) for a period of six (6) months from the effective date of an order (“Enterprise Platform Warranty Period”), each Product listed on the order and Updates delivered for the Product during the Enterprise Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

III. CLOUD PLATFORM LICENSE TERMS

The terms of this Section III (“Cloud Platform License Terms”) apply exclusively to the licensing and provision of the “Cloud Platform” version of our Products, an optimized version of the MicroStrategy software platform built specifically for deployment in an Amazon Web Services or Microsoft Azure environment through the MicroStrategy Cloud provisioning console. Products licensed under these Cloud Platform License Terms will be designated for use in a “Cloud Platform for AWS” or “Cloud Platform for Azure” operating environment on an order.

License Grant. We grant you a non-exclusive, non-transferable license, subject to the terms and conditions of this Agreement and in accordance with applicable law, to (a) install our Products identified in an order on servers and workstations in the country to which the Products are delivered; and (b) grant Named Users located anywhere in the world access to the Products (including the Documentation and reports, dashboards, dossiers and other output generated by the Products) in support of your internal business operations, each in accordance with the Documentation and license type(s) and terms specified on an order. We will supply each Product to you by making it available electronically. You may make additional copies of the download files containing the Products for archival purposes.

License Type. Your license to a Product will be under a Named User or CPU license type, as specified on an order. Each Named User license to a

License Duration. The duration of your license to a Product will be for a perpetual or limited term, as specified on an order. Subject to the terms of this Agreement and the applicable order, (a) if a “Perpetual” interval is specified for a Product, you will receive a license to that Product in perpetuity; and (b) if a “Term” interval is specified for a Product, you will receive a license to that Product for a period of 12 months (or another period specified on the order) from the date of delivery of the Product.

Deployment Method. You may only install the Products on servers and workstations under the control of your third-party service provider who hosts the Products on your behalf in a public Cloud, and will deploy the Products only in the operating environment specified on the order. If the “Cloud Platform for AWS” operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order (e.g., Intelligence, Reporter or Identity) solely in an Amazon Web Services environment. If the “Cloud Platform for Azure” operating environment is specified on the order, you may deploy the base server product module in the DSI listed on the order solely in a Microsoft Azure environment.

Additional Limited Warranties and Remedies. We warrant that (a) for a period of six (6) months from the effective date of an order (“Cloud Platform Warranty Period”), each Product listed on the order and Updates delivered for the Product during the Cloud Platform Warranty Period will perform in substantial conformance with the technical specifications set forth in the Documentation; and (b) prior to release, we scan each version of the Products using a nationally recognized virus scanning program and we will remove any virus detected by such virus scanning program prior to releasing such version of the Products. For any breach of the warranty set forth in subsection (a) above, your exclusive remedy and our entire liability will be (1) the correction of the Product errors that caused the breach of the warranty; or (2) replacement of the Product; or (3) if neither of the foregoing can be reasonably effected by us, the refund of the license fees and any unused, prepaid Technical Support Services fees paid for the Product, provided that the Product licenses are terminated.

IV. SERVICES TERMS

The terms of this Section IV (“Services Terms”) apply exclusively to the provision of our Technical Support, Education, and Consulting Services offerings.

Models. Each type of Service purchased under these Services Terms will be provided under one of the following models.

(a) Annual Subscription. Services sold under an “Annual Subscription” model will be designated on an order by an “Annual” interval. We will provide these Services to you for a period of twelve (12) months beginning on the effective date of the order, except as otherwise set forth below.

(b) Hourly. Services sold under an “Hourly” model will be designated on an order by a “Project” interval for an estimated number of hours. We will deliver these Services at your request on a time and materials basis during the twelve (12) month period beginning on the effective date of the order; the number of hours that we actually deliver may vary from the estimated number of hours listed on the order. For clarity, these types of Services are not provided on a fixed-fee basis and we do not guarantee completion of deliverables within a specific number of hours. If the parties anticipate that the hours to be delivered will exceed the estimated hours set forth on the order, we will request your approval to exceed the estimate and will not deliver those excess hours until we receive your approval; such approval may be provided by email or in an executed change order.

(c) Prepaid Hourly. Services sold under a “Prepaid Hourly” pricing model will be designated on an order by an “Annual” interval for a set number of hours. Prepaid Hourly Services are payable by you in advance. We will deliver these Services at your request on a time and materials basis up to 4 the number of hours stated on the order; hours not requested during the twelve (12) month period beginning on the effective date of the order will expire.

Technical Support
(a) Levels of Technical Support Offerings. We offer four (4) levels of Technical Support Services – Standard Support, Extended Support, Premier Support and Elite Support – each of which is provided by us in accordance with and described in the Technical Support Policy. We will provide you the level of Technical Support Services specified on an order. Each of these support offerings is provided on an Annual Subscription basis.

(b) Support Liaisons. You may designate a set number of Support Liaisons (as defined in our Technical Support Policy) for each of your DSIs based on the level of Technical Support Services you purchase. You may also purchase additional Support Liaisons on an Annual Subscription basis.

(c) Enterprise Support. As part of your Technical Support Services subscription, we will deliver a pre-determined number of hours of “Enterprise Support” to you annually at your request, as specifically described in the Technical Support Policy. If you would like us to deliver more hours of Enterprise Support than the hours to which you are entitled under your Technical Support Services subscription, you may purchase additional Enterprise Support via an order on a Prepaid Hourly basis.

(d) Additional Technical Support Terms. Each order for perpetual Product licenses will state the fee for Standard Technical Support Services for a period of twelve (12) months commencing on the date of delivery of those Products. Except as otherwise specified on an order, (a) upon expiration of the initial annual subscription term, you have the option to renew Standard Technical Support Services on those Product licenses. Standard Technical Support Services for term licenses is included as part of the term license fee. For each Product license, we will deliver to you, at your request, an Update at no charge as part of a Technical Support Services subscription. Updates will not include new products that we market separately. We warrant that we will not materially decrease the level of Technical Support Services provided during an active subscription to such Technical Support Services.

**Education** We offer education and training Services on either an Annual Subscription or Hourly basis, as described below. Education offerings may be purchased via an order or an online credit card purchase. In the case of education offerings purchased online via a credit card, references to an order will be deemed to refer to the online purchase, and references to the “effective date of an order” will be deemed to mean the date of online purchase.

(a) Types of Education Offerings.

(i) Education Passes. Education Passes are sold on an Annual Subscription basis and provide our customers and partners with flexible access to our training materials and courses. Each Education Pass provides a single individual (“Education Pass User”) global access to instructor-led public training classes (virtual or in-person) and self-paced training courses, and includes all applicable certification exam fees. There are two types of Education Passes: an “Education Pass-Architect,” that provides the Education Pass User with unlimited access to all live or on-demand courses and annual certifications for staff of Directors and the establishment of an Intelligence Center; and an “Education Pass-Analyst,” that provides the Education Pass User with access to all live or on-demand courses and annual certifications specific to Analysts. We will notify you that your Education Pass subscription is set to expire between thirty (30) and ninety (90) days prior to the expiration of the then-current term. No more than once during an Education Pass subscription term, you may reassign an Education Pass subscription to a new Education Pass User for the remainder of the subscription term if the current Education Pass User has not used the Education Pass to attend any public instructor-led courses or access any self-paced training courses or if the current Education Pass User has terminated employment with you.

(ii) Education Credits. Education Credits are sold on an Annual Subscription basis and are “purchase cards” that organizations can apply to other training, including a la carte courseware for individuals and onsite customer training for groups. Education Credits may not be applied to the purchase of Education Pass subscriptions.

(iii) Education Services. Education Services are sold on an Hourly basis. Under an “Education Services” engagement, we will assist you with customizing and adapting our courseware and training classes to your application standards, data sets, customizations and use cases. You will reimburse us for all reasonable expenses we incur when delivering these Education Services. We grant you a license to use the work product we develop as part of an Education Services engagement in support of your internal business operations.

(b) Additional Education Terms.

(i) Instructor-Led Private Classes. For each in-person instructor-led private training class delivered at a non-MicroStrategy location, (a) if the instructor is required to travel to deliver the class, you will reimburse us for the instructor’s reasonable travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. If you redeem Education Credits for an instructor-led private training class and you cancel the class prior to commencement, you will reimburse us for any non-cancelable travel expenses and facility rental fees we incur in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR); and if you cancel within fourteen (14) business days prior to commencement, you may only reschedule the class to an alternate available date by redeeming additional Education Credits for the class; if the cancellation is more than fourteen (14) business days prior to commencement, you will reimburse us for all reasonable expenses we incur when delivering these Education Services. We grant you a license to use the work product we develop as part of an Education Services engagement in support of your internal business operations.

(ii) Courseware for Instructor-Led Training Classes. For each instructor-led training class (whether public or private, virtual or in-person) we deliver to you, we will make electronic versions of the course content files for the class (“Courseware”) available to you, and you may reproduce and distribute one paper copy of the Courseware to each of your employees (or other individual designated by you) who attends the class. Your use of the Courseware is limited to use only by those individuals who attend the class, solely for their own training purposes.

(iii) Intellectual Property and Subcontractors. All education course materials (including Courseware) are copyrighted by us and are our confidential information. Education and training Services are provided and delivered either directly by us or through our subcontractors. Notwithstanding anything to the contrary in any written agreement between you and us, if any, you consent to our use of subcontractors to provide education and training Services.

**Consulting.** We offer consulting Services on an Hourly basis, either as a packaged consulting Service offering or as an individual consultant resource Service offering, each as more particularly described below.

**Types of Consulting Services.**

**Packaged Consulting Services.** For packaged consulting Service offerings, we will perform the applicable tasks described below at your request on an Hourly basis at a single blended rate, regardless of the consultant(s) we engage to provide the Services. For these offerings, we will determine the level of consultant(s) who will provide the Services at our sole discretion, and the location where the Services will be performed (either onsite or remotely from our offshore Global Delivery Center).

**Platform Services.** Under a “Platform Services” engagement, we will assist you with architecting, configuring, and deploying your Product architecture; tasks may include designing a best practice-based architecture that includes separate environments for development and user testing to enable end users to experience great application performance across applications during peak hours while minimizing system cost; developing a sizing strategy to maximize platform efficiency; configuring administration services and security settings including provisioning users, scheduling, subscriptions, system monitoring, OS patches, and back-ups; and designing an upgrade strategy to enable you to start using the latest innovations from MicroStrategy faster.
Application Services. Under an “Application Services” engagement, we will assist you with defining, developing and deploying end-to-end enterprise or departmental applications; tasks may include determining the optimal technology approach and caching strategy to deliver effective, high-performance applications; leveraging a best practice approach for building new applications which includes conducting user workshops, building wireframes, iterating, testing, documenting and mentoring to increase adoption; and enhancing, optimizing or redesigning existing applications for improved user experience, faster performance or extended functionality.

Analytics Services. Under an “Analytics Services” engagement, we will assist you with designing and configuring a scalable and reusable federated enterprise data layer that supports a single version of the truth; tasks may include configuring and optimizing connections to databases, big data sources, NoSQL sources, and enterprise applications to access enterprise data for use in analytics and mobility applications; designing an optimized in-memory strategy and publishing high performance data sets to Analysts, Data Scientists and Developers, and Architects, so they can build analytics, models and applications faster on trusted data; and conducting regression testing, reviewing the schema, resolving issues, and implementing a process for on-going data integrity management.

Mobility Services. Under a “Mobility Services” engagement, we will assist you with defining, developing and deploying end-to-end enterprise mobile architecture and applications; tasks may include implementing a successful mobile strategy in a heterogeneous device environment that optimizes the experience for iOS and Android users; leveraging a best practice approach for building new mobile apps which includes conducting user workshops, building wireframes, iterating, testing, documenting and mentoring to increase adoption; developing a caching strategy that optimizes the performance and offline experience of apps; determining the optimal deployment strategy and navigating security requirements and industry regulations; and enhancing, optimizing or redesigning existing apps for improved user experience, faster performance or extended functionality such as write-back capabilities or mobile alerting via push notifications.

Individual Consultant Resources. We also offer consulting Services at certain individual consultant resource levels – Specialist, Master, Expert and Fellow. For these individual consultant resource Service offerings, we will perform the applicable tasks set forth on an order or a statement of work at your request on an Hourly basis at the hourly rates applicable to each resource. Except for Fellows, each of these resource levels are available either onsite or remotely from our offshore Global Delivery Center. Fellows are available onsite only.

Additional Consulting Terms. You will reimburse us for all reasonable expenses we incur when delivering the Services in accordance with applicable regulations. We grant you a license to use the work product we develop as part of a consulting Services engagement in support of your internal business operations.

Additional Limited Warranty Applicable to all Service Offerings. We warrant that our employees and contractors will perform any Services listed on an order in a manner conforming to generally accepted industry standards and practices. For any breach of this warranty, your exclusive remedy and our entire liability will be reperformance of the Services at no cost to you.
1. Scope. This Rider and the attached MMModal Services, Ltd (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”).

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be deemed deleted, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The Government Customer is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are hereby deemed to be deleted. Termination shall be governed by FAR 52.212-4(f) and (m) and the Contract Disputes Act, subject to the following exceptions:

EC America may request cancellation or termination of the license agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolution process or if such remedy is otherwise ordered by a United States Federal Court.

e) Choice of Law. Subject to the Contracts Disputes Act and the Federal Tort Claims Act (28 U.S.C. §1346(b)), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by law, they will not apply to this Rider or the underlying Schedule Contract. All clauses in the Manufacturer Specific Terms referencing equitable remedies are deemed deleted and not applicable to any Government order.

f) Force Majeure. Subject to FAR 52.212-4(f) Excusable delays(FEB 2012), unilateral termination by the Contractor does not apply to a Government Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

g) Assignment. All clauses regarding assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements. All clauses governing assignment in the Manufacturer Specific Terms are hereby deemed deleted.

h) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby deemed to be deleted.

i) Customer Indemnities. Unless otherwise permitted by Federal statute, all Manufacturer Specific Terms referencing customer Indemnities are hereby deemed to be deleted.

j) Contractor Indemnities. All Manufacturer Specific Terms that (1) violate DOJ’s jurisdictional statute (28 U.S.C. § 516) and/or (2) require that the Government give sole control over the litigation and/or settlement are hereby deemed to be deleted.

k) Renewals. All Manufacturer Specific Terms that violate the Anti-Deficiency Act ban on automatic renewal are hereby deemed to be deleted.

l) Future Fees or Penalties. All Manufacturer Specific Terms that violate the Anti-Deficiency Act prohibition on the Government paying any fees or penalties beyond the contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412), are hereby deemed to be deleted.

m) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties.

n) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer, any third party manufacturer shall be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby deemed to be deleted.
o) Installation and Use of the Software. Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

p) Dispute Resolution and Venue. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with FAR 52.233-1 Disputes and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

q) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, use of the name or logo of any U.S. Government entity is prohibited.

r) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

s) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract, the terms of this Rider shall control. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

MMODAL SERVICES LTD. LICENSE, WARRANTY AND SUPPORT TERMS

This agreement and the underlying GSA Schedule Contract, Schedule pricelist, and purchase order which by this reference are incorporated herein (together referred to hereinafter as the “Agreement” or “End User Agreement”) is a binding agreement between MModal Services, Ltd. and/or its Affiliates (hereinafter referred to as “M*Modal”) and the entity identified in the purchase order as the licensee of software from M*Modal (hereinafter referred to as “Ordering Activity”). M*Modal and Ordering Activity may be referred to herein individually as a “Party” and collectively as the “Parties.”

1 DEFINITIONS. The following terms when used with capital letters shall have the corresponding definitions:

1.1 “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN or other security code, used alone or in combination to verify an individual’s identity and authorization to access and use the Software.

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such person or entity. “Control” means the possession of the power to direct or cause the direction of the management or policies of such person or entity, whether through the ownership of equity interests, voting power or voting control, or by Agreement. Without limiting the generality of the foregoing, the holding of fifty percent (50%) or more of the equity interests of an entity, fifty percent (50%) or more of the voting power of an entity, or the voting control of an entity shall each be deemed Control.

1.3 “Authorized User” means each of the individuals employed or engaged by Ordering Activity at a Facility with appropriate Access Credentials to the Software and/or Services.

1.4 “Ordering Activity Data” means clinical information, in any form or medium, collected, downloaded or otherwise received from Ordering Activity or an Authorized User by or through the Software.

1.5 “Ordering Activity Systems” means the Ordering Activity’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Ordering Activity or through third-party services.

1.6 “Confidential Information” means business or technical information disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), in any form or medium, tangible or intangible, in connection with this Agreement and (a) is designated either in writing or orally as confidential as confidential at or within a reasonable time after such disclosure, (b) by the nature of the circumstances surrounding such disclosure would, in good faith, reasonably be expected to be treated as confidential information of the Disclosing Party, whether or not such information is identified as such by the Disclosing Party, or (c) has or could have commercial value or other utility in the business or prospective business of the Disclosing Party. Confidential Information shall not include information that: (d) is shown by written documentation to already have been in the possession of, or known to, the Receiving Party prior to disclosure and prior to such Receiving Party having an obligation of confidentiality with respect to such Confidential Information, in each case provided that, to the extent such Confidential Information was obtained by the Receiving Party from a third party, such third party did not commit a breach of an obligation of confidence with respect to such Confidential Information, or (e) becomes publicly available through no fault or breach of the Receiving Party.

1.7 “Deliverables” means work produced from the Software, created for and delivered to Ordering Activity under this Agreement.

1.8 “Facility” means the Ordering Activity location where Software is downloaded and/or installed.

1.9 “Intellectual Property Rights” means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases, (d) trade secrets and know-how, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.10 “M*Modal Materials” means the Software, User Guide, M*Modal Systems and any other information, data, documents, materials, works, content, devices, tools, methods, processes, know-how, hardware, software and other technologies and inventions possessed by M*Modal prior to the commencement of or independent of M*Modal’s delivery of the Services or Products, or acquired, developed or used by M*Modal in the performance of
1.16 “User Guide” means the operator and/or user manual and written instructions for the Software.

1.12 “Services” means any services provided by M*Modal to Ordering Activity pursuant to the Agreement.

1.13 “Specifications” means the descriptions concerning the functionality, features, and requirements of the Software listed within the User Guide.

1.14 “Software” means M*Modal branded software applications including any maintenance releases and the appropriate User Guide Ordering Activity is granted a license to under this Agreement.

1.15 “Third Party Products” means any non-M*Modal branded materials or equipment.

1.16 “User Guide” means the operator and/or user manual and written instructions for the Software.

2 EFFECT OF TERMINATION. In the event of termination or expiration of this Agreement (a) M*Modal will cease providing any Services; (b) the licenses related to this Agreement shall terminate, unless expressly stated otherwise in the Agreement; (c) Ordering Activity shall immediately cease using any Intellectual Property Rights in such M*Modal Materials shall be solely owned by M*Modal.

3 RESERVED.

4 INTELECTUAL PROPERTY

4.1 General: Except for the limited license(s) granted herein, all right, title and interest in and to M*Modal Materials are retained by M*Modal or its licensors. Absent the prior, written consent of M*Modal, neither Ordering Activity nor any Authorized User shall alter or remove any trademark, copyright, trade secret, patent, proprietary or other legal or technical content or legend contained in or on any copies thereof. Ordering Activity shall make reasonable efforts to protect M*Modal Materials from unauthorized use. Ordering Activity unconditionally and irrevocably assigns to M*Modal its entire right, title and interest in and to any Intellectual Property Rights that Ordering Activity may now or hereafter have in or relating to the M*Modal Materials (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, Agreement, assignment or otherwise. Ownership of derivative works should be set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

4.2 Continuous Improvement: Ordering Activity acknowledges and agrees that M*Modal may use, compile (including creating statistical or other models), and analyze Ordering Activity Data to (a) improve, develop or otherwise modify M*Modal Materials, and (b) use computerized processes to tailor and deliver to Ordering Activity relevant communications. To the extent Ordering Activity Data is used or compiled in or with any M*Modal Materials, all Intellectual Property Rights in such M*Modal Materials shall be solely owned by M*Modal.

4.3 Ordering Activity Data and Deliverables: Except for the limited purpose of performing Services or providing Software, and except for the limited license(s) granted herein, all right, title and interest in and to Ordering Activity Data is retained by Ordering Activity. Subject to this Agreement, and except to the extent Deliverables include any M*Modal Materials or M*Modal Confidential Information, M*Modal hereby assigns to Ordering Activity all Intellectual Property Rights in and to the Deliverables, whether held or acquired by operation of law, contract, assignment or otherwise. Ordering Activity is responsible for making and maintaining its own backup copies of any Ordering Activity Data and Deliverables.

4.4 License Grant: Any license granted to Ordering Activity in the Software (a) is non-exclusive and non-transferable; and (b) extends to Ordering Activity and Authorized Users to access and use the Software in the United States solely for Ordering Activity’s internal business purposes. The Software shall be downloaded and installed on only computing device for a single Authorized User. The term of the license shall be set forth in the ordering documents.

4.5 License Restrictions: Without expanding the limited license grant herein, Ordering Activity and Authorized Users shall not (a) disassemble, decompile, reverse compile or reverse engineer the Software, or take any action in order to derive a source code equivalent of the Software, (b) release to any third party results of any benchmark, performance, or functionality tests performed on the Software, (c) release to any third party results obtained through use of the Software other than the Deliverables, (d) incorporate, bundle or pre-load any portion of the Software into any software or computing device of Ordering Activity except as expressly set forth in this Agreement, (e) copy, modify or create derivative works of the Software, (f) sublicense the Products or any portion thereof to a third party, or otherwise permit use of the Software including, without limitation, timesharing or networking use by any third party, except as expressly set forth in this Agreement, (g) link, combine or use the Software with any open source software without the written permission of M*Modal if such linkage, combination or use would create a risk, or have the “viral” effect, of disclosing or licensing M*Modal source code or rendering any M*Modal patent unenforceable under the GNU General Public License or under the terms of any other open source license applicable thereto, or (h) cause the Software to interact with the functionality of a Third Party Product similar to that contained in the Software. For clarification, a Third Party Product shall not be deemed to “interact with” the Software if such Third Party Product does not export or import data from the Software to such Third Party Product, or vice versa.

5 M*MODAL WARRANTIES AND DISCLAIMERS.

5.1 M*Modal warrants that, for a period of ninety (90) days from completion of implementation, in the case of Products implemented by M*Modal, or shipment in all other cases (the “Warranty Period”), Products shall materially function in accordance with applicable Specifications and the media on which Software is distributed shall be free from defects in materials and workmanship. Ordering Activity must provide M*Modal with written notice of breach of this warranty during the Warranty Period setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option, (a) repair or replace that portion of the Products effected.

5.2 M*Modal warrants that it shall perform Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Ordering Activity must provide M*Modal with written notice of breach of this warranty within thirty (30) days after
performance of Services setting forth in reasonable detail the nature of such breach. In the event of breach, as Ordering Activity’s sole and exclusive remedy, M*Modal shall, at M*Modal’s option re-perform the Services.

5.3 The limited warranties set forth above do not apply to problems arising out of or related to:

5.3.1 Products, or the media on which it is provided, that is modified or damaged by Ordering Activity;

5.3.2 Any operation or use of, or other activity relating to, the Products other than as specified in the User Guide, including any incorporation in the Products of, or combination, operation or use of the Products in or with, any technology or service not specified for Ordering Activity’s use in the User Guide or expressly authorized by M*Modal in writing;

5.3.3 Ordering Activity’s or any Authorized User’s negligence, abuse, misapplication or misuse of the Products;

5.3.4 Ordering Activity’s failure to promptly install maintenance releases that M*Modal has previously made available to Ordering Activity;

5.3.5 Operation of or access to Ordering Activity Systems; and

5.3.6 Third Party Products.

5.4 To the extent applicable, M*Modal shall pass through to Ordering Activity any warranty provided to M*Modal for Third Party Products.

5.5 OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH ABOVE OR IN THIS AGREEMENT, M*MODAL MAKES NO FURTHER OR ADDITIONAL WARRANTIES IN CONNECTION WITH ANY PURCHASE, LICENSE OR SALE OF SERVICES OR PRODUCTS. M*MODAL DOES NOT WARRANT THAT THE OPERATION OF ANY PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. M*MODAL DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

6 ORDERING ACTIVITY WARRANTIES AND ACKNOWLEDGEMENTS. Ordering Activity warrants that Ordering Activity and any person or entity using the Software shall (a) use the Software consistent with the User Guide and this Agreement; (b) comply with all applicable laws and regulations, including export and import laws, in connection with receipt or use of the Software; (c) be responsible for the accuracy and legality of information provided to M*Modal; and (d) be responsible for identifying errors in the results from use of the Software or before relying on such results. Ordering Activity agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by M*Modal regarding future functionality or features. Ordering Activity further acknowledges that M*Modal may make changes to the Software determined reasonably necessary by M*Modal so long as such changes do not materially decrease the functionality of the Software.
1. **Scope.** This Rider and the attached *Mobileireon, Inc.* ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 48002.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is
triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking, to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its own document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**MOBILEIRON INC.**

**MOBILEIRON INC. LICENSE, WARRANTY AND SUPPORT TERMS**
This End User License Agreement ("Agreement") is entered into as of the later date signed below ("Effective Date") by and between MobileIron, Inc. ("MobileIron"), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller ("Customer").

This Agreement consists of this page, the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor’s prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer’s standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

MOBILEIRON, INC.                                                                                                                  CUSTOMER:

Signature:                                                                                                                   Signature:

Printed Name:                                                                                                                Printed Name:

Title:                                                                                                                        Title:

Principal Place of Business:                                                                                                    Principal Place of Business:

415 East Middlefield Road, Mountain View, CA 94043                                                                                 415 East Middlefield Road, Mountain View, CA 94043

Date:                                                                                                                        Date:

Notices to MobileIron:                                                                                                         Notices to Customer:

MobileIron, Inc.
Attn: General Counsel
415 East Middlefield Road
Mountain View, CA 94043
With an email copy to: contracts@mobileiron.com                                                                                   With an email copy to (if applicable):

TERMS AND CONDITIONS

Definitions.
"Documentation" means the written and/or electronic release notes, implementation guides, or other published technical documentation about specific Software that is provided by MobileIron to Customer together with the delivery of the Software.

"License Term" means the term of the license granted for specific Software, as identified in the relevant Order and starting when the Software is first made available for download by Customer.

"Order" means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).

"Software" means the object code version of MobileIron proprietary computer programs (including any software accessed as a service) described in the relevant Order, including any Documentation and Updates.

"Updates" means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

License Grant

Software License. Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to use the Software solely for Customer’s internal use with Customer’s ordinary business operations and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide Software licenses to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.
3. Use Restrictions. As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the Software (except and only to the extent any pre-existing restriction is prohibited by applicable law); (b) modify, adapt, or create derivative works based on the Software; (c) distribute, sell, license, lease, transfer, or otherwise provide any Software to third parties except as expressly provided for in this Agreement; (d) provide the Software as a service to third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) bundle any component of any Software; or (f) use the Documentation except for supporting Customer’s authorized use of the Software; or (g) use the Software to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any Software accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the Software or Documentation, or to provide management, hosting, support or similar services with regard to the Software without the prior written consent of MobileIron. “MobileIron Competitor” means Good Technology by Blackberry, AirWatch by VMware, Maas360 by IBM Corporation, XenMobile by Citrix, and InTune by Microsoft.

Payment: Additional Licenses: Reporting. Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron’s net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall: (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. For fees for excess usage shall be based on MobileIron’s then-current price list or as specified in the Order or in the Reseller’s prime contract. Upon written request by MobileIron, Customer shall provide a usage report, which in certain cases may be generated using the Software, or provide MobileIron reasonable access to the system administrator logs or portal solely for the purpose of certifying the number and type of registered devices or users. MobileIron’s infrastructure may enable MobileIron to access the device or user count for the Software.

Confidentiality

Definition. “Confidential Information” means non-public information provided by one party (“Discloser”) to the other (“Recipient”) that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restriction, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. MobileIron Confidential Information includes but is not limited to all Software (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the Software), Documentation and its derivatives, and MobileIron’s pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.

Non-disclosure and Non-Use. The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the same degree of care to prevent unauthorized use and disclosure of Discloser’s Confidential Information as it does for its own confidential information, but in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, limit access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser’s option, the Discloser’s Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1905.

Ownership. All Software is licensed and not sold. MobileIron and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the Software and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services (“Feedback”). To the extent Customer does provide Feedback to MobileIron, Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.

Indemnity

Indemnification. Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees (“Customer Indemnitee(s)”) by an unaffiliated third party alleging that Customer’s use of the Software infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.

Procedures. MobileIron’s indemnification obligation is conditioned on Customer Indemnitee(s): (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer’s prior written consent, and (iii) providing MobileIron all rights and documentation to prove Customer’s compliance with the terms of this Agreement. If MobileIron fails to meet its obligations under this Section 5, Customer may, at its option, (a) defend and settle the claim, (b) modify or replace the applicable Software to become non-infringing, or (c) if neither (i) nor (ii) is commercially practicable, terminate Customer’s license to the affected portion of applicable Software and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid by Customer corresponding to such Software. In the case of a perpetual license, the unused portion of the license fees shall be determined on a pro-rata basis over a three (3) year period starting from the initial delivery of the Software.

Exclusions. MobileIron shall have no obligations under this Section 7 if the claim is based upon or arises out of: (a) any modification to the applicable Software not made by or at the direction of MobileIron, (b) any combination or use of the applicable Software with mobile or other third party equipment, products or systems, to the extent that such claim is based on such combination or use, or (c) Customer’s continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer’s failure to use Updates made available by MobileIron, (v) Customer’s failure to use the Software provided by MobileIron for which Customer has not paid, (vi) any damages finally awarded to a third party by a court of competent jurisdiction as a result of such claim.
in accordance with the applicable Documentation, and/or (vi) use of the Software outside the scope of the license granted under this Agreement. The remedies specified in this Section 7 constitute Customer’s sole and exclusive remedies, and MobileIron’s entire liability, with respect to infringement of third party intellectual property rights.

**Support and Maintenance Services.** Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

**Warranties.**

**Software.** For ninety (90) days following the commencement of the applicable License Term, MobileIron represents and warrants to Customer that the Software materially conforms to the specifications specified in the relevant Documentation. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to repair or replace such Software or refund the license and associated support and maintenance fees paid for such non-conforming Software, in which case the license to the Software shall terminate.

**Professional Services.** Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

**Exclusions.** The express warranties do not apply if the applicable Software or hardware (i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

**Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 6, THE SOFTWARE, AND SERVICES ARE PROVIDED “AS IS,” AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

**Term and Termination.** The license granted herein with respect to specific Software shall remain effective until the License Term for the relevant Software expires or the license for the relevant Software is terminated. This Agreement shall remain effective until the earliest of (a) termination in accordance with this Section 10, (b) expiration of the applicable License Term or (c) expiration of the applicable Support & Maintenance Term. If MobileIron agrees to reinstate a lapsed subscription license, then the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days’ written notice of a material breach by the other party, unless the breach is cured within the 30-day notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. For perpetual licenses only, the license grant in Section 2 shall survive expiration or termination of this Agreement unless MobileIron has terminated due to Customer’s uncured material breach. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.

**Limitation of Liabilities.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER’S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SOFTWARE OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.

**General.**

**Import/Export.** Software and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

**U.S. Government Rights.** The Software and Documentation are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with MobileIron to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Software and Documentation and return the Software and Documentation and any other software or technical data delivered as part of the Software

and Documentation, unused, to MobileIron. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement. In-Licensed Materials and Open Source. The Software may contain or may interoperate with software services or other technology that is owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free software licenses ("In-Licensed Materials"). The In-Licensed Materials may be subject to additional terms and conditions, as identified on Schedule A, attached hereto, or as otherwise made available to Customer. Such terms and conditions are incorporated by reference herein. To the extent MobileIron uses open source software in its Software, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or restrictions upon Customer, provided Customer uses the Software in accordance with this Agreement.

Governing Law and Jurisdiction. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed, and enforced in accordance with Federal common law of the United States and where there is no Federal common law, the laws of the State of California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state and federal courts in Santa Clara, California, and the parties agree to service of process in accordance with the rules of such courts. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply. The foregoing is subject to the Contract Disputes Act.

Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however, subject to FAR 42.12, either party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void. Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns.

Data Communications. MobileIron shall only collect, access, use, store, safeguard, disclose and transfer ("Process") Personal Information (i) for the purposes of this Agreement, including without limitation, to implement and deliver the Software and its features and associated services, provide Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or (iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. "Personal Information" means any information relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in performance by MobileIron of its obligations under this Agreement. MobileIron collects, analyzes, and uses aggregated, de-identified technical data and related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product development/improvement and to provide support and maintenance services. MobileIron may use, store, or disclose such information or material derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron's or its suppliers' intellectual property rights in Software or either party's Confidential Information may cause irreparable injury to such party for which monetary damages would be an inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under Federal procurement law, to equitable relief (without a requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the Software, including in a list of MobileIron customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any MobileIron product or service.

Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

Waiver & Severability: Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.
MOBILEIRON, INC.
Schedule A: Terms and Conditions Related to In-Licensed Materials and Third Party Products
(version August 12, 2015)

MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the “Customer Agreement”), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed “Software” (and subject to the same terms and conditions applicable to “Software”) under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise “In-Licensed Materials” means software, services or other technology software that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron “Silver” or “Gold” Bundle, also sold as Core:

1. Cell Tower Information (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such latitude and longitude location information to create a latitude/longitude lookup database for cellular towers.

2. SMS Messaging. (a) Customer will not use SMS messaging service to transmit inappropriate content. Inappropriate content includes any content that (a) is unsolicited, (b) causes the introduction of viruses, worms, Trojan horses, e-mail bombs, cancelbots or other similar computer programming routines, (c) is unlawful or offensive as determined by MobileIron’s suppliers in their sole discretion, (d) is misleading or inaccurate, or (e) infringes the intellectual property of any person.

3. Microsoft® Exchange Activesync. (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any smartphone or other device software that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer’s behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer’s employees, agents and/or contractors.

4. Email+. (a) “Email+ Device Software” means MobileIron’s Email+ client device email software delivered by MobileIron to Customer, including any updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) “EAS-Enabled Server” means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Windows Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync™ Protocol. (c) MobileIron grants to Customer a non-exclusive right to permit Customer Representatives to use and reproduce the Email+ Software (in object code form) only: (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron’s Software and (ii) for Customer’s use with services provided by EAS-Enabled Servers.

5. Splunk Universal Forwarder. (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner not related to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to the Splunk Universal Forwarder.

6. Mobile@Work In-House App SDK. (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer’s own branding. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as “Software,” except that: (i) Customer may only use this SDK to brand Mobile@Work with its own branding; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron “Platinum” Bundle (includes the terms and conditions for the MobileIron “Silver” and “Gold” Bundle as well as the additional terms below):

1. MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer’s help-desk administrator to remotely view a screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.

2. Authorized Developer. Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron’s provision of Help@Work for iOS to Customer.

3. Help@Work for iOS Display Finder. If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.

4. ServiceConnect Integrations. (a) “ServiceConnect Integrations” are software modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party (“Underlying Third Party”). (b) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer’s use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes
If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement (“SMA”) applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

Definitions.
“Designated Support Contact” means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.

“Incident” means when the Supported Software does not seem to materially perform in accordance with the specifications specified in the relevant Documentation.

“Response” means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.

“Support & Maintenance Term” means the duration of support and/or maintenance services that MobileIron must provide, as specified in the relevant Order. The initial Support & Maintenance Term shall commence when the Software is first made available for download by Customer. Any renewal Support & Maintenance Term shall commence upon the day immediately following the end of the then-current Support & Maintenance Term. “Supported Software” means the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release. (For example, if Software shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)

Support Services.
Support and Trouble Tickets. During the Support & Maintenance Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron’s Support Portal (available at https://help.mobileiron.com) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the trouble ticket without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron’s request or receipt of a patch or workaround (as applicable). Support services for Supported Software are available to Customers who have purchased direct support services or higher, for twenty-four hours per day and seven days per week. Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response Time for Direct Support</th>
<th>Initial Response Time for Premium Plus Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A severity one (1) issue is a catastrophic production problem which may severely impact Customer's production systems or that causes Customer's production systems to go down or not function. There may be a loss of production data and no procedural work around exists.</td>
<td>1 hour</td>
<td>30 minutes</td>
</tr>
<tr>
<td>2</td>
<td>A severity two (2) issue is an issue where Customer's production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer's business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer's High Availability Configuration.</td>
<td>4 hours</td>
<td>2 hours</td>
</tr>
<tr>
<td>3</td>
<td>A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer’s operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.</td>
<td>1 business day</td>
<td>1 business day</td>
</tr>
<tr>
<td>4</td>
<td>A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.</td>
<td>5 business days</td>
<td>5 business days</td>
</tr>
</tbody>
</table>

* MobileIron business hours are 6 am-6 pm PT, Monday through Friday (excluding holidays)

b. Limitations. MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the Supported Software has been modified or repaired, except by or at the direction of MobileIron, (iii) if the Supported Software has not been installed, used or maintained in accordance with the Documentation, (iv) the Supported Software is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on, or integrated with any Supported Software.
Maintenance Services

During the Support & Maintenance Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the Software and, for security fixes only, the immediately prior release.

Reinstatement. If the Support & Maintenance Term expires without renewal, this SMA shall terminate as of the expiration date. Customer may reinstate this SMA by paying MobileIron an amount equal to the support and/or maintenance fees that would have been payable during the period of lapse and a reinstatement fee.

General. MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees).
MOBILEIRON, INC.
SOFTWARE-AS-A-SERVICE (SAAS) TERMS OF USE
FEDERAL END USER
(version May 26, 2016)

This Software-as-a-Service Terms of Use (“Agreement”) is entered into as of the later date signed below (“Effective Date”) by and between MobileIron, Inc. (“MobileIron”), a Delaware corporation having its principal place of business at 415 East Middlefield Road, Mountain View, CA 94043, and the customer/ordering activity specified below or an ordering activity identified in an order to a MobileIron reseller (“Customer”).

This Agreement consists of the attached terms and conditions, and the attached schedule(s), which are incorporated by reference. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes and cancels all prior agreements, representations, communications, and understandings of the parties, written or oral, relating to such subject matter, and is not intended to confer upon any person other than the signatories below any rights or remedies and does not modify any terms and conditions between Customer and any prime contractor regarding the terms and conditions of the prime contractor’s prime contract. This Agreement prevails over any conflicting, or additional terms of any ordering document, acknowledgment, confirmation or other document issued by Customer to MobileIron before or after the execution of this Agreement unless such conflicting or additional terms have been introduced via an amendment and accepted in writing by both parties. The headings of sections of this Agreement are for convenience and are not for use in interpreting this Agreement.

Except as otherwise provided in this Agreement, all legal notices will be given in writing to the addresses below and will be effective (a) when personally delivered, (b) on the reported delivery date if sent by a recognized international or overnight courier, or (c) five business days after being sent by registered or certified mail (or ten days for international mail). For clarity, purchase orders, invoices, and other documents relating to order processing and payment are not legal notices and may be delivered electronically in accordance with MobileIron and Customer’s standard ordering procedures.

This Agreement is agreed to and executed by authorized representatives of the parties.

<table>
<thead>
<tr>
<th>MOBILEIRON, INC.</th>
<th>CUSTOMER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Printed Name:</td>
<td>Printed Name:</td>
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<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Principal Place of Business:</td>
<td>Principal Place of Business:</td>
</tr>
<tr>
<td>415 East Middlefield Road, Mountain View, CA 94043</td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td>Notices to MobileIron:</td>
<td>Notices to Customer:</td>
</tr>
<tr>
<td>MobileIron, Inc. Attn: General Counsel 415 East Middlefield Road Mountain View, CA 94043</td>
<td>With an email copy to: <a href="mailto:contracts@mobileiron.com">contracts@mobileiron.com</a></td>
</tr>
</tbody>
</table>

TERMS AND CONDITIONS

Definitions.
“Documentation” means the written and/or electronic release notes, implementation guides, or other published technical documentation about the applicable SaaS Product that is provided by MobileIron to Customer together with access to the SaaS Product.
“License Term” means the term of the access rights granted for the SaaS Product, as identified in the relevant Order, starting when MobileIron delivers to Customer the relevant credentials to access and use the SaaS Product.
“Order” means any purchase order, product schedule or ordering document between Customer and MobileIron (or an authorized reseller, if applicable) that identifies the products and/or services licensed or sold and any applicable licensing parameters (e.g., the number of licenses).
“SaaS Product” means the mobile enterprise management services made available by access to and use of software hosted by MobileIron to which Customer has purchased a license under the relevant Order. References in this Agreement to the SaaS Product shall include the Software.
“Software” means the object code version of MobileIron proprietary computer programs made available by MobileIron for download by Customer for use in connection with any SaaS Product, including any Documentation and Updates.
“Updates” means any correction, update, upgrade, patch, or other modification or addition made by MobileIron to specific Software.

Rights of Access and Use.
Access and Use. Subject to the terms and conditions of this Agreement, during the applicable License Term, MobileIron hereby grants to Customer (i) a non-exclusive, non-transferable and non-sublicensable license for Customer to access and use the SaaS Product and to copy, and install the Software, in each case solely for MobileIron’s internal use and in accordance with the applicable Documentation, and (ii) the right to maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes. Subject to the restrictions in Section 3, below, Customer may provide access to the SaaS Product to its employees, contractors, and affiliates (and any employees and contractors of such affiliates), provided Customer is responsible for their actions that violate the terms of this Agreement.

Trial Product. The terms applicable to the SaaS Product apply to trial copies of the SaaS Product (“Trial Product”), except for the following different or additional terms: (i) the License Term for Trial Product is thirty (30) days, which MobileIron may extend upon written consent; (ii) the trial period shall commence on the date that MobileIron first provides Customer credentials to access the the Trial Product; (iii) Trial Product is provided ‘AS IS’ without warranty of any kind; and (iv) MobileIron disclaims all warranties, indemnities, and all other liabilities for Trial Product; (iv) Customer is not entitled to any support and maintenance services or any Updates for Trial Product; and (v) either party may terminate the license for Trial Product upon five (5) days’ written notice to the other party.

3. Use Restrictions; Customer Obligations. As a condition of the license granted in Section 2, Customer shall not itself and shall not authorize or permit any third party to: (a) reverse engineer, decompile, decode, decrypt, disassemble, or attempt to derive any source code from the SaaS Product (except and only to the extent any foregoing restriction is prohibited by applicable law); (b) modify, adapt, or create any derivative works based on the SaaS Product; (c) distribute, sell, license, lease, transfer, or otherwise provide any SaaS Product to third parties except as expressly provided in this Agreement; (d) provide the SaaS Product as a service to unaffiliated third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (e) unbundle any component of any SaaS Product; or (f) use the Documentation except for supporting Customer’s authorized use of the SaaS Product; or (g) use the SaaS Product to store or transmit malicious code or infringing, libelous, unlawful or tortious material; or (h) disrupt the integrity or performance of any SaaS Product accessed as a service; or (i) employ or authorize a MobileIron Competitor to use or view the SaaS Product or Documentation, or to provide management, hosting, support or similar services with regard to the SaaS Product without the prior written consent of MobileIron. “MobileIron Competitor” means Good Technology by Blackberry, AirWatch by VMWare, Maas360 by IBM Corporation, XenMobile by Citrix, and Intune by Microsoft. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any SaaS Product and notify MobileIron promptly of any such unauthorized access or use.

Payment; Additional Licenses; Reporting. Customer shall pay the fees for MobileIron products and/or services as set forth in the applicable Order. If Customer is purchasing through a reseller, payment terms will be determined by Customer and the reseller. If Customer is purchasing directly from MobileIron, all fees shall be paid in U.S. dollars and are due within thirty (30) days of the invoice. Customer shall pay all applicable fees, insurance costs, and taxes, excluding taxes on MobileIron’s net income. If the actual number of registered devices or users (as applicable) exceed the number of licenses purchased by Customer in the applicable Order, then Customer shall (a) immediately cease such excess usage or (b) purchase additional licenses to cover the excess usage. Fees for excess usage shall be based on MobileIron’s then-current price list or as specified in the Order or in the Reseller’s prime contract. Customer acknowledges that MobileIron’s delivery and support infrastructure may enable MobileIron to access the device or user count for the SaaS Product. Upon written notice by MobileIron, Customer shall certify in writing the number and type of registered devices or users.

Confidentiality

Definition. “Confidential Information” means non-public information provided by one party (“Discloser”) to the other (“Recipient”) that is designated as confidential or reasonably should be considered as such, excluding information that (i) is or becomes public through no fault of the Recipient, (ii) was known to Recipient before the disclosure without a duty of non-disclosure, (iii) is disclosed to Recipient by a third party without violation of any confidentiality restrictions, or (iv) is independently developed by the Recipient without access to or use of the Discloser’s information. MobileIron’s Confidential Information includes but is not limited to all SaaS Products (and any derivatives, performance data, benchmark results, security assessments, product roadmaps and any other technical information relating to the SaaS Products), Documentation and its derivatives, and MobileIron’s pricing. The terms and conditions of this Agreement are the Confidential Information of both parties.

Non-disclosure and Non-Use. The Recipient shall (i) only use the Confidential Information of the Discloser to exercise its rights and/or to perform under this Agreement, (ii) use the Confidential Information in no event less than reasonable care, and (iii) with respect to employees, contractors, or agents of Recipient, obtain access to the Discloser’s Confidential Information only to those employees, contractors, or agents who have a need to access such Confidential Information and who are subject to confidentiality obligations at least as restrictive as those specified in this Section 5. The Recipient may disclose the Discloser’s Confidential Information to the extent required by any court, governmental body, or law or regulation, provided that, if legally permissible, Recipient shall provide prompt written notice to the Discloser of such disclosure. Upon written request of the Discloser, the Recipient shall return or destroy, at Discloser’s option, the Discloser’s Confidential Information. The Confidential Information of MobileIron is exempt from release under the Freedom of Information Act pursuant to 5 U.S.C. 552(b)(4) and is subject to the Federal Trade Secrets Act, 18 U.S.C. 1950.

Ownership. MobileIron and its suppliers own and retain all right, title, and (except as expressly licensed in this Agreement) interest in and to the SaaS Product and its derivative works. Customer is not obligated to provide MobileIron with any suggestions or feedback about the products or services (“Feedback”). To the extent Customer does provide Feedback to MobileIron, Customer assigns ownership of such Feedback to MobileIron and MobileIron may use and modify such Feedback without any restriction or payment.

Indemnity

Indemnification by MobileIron. Subject to 28 USC 518, MobileIron shall at its cost and expense (i) defend or settle any claim brought against Customer and its directors, officers and employees (“Customer Indemnitee(s)”) by an unaffiliated third party alleging that Customer’s use of the SaaS Product infringes or violates that third party’s intellectual property right(s), and (ii) pay, indemnify and hold Customer Indemnitees harmless from any settlement of such claim or any damages finally awarded to such third party by a court of competent jurisdiction as a result of such claim.

Remedies. If a claim under Section 7.a occurs or in MobileIron’s opinion is reasonably likely to occur, MobileIron may at its expense and sole discretion: (i) procure the right to allow Customer to continue using the applicable SaaS Product, (ii) modify or replace the applicable SaaS Product to become non-infringing, or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer’s license to the affected portion of applicable SaaS Product and refund (or cause the authorized reseller to refund) a portion of the pre-paid, unused license fees paid to Customer corresponding to such SaaS Product. Exclusions. MobileIron shall have no obligations under this Section 7 if the claim is based upon or arises out of: (i) any modification to the applicable SaaS Product not made by or at the direction of MobileIron, (ii) any combination or use of the applicable SaaS Product with any third party equipment,
products or systems, to the extent that such claim is based on such combination or use, (iii) Customer’s continued use of the allegedly infringing technology after being notified of the infringement claim, (iv) Customer’s failure to use Updates made available by MobileIron, (v) Customer’s failure to use the SaaS Product in accordance with the applicable Documentation, and/or (vi) use of the SaaS Product outside the scope of the license granted under this Agreement. This Section 7 constitutes Customer’s sole and exclusive remedies, and MobileIron’s entire liability, with respect to infringement of third party intellectual property rights.

Procedures. MobileIron’s indemnification obligation conditioned on Customer: (i) giving MobileIron prompt written notice of such claim, (ii) permitting (subject to 28 USC 518) MobileIron to solely control and direct the defense or settlement of such claim, provided MobileIron shall not settle any claim in a manner that requires Customer to admit liability or pay money without Customer’s prior written consent, and (iii) providing MobileIron all reasonable assistance in connection with the defense or settlement of such claim, at MobileIron’s cost and expense.

Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in Schedule B, attached hereto.

Warranties. MobileIron represents and warrants to Customer that the SaaS Product materially conforms to the specifications specified in the relevant Documentation. Customer must notify MobileIron of any warranty deficiencies within thirty (30) days from the provision of the deficient SaaS Product. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to (i) repair such SaaS Product (and/or deliver new applicable Software) or (ii) terminate the applicable License Term and refund any prepaid, unused subscription fees paid to MobileIron for the unused period of any such terminated License Term.

Professional Services. Customer may order professional services from MobileIron. Such professional services shall be subject to the terms and conditions of this Agreement and mutually agreed-upon statement of work (if any). For ninety (90) days following the date of delivery of any professional service by MobileIron to Customer, MobileIron represents and warrants that such professional services shall be professional, workman-like and performed in a manner conforming to generally accepted industry standards and practices for similar services. Customer’s sole and exclusive remedy and the entire liability of MobileIron for MobileIron’s breach of this warranty will be for MobileIron, at its option, to re-perform the non-conforming services or refund the fees paid for such non-conforming professional services.

Exclusions. The express warranties do not apply if the applicable SaaS Product(i) has been modified, except by or at the direction of MobileIron, (ii) has not been installed, used, or maintained in accordance with this Agreement and Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, and/or (iv) is used with equipment, products or systems not specified in the Documentation. Additionally, these warranties only apply if notice of a warranty claim is provided within the applicable warranty period.

Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 9, THE SAAS PRODUCT, AND SERVICES ARE PROVIDED “AS IS,” AND MOBILEIRON PROVIDES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND MOBILEIRON SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

Term and Termination. The access rights granted herein with respect to the SaaS Product shall remain effective until the License Term for the relevant SaaS Product expires or the license for the relevant SaaS Product is terminated. This Agreement shall remain effective until the earliest of termination in accordance with this Section 10, or expiration of the applicable License Term. If MobileIron agrees to reinstate a lapsed subscription license, the terms of this Agreement shall apply. Either party may terminate this Agreement: (a) upon thirty (30) days’ written notice of a material breach by the other party (or three (3) business days in the case of a failure to pay), unless the breach is cured within the notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings. In addition, the parties may terminate this Agreement by mutual written consent. In addition, Sections 1, 3-7, and 9-12, and all liabilities that accrue prior to termination shall survive expiration or termination of this Agreement for any reason. For ninety (90) days after the expiration or termination of this Agreement, upon Customer’s request, MobileIron shall permit Customer to access the SaaS Product solely to the extent necessary for Customer to retrieve applications uploaded to such SaaS Product by Customer. After such 90-day period, MobileIron may delete all Customer Data in MobileIron’s possession or control. Any dispute regarding a termination for breach under this section, will be resolved in accordance with the Contract Disputes Act.

Limitation of Liabilities. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY BREACHES OF OR FOR LIABILITY ARISING OUT OF SECTION 3 (RESTRICTIONS), 5 (CONFIDENTIALITY), OR CUSTOMER’S PAYMENT OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (a) ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE, OR (b) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAYABLE TO MOBILEIRON FOR THE RELEVANT SAAS PRODUCT, OR SERVICE DURING THE TWELVE-MONTH PERIOD BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THIS AGREEMENT. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.

General. Export/Import. The SaaS Product and Documentation may be subject to U.S. and foreign import and export control laws and regulations. Customer agrees to comply with all such regulations applicable to Customer, including obtaining applicable import licenses.

U.S. Government Rights. U.S. Government Rights. The Software and Documentation are “commercial items” as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), MobileIron provides the Software and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD)), the Government acquires, in accordance with FAR 2.212 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD.
agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as
defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this
Section, it must negotiate with MobileIron to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written
addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet
the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement,
the Government agrees to terminate its use of the Software and Documentation and return the Software and Documentation and any other software or
technical data delivered as part of the Software and Documentation, unused, to MobileIron. This U.S. Government Rights clause in this Section is in lieu
of, and supersedes, any other FAR, DFARS, or other provision, or supplemental regulation that addresses Government rights in computer
software or technical data under this Agreement.

In-Licensed Materials and Open Source. The SaaS Product may contain or may interoperate with software services or other technology that is not
owned by MobileIron but has been licensed to MobileIron by a third party or that is available under open source or free software licenses ("In-Licensed
Materials"). The In-Licensed Materials may be subject to additional terms and conditions, as identified on Schedule A, attached hereto or as otherwise
made available to Customer. Such terms and conditions are incorporated by reference herein. To the extent MobileIron uses open source software in
its SaaS Product, the applicable licenses shall not restrict the license rights granted to Customer under this Agreement or impose further obligations or
restrictions upon Customer, provided Customer uses the SaaS Product in accordance with this Agreement.

Governing Law and Jurisdiction. This Agreement, and the rights and duties of the parties arising from this Agreement, shall be governed by, construed,
and enforced in accordance with Federal common law of the United States and where there is no Federal common law, the laws of the State of
California, excluding its conflicts-of-law principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be state
and federal courts in Santa Clara County, California, and the parties agree to service of process in accordance with the rules of such courts. The
subject to the Contract Disputes Act.

Assignment. Neither party may assign this Agreement without prior written consent of the other party, provided however subject to FAR 42.12, either
party may do so to a successor-in-interest of substantially all of its business and/or assets. Any assignment in violation of this Section 12.e shall be void.
Subject to the foregoing, all rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of and be
enforceable by and against the successors and permitted assigns.

Data Communications. MobileIron shall only collect, access, use, store, safeguard, disclose and transfer ("Process") Personal Information (i) for the
purposes of this Agreement, including without limitation, to implement and deliver the SaaS Product and its features and associated services, provide
Customer support, and help Customer prevent or address service or technical problems, (ii) as otherwise expressly permitted by Customer in writing, or
(iii) as compelled by law. Customer shall make such disclosures, obtain such consents, and provide such access, choices and other applicable rights to
individual users with regard to the Processing of Personal Information as are required under applicable law, rules or regulations. "Personal Information"
means any information relating to an identified or identifiable individual user that is obtained by or communicated to MobileIron by Customer in
performance of its obligations under this Agreement, MobileIron collects, analyzes, and uses aggregated, de-identified technical data and
related information (such as product or feature usage, device metrics/metadata and/or mobile application usage) to facilitate market research, product
development/improvement and to provide support and maintenance services. MobileIron may use, store, or disclose such information or material
derived from such information, as long as it is in a form that does not identify or is not attributable to any individual.

Equitable Relief. The parties agree that a material breach of this Agreement adversely affecting MobileIron’s or its suppliers’ intellectual property rights in
the SaaS Product or either party’s Confidential Information may cause irreparable injury to such party for which monetary damages would be an
inadequate remedy and the non-breaching party shall be entitled, to the extent permitted under Federal procurement law, to equitable relief (without a
requirement to post a bond) in addition to any remedies it may have under this Agreement or at law.

Publicity. MobileIron may publicly disclose that Customer is a customer of MobileIron and a licensee of the SaaS Product, including in a list of MobileIron
customers and other promotional materials, however, MobileIron will not state or imply that Customer endorses any MobileIron product or service.

Independent Contractor. The parties are independent contractors. This Agreement shall not establish any relationship of partnership, joint venture,
employment, franchise or agency between the parties.

Waiver & Severability; Amendments. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other
provision or any subsequent breach. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the provision will be enforced to the
maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and
effect. This Agreement may only be amended, or any term or condition set forth herein waived, by written consent of both parties.
MOBILEIRON, INC.
Schedule A: Terms and Conditions Related to In-Licensed Materials
(version August 12, 2015)

MobileIron and Customer have entered into one or more agreement(s) relating to the use and license of MobileIron software, which may contain In-Licensed Materials (the “Customer Agreement”), and the following terms and conditions shall apply.

I. IN-LICENSED MATERIALS

The software licensed under the Customer Agreement may contain or be provided with the In-Licensed Materials listed below. Such In-Licensed Materials shall be deemed “Software” (and subject to the same terms and conditions applicable to “Software”) under the Customer Agreement notwithstanding anything to the contrary therein; provided, however, in connection therewith, additional or different terms are applicable as identified below. In-Licensed Materials shall have the meaning set forth in the Customer Agreement if defined therein; otherwise “In-Licensed Materials” means software, services or other technology that is not proprietary to MobileIron but has been licensed to MobileIron and is contained in or may interoperate with the Software.

A. MobileIron “Silver” or “Gold” Bundle, also sold as Core:

1. **Cell Tower Information** (only applies to Customers outside the United States). If Customer is provided any cellular tower identification information with associated latitude and longitude location information, Customer agrees that neither it nor its end users will use such latitude and longitude location information to create a latitude/longitude lookup database for cellular towers.

2. **SMS Messaging**. (a) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not specifically approved by the Underlying Third Party. (b) MobileIron disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (c) The Underlying Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperation with the ServiceConnect Integration. MobileIron shall have no liability for discontinuance or disruption.

3. **Microsoft® Exchange Activesync**. (a) With respect to Microsoft® Exchange Activesync, the provision of this service (or software, as applicable) to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any smartphone or other device software that you use to access this service (or to access the functionality provided by software, as applicable). (b) With respect to Microsoft® Exchange Activesync, use is limited to internal use (including such use by agents or contractors exclusively on Customer’s behalf) as part of the Core offering for the sole purpose of managing hand-held devices of Customer’s employees, agents and/or contractors.

4. **Email+**. (a) “Email+ Device Software” means MobileIron’s Email+ client device email software delivered by MobileIron to Customer, including any updates, modifications or upgrades of the same delivered to Customer during the term of the Agreement. (b) “EAS-Enabled Server” means (i) Microsoft Exchange server 2003, 2007, 2010 or any subsequent version thereof released during the term of the Agreement, (ii) any Microsoft owned or operated server that provides Windows Live Hotmail services, and (iii) any server software licensed by Microsoft to implement the Microsoft Exchange ActiveSync™ Protocol. (c) MobileIron grants to Customer a non-exclusive right to permit Customer Representatives to use and reproduce the Email+ Software (in object code form) only: (i) in mobile phones, smartphones, laptops, or tablets that are managed by MobileIron’s Software and (ii) for Customer’s use with services provided by EAS-Enabled Servers.

5. **Splunk Universal Forwarder**. (a) The Splunk Universal Forwarder may forward data generated by the MobileIron Core product to Splunk Enterprise, a separate third party product not licensed or distributed by MobileIron. In order to be licensed to use the Splunk Universal Forwarder, Customer is required to obtain a license to Splunk Enterprise, directly or indirectly, from Splunk Inc. (b) Customer may not use any part of the Splunk Universal Forwarder, including third party code, in a manner related not to the MobileIron Core product. (c) MobileIron disclaims all warranties and indemnities in connection with the Splunk Universal Forwarder and Splunk Enterprise. Splunk Inc. makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to the Splunk Universal Forwarder.

6. **Mobile@Work In-House App SDK**. (a) MobileIron Mobile@Work In-House App SDK is a custom SDK designed to allow Customer to brand Mobile@Work with Customer’s own branding. MobileIron offers this SDK without any additional charge. Use by Customer is optional and deemed acceptance of the terms below. (b) MobileIron is willing to license this SDK on the same terms and conditions as “Software,” except that: (i) Customer may only use this SDK to brand Mobile@Work with its own branding; (ii) Customer may distribute its branded Mobile@Work application through its enterprise AppStore; and (iii) MobileIron will only support the current version of this SDK and the immediately preceding version for 6 months following the release of the current version.

B. MobileIron “Platinum” Bundle (includes the terms and conditions for the MobileIron “Silver” and “Gold” Bundle as well as the additional terms below):

1. MobileIron Help@Work for iOS is a custom SDK designed to allow Customer to develop the Help@Work for iOS app, which will allow the Customer’s helpdesk administrator to remotely view the screen of a managed iOS device, while working with the individual device-holder on troubleshooting workflows.

2. **Authorized Developer**. Customer represents and warrants that it has a valid Apple iOS Developer Program Enterprise License Agreement and hereby appoints MobileIron as an Authorized Developer under such agreement solely in connection with MobileIron’s provision of Help@Work for iOS to Customer.

3. **Help@Work for iOS Display Finder**. If Customer at its option chooses to download the Help@Work for iOS Display Finder component, Customer will be required to accept the accompanying Apple end-user software license agreement (EULA), which solely governs the Apple software included therewith.

4. **ServiceConnect Integrations**. (a) “ServiceConnect Integrations” are software modules provided by MobileIron that integrate MobileIron Core or MobileIron Cloud with separate third party products and/or services not licensed or distributed by MobileIron (e.g. ServiceNow or Splunk). In order to be licensed to use a ServiceConnect Integration, Customer is required to obtain a license to the relevant third party product or service, directly or indirectly, from the third party (“Underlying Third Party”). (b) Customer may not use any part of any ServiceConnect Integrations, including third party code, in a manner not related to the MobileIron Core or MobileIron Cloud product. (c) Customer agrees that the Underlying Third Party does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of any ServiceConnect Integration and that the Underlying Third Party shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to Customer’s use of or reliance upon any ServiceConnect Integration. (d) MobileIron disclaims all warranties and indemnities in connection with the ServiceConnect Integrations and the third party product or services on which the ServiceConnect Integrations run. The Underlying Third Party makes no warranties or indemnities and disclaims all obligations and other liabilities with respect to any ServiceConnect Integration. (e) The Underlying Third Party may, at any time and for any reason, discontinue its product or service, or discontinue or disrupt interoperation with the ServiceConnect Integration. MobileIron shall have no liability for any such discontinuance or disruption.
If Customer has paid fees to obtain support and maintenance services directly from MobileIron, this Support and Maintenance Agreement ("SMA") applies to such support and maintenance services. If Customer has paid fees to obtain support and maintenance services directly from an authorized reseller, the terms regarding support in this SMA shall not apply and shall instead be determined between Customer and the relevant authorized reseller, and the terms regarding maintenance are set forth in Section 3 below.

Definitions.
"Designated Support Contact" means any Customer employee appointed by Customer who has been trained and certified by MobileIron to be a primary Customer contact with MobileIron for support services.
"Direct Support Case Pack" means a direct support package that limits the number of Incidents for which the Customer is able to obtain direct support from MobileIron.
"Incident" means when the SaaS Product does not seem to materially perform in accordance with the specifications specified in the relevant Documentation. "Response" means when MobileIron support personnel have (i) triaged the Incident, (ii) contacted Customer, and (iii) begun initial troubleshooting on the Incident.

Support Services.
Support and Trouble Tickets. During the License Term, MobileIron shall use commercially reasonable efforts to provide support services to Customer, as described below. The Designated Support Contact may report Incidents to MobileIron through MobileIron’s Support Portal (available at https://help.mobileiron.com) or support telephone helpline, and thereafter, the parties may cooperate to address the Incidents via email, telephone or the Support Portal. MobileIron shall provide Customer with a trouble ticket number that Customer can use to track the status of Incidents. MobileIron may close the Incidents without further responsibility if Customer fails to respond to a request for additional information or to confirm that the trouble ticket is resolved within ten (10) days of MobileIron’s request or receipt of a patch or workaround (as applicable). Support services for the SaaS Product are available for twenty-four hours per day and seven days per week, unless the Customer has purchased a Direct Support Case Pack, in which case support services are available during business hours, which are 6 am-6 pm Pacific, Monday through Friday (excluding holidays).

Initial Response Times for Technical Support Issues. MobileIron shall provide Responses for Incidents that have been properly reported through the Support Portal in accordance with the table below. The Response times set forth below shall not apply to the Direct Support Case Pack:

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Initial Response Time for Standard SaaS Subscription</th>
<th>Initial Response Time for Premium Plus Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A severity one (1) issue is a catastrophic production problem which may severely impact Customer’s production systems or that causes Customer’s production systems to go down or not function. There may be a loss of production data and no procedural work around exists.</td>
<td>1 hour</td>
<td>30 minutes</td>
</tr>
<tr>
<td>2</td>
<td>A severity two (2) issue is an issue where Customer’s production systems are functioning but does so in a severely reduced capacity. The situation causes significant impact to portions of Customer’s business operations and productivity. The systems are exposed to potential loss or interruption of service, including disruption of Customer’s High Availability Configuration.</td>
<td>4 hours</td>
<td>2 hours</td>
</tr>
<tr>
<td>3</td>
<td>A severity three (3) issue is a medium-to-low impact problem which involves partial non-critical functionality loss. This issue impairs some operations but allows Customer to continue to function. This may be a minor issue with limited/no loss of functionality or impact to Customer’s operation and there is an easy circumvention or avoidance by the end user. This includes errors in Documentation.</td>
<td>1 business day</td>
<td>1 business day</td>
</tr>
<tr>
<td>4</td>
<td>A severity four (4) issue is for a general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.</td>
<td>5 business days</td>
<td>5 business days</td>
</tr>
</tbody>
</table>

b. Limitations. MobileIron shall have no obligations under this Section 2: (i) if the Incident cannot be reproduced by MobileIron, (ii) if the SaaS Product has been modified or repaired, except by or at the direction of MobileIron, (iii) if the SaaS Product has not been installed, used or maintained in accordance with the Documentation, (iv) the SaaS Product is used with equipment, products or systems not supplied by MobileIron, (v) Customer does not permit MobileIron timely access to the logs or to perform remote troubleshooting sessions on the affected server or component, as reasonably requested by MobileIron, and/or (vi) for information or data contained in, stored on or integrated, with any SaaS Product. MobileIron’s obligations to provide maintenance for software installed on Customer’s premise (e.g., Sentry or Connector) shall apply only to the current shipping release of the Software and any prior release for one (1) year after such prior release has been superseded by a subsequent shipping release. (For example, if Sentry shipping version 5.0 is released in January 2016, version 5.1 is released in June 2016, and version 5.2 is released in December 2016, MobileIron shall support version 5.0 until June 2017, version 5.1 until December 2017, and version 5.2, assuming version 5.2 has not been superseded yet.)

Maintenance Services. During the License Term, MobileIron (or authorized reseller, if applicable) shall make available to Customer all Updates to the extent generally released to other MobileIron customers that purchased the same maintenance services. Such maintenance services shall apply only to the current shipping release of the SaaS Product and, for security fixes only, the immediately prior release.
**General.** MobileIron may revise the terms of this SMA, provided that: (a) such revision is made to its standard SMA terms made generally available to other customers, (b) MobileIron provides written/email notice of such revision at least sixty (60) days prior to the expiration of the then-current Support & Maintenance Term, (c) such revisions only apply to renewal terms, and (d) renewal is subject to mutual agreement. Any delay or failure in the performance by MobileIron (including in SaaS Product availability) shall be excused if and to the extent caused by a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of MobileIron, including but not limited to acts of God (including but not limited to fire, flood, earthquake, storm, hurricane or other natural disaster), war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo, rebellion, revolution, insurrection, military or usurped power, civil war, acts or threats of terrorism, riots, strikes or labor disputes (excluding by MobileIron employees) (“Force Majeure”).
MULTIVISTA FRANCHISE SYSTEMS, LLC  
203-38 FELL AVENUE  
NORTH VANCOUVER B.C., CANADA  

EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)  

1. **Scope.** This Rider and the attached Multivista Franchise Systems, LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Contractor agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.  

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Respected to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:  

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.  

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.  

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.  

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.  

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.  

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.  

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.  

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.  

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.  

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.  

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is
made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**MULTIVISTA**

**MULTIVISTA LICENSE, WARRANTY AND SUPPORT TERMS**
Service Descriptions
This Attachment A described below combines Contractor’s state-of-the-art Multivista indexing and navigation system with inspection-grade digital photography designed to capture actual conditions throughout construction and at critical milestones. The Multivista system will utilize actual construction drawings, making such drawings interactive and accessible anywhere through a secure on-line interface. For all documentation referenced herein, indexing and navigation is organized by both time and location throughout the Project.

Site Survey and Progressions Sets:
“Progression” photo sets are performed at pre-determined intervals throughout the duration of construction. Progression photos broadly track all aspects of construction through time.

The Site Survey and Progression Sets are generally included in all subscriptions to the Multivista system. They are critical tools for the communication and project management aspects of all product types.

Site Survey (Pre-Construction): The pre-construction site survey is a one-time shoot that provides coverage of the site and its immediately surrounding area to carefully memorialize conditions before a project begins.

Exterior Progression Shoots: Exterior Progression photos are taken from key perspectives along site perimeters and 360 degrees around each building envelope during erection. Exterior progressions track the construction of building elevations and all work within the immediate vicinity of the exterior of the building, including some site work. Exterior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection. Exterior progression documentation typically begins at substantial framing, and not at commencement of site work. Exterior progressions can begin at commencement of site work for the purpose of broadly capturing site work upon request.

Interior Progression Shoots: Interior Progression photos track the interior improvements from when interior work begins (typically, at the commencement of stud-work) to completion. Interior Progressions broadly track the improvements from logical perspectives. Interior Progressions are designed to provide comprehensive coverage of the various trades coming together over time. Interior progressions are performed, approximately, at monthly intervals and are coordinated with the pace of erection.

Detailed Sets (“Exact-Builts®”):
Detailed photo sets serve as “visual as-builts” which are performed at critical milestones during construction. They offer a higher concentration of photos and perspectives than the Progression shoots and/or focus on details of particular interest or importance to the Ordering Activity.

The Fundamental Exact-Builts®:
Depending on the product type, subscriptions to the Multivista System generally include at least two out of three of the following Exact-Builts® shoots which, when combined with the Site Survey and Progression Shoots, result in an unparalleled permanent documentation package superior to any known “best-practices.”

Pre-Slab Exact-Builts®: This process will include overlapping images of all roughed-in MEP, cabling systems and other structural components within the building envelope(s), post inspection (where necessary), just prior to the concrete being poured.

Interior MEP Exact-Builts®: Mechanical, Electrical, Plumbing (MEP) and all other systems in walls and ceilings will be documented post-inspection and pre-insulation, sheat rock or dry wall installation. This process provides a high concentration of overlapping coverage allowing for all finished systems to be viewed in great detail. This Exact-Builts® sweeps the entire project: every wall and every ceiling, on every floor of every building, throughout the entire Project. Note that this will not capture pre-slab, site, or in-slab-on-deck systems or other “horizontal” MEP work.

Interior Finished Condition Exact-Builts®: At Certificate of Occupancy or other “finished” milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

Elevation Exact-Builts®: – documentation of the entire building and skin capturing all exterior facades of building, to include windows and exterior skin to be determined by the Ordering Activity.

Custom Exact-Builts®:
These Exact-Builts® shoots are project-specific Detailed Sets that are not generally included in standard subscriptions to the service, but can be added to scope upon request.

Existing Condition Exact-Builts®: At Certificate of Occupancy or other “finished” milestone as the Ordering Activity designates, all walls, ceilings and floors in their post-inspection, completed condition are documented in exceptional detail.

Slideshows: Slideshows capture miscellaneous occurrences or conditions while a photographer is on-site to perform any other shoot in the Order. These conditions are those that do not fit neatly into the building envelope interface (i.e., materials stored on site). Slideshows are not linked to architectural plans in the same manner as the formal shoots; however, they will be dated, labeled and stored on the Ordering Activity’s interface. Thus, all of Ordering Activity’s information remains in one “place.” Owner and Superintendent photograph collections of critical events or conditions may also be provided to Contractor for incorporation into the Slideshow collections.

Web Camera Hosting Packages
Web hosting is integrated into the Multivista Documentation Software. This includes live 24/7 image stream; static images (1920x1080 resolution), archived every 15 minutes between 6:00am and 6:00pm local time with ability to perform historical review; camera stream re-broadcasting capable of supporting up to twelve (12) concurrent users. Installation and Webhosting are included with the Web Camera options.
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - PoE Connection Kit
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - PoE Connection Kit
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - 5.8 GHz Wireless Connection Kit
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - 5.8 GHz Wireless Connection Kit
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit
3 MP - Fixed Dome Camera - Axis P3346-VE 6mm Network Camera Kit - Cellular Connection Kit - Lightning Zone
2 MP - PTZ Dome Camera - Axis Q6035-E Outdoor PTZ 20x ZM Camera Kit - Cellular Connection Kit - Lightning Zone

Video Services:
Contractor uses high definition video equipment to document “As Delivered” construction events. Documentation comprises of Video recordings of dynamic events during the construction process. This deliverable may include but not limited to owner or process training videos, specific milestones or events and inspections. The deliverable includes post production editing. The final deliverable will be on a DVD or hard drive format and is not hosted on the Contractor’s Multivista website or server.

Additional Items
Contractor will accommodate, without charge, limited additional items that may be captured during our scheduled visits and included in the Slideshow section of our service. Additional items requested which are of significant scope, may be ordered separately.

Miscellaneous
SERVICES: Contractor shall provide professional services in accordance with the Order. Contractor will begin a Project Set-Up only after receipt of electronic plans from the architect of the Project in an acceptable format. Thereafter, Contractor requires at least ten (10) business days for Project Set-Up prior to the first shoot contemplated by the Order.

DETAILED PHOTO SETS: Because of the volatile nature of construction schedules, IT IS THE SOLE RESPONSIBILITY OF THE ORDERING ACTIVITY TO PROVIDE CONTRACTOR AT LEAST 24 HOURS NOTICE PRIOR TO THE TIME THAT A DETAILED SET MUST BE PERFORMED. To the extent look-ahead schedules are made available to Contractor, Contractor will endeavor to communicate with the Project owner’s representative or superintendent regarding upcoming Detailed Set shoots. However, Contractor will not be responsible if such Detailed Sets are not performed due to lack of notice pursuant to this provision.

AGENT/OWNER’S REPRESENTATIVE: Ordering Activity must designate a specific person or persons authorized to and responsible for scheduling site visits and Detailed Shoots.

STANDARD OF CARE: Services provided by Contractor under this Attachment A will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor makes no warranties or guarantees, either expressed or implied, of the fitness of its documentation for any particular use.

OWNERSHIP OF DOCUMENTS: Contractor makes no warrants as to the professional nature of the photograph other than to capture the construction progress. Notwithstanding the foregoing, the underlying proprietary software, processes, procedures and all other proprietary information used to create these instruments of service, including all intellectual property rights associated therewith, shall at all time remain the sole property of Contractor and/or its suppliers.

SITE VISITS/OBSERVATION: Contractor shall visit the project and/or construction site at appropriate intervals and take photos of the construction progress. Visits to the project site and observations made by Contractor as part of services provided during construction under this Attachment A shall not make Contractor responsible for monitoring of the work. Contractor employees will report to the site office prior to working on site. The site superintendent shall be the designated person granting permission onto the site in order to ensure safe access for Contractor employees.

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NEC Corporation of America ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Resorted to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms  referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by the law of the State of Georgia, provided that the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall not be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is
made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NEC CORPORATION OF AMERICA (“NEC”)
1. DEFINITIONS

1.01 "CPU" means a central processing unit in the System or SubSystem.
1.02 "Computer Program" means any instruction or instructions in object-code format for controlling the operation of a CPU.
1.03 "Licensed Product" means:
   a: The Computer Program furnished hereunder to the Ordering Activity (herein also referred to as "LICENSEE").
   b: The Computer Program manuals, documentation and any other material for the licensed Computer Program.
   c: (i) “PBX” as used herein shall mean hardware PRODUCTS. (ii) “PBX Applications” as used herein shall mean computer software which executes in conjunction with the PBX hardware PRODUCTS utilizing external interfaces and include the following applications.
      - Global Navigator
      - Unified Communications for Business (UCB)
      - Unified Communications for Enterprise (UCE)
      - UM Products (UM8700, UM4730, UM8500, UM8000)

d: (i) “ECP” as used herein shall mean UNIVERGE® SV7000, UNIVERGE® SV8500 and NEC Sphericall® hardware PRODUCTS. (ii) “Applications” as used herein shall mean PBX Applications as defined in Section 1.03 (c) above.

THE TERM "LICENSED PRODUCT" DOES NOT MEAN OR INCLUDE THE SOURCE CODE FORMAT FOR THE COMPUTER PROGRAM.

2. GRANT OF RIGHTS

2.01 Contractor hereby grants the LICENSEE, and the LICENSEE hereby accepts, a personal, non-transferable and non-exclusive right to use the Licensed Product on 1 CPU at a time, or a single system where multiple CPU's are provided in the configuration, solely for its internal business purposes. The LICENSEE understands that the Licensed Product furnished to the LICENSEE is furnished solely for use in conjunction with the related hardware Licensed PRODUCTS sold by Contractor to LICENSEE. The LICENSEE has no right to use the Licensed Product so furnished on any CPU other than that such CPU or for any purpose not specified herein.

2.02 LICENSEE and Contractor expressly acknowledge and agree that NEC and/or NEC’s licensors retain ownership of and title to their respective portions of the License Product and no right, title or interest to the intellectual property in the Licensed Product is hereby transferred to the LICENSEE or Contractor, except as expressly granted herein.

2.03 The LICENSEE shall not transfer possession of the Licensed Product, nor any rights conferred herein to any third party, except to a third party who acquires title to the LICENSEE’S related hardware Licensed PRODUCTS, provided such transferee has executed and provided to NEC, a signed copy of this Attachment A and has tendered to NEC, the then-current license transfer fee.

2.04 LICENSEE hereby agrees that it shall not reverse compile, disassemble, alter, add to, delete from, or otherwise modify the Licensed Product, except to the extent that such modification capability is an intended feature of the Licensed Product.

3. LIMITED WARRANTY AND REMEDIES

3.01 a: For a period of 14 months from date of shipping to the LICENSEE’S site, Contractor warrants that the PBX and the UNIVERGE® SV8500 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

b: For a period of 120 days from date of shipping to LICENSEE’s site, Contractor warrants that the UNIVERGE SV8500 software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

c: For a period of 90 days from date of shipping to the LICENSEE’s site, Contractor warrants that the Applications software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

d: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the UNIVERGE® SV7000 hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

e: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the NEC Sphericall® PRODUCTS software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

f: For a period of 14 months from date of shipping to the LICENSEE’S site, Contractor warrants that the UNIVERGE® SV8500 hardware and the NEC Sphericall® hardware will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

g: For a period of 90 days from date of shipping to the LICENSEE’S site, Contractor warrants that the Unified Communications Enterprise (UCE), Unified Communications Business (UCB), CallCenterWorX and Global Navigator software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and
h: For a period of 180 days from date of shipping to the LICENSEE’s, Contractor warrants that the Unified Messaging (UM8700, UM4730, UM8500, UM8000) software will substantially conform to published performance specifications applicable as of the date of this Attachment A and will be free from defects in workmanship, under normal use and service, when correctly installed and maintained.

3.02 Contractor’s liability for any Licensed Product which is shown to be defective during its warranty period is limited to:

a: replacing the Licensed Product or part thereof with a functionally equivalent Licensed Product or part,

b: repairing the Licensed Product, or

c: issuing credit for the depreciated value of the Licensed Product

The choice of which of the above warranty remedies to utilize concerning any particular Licensed Product shall be Contractor’s.

3.03 In the event that any Licensed Product is shown to be defective during the warranty period, the LICENSEE, who purchased or leased such Licensed PRODUCTS, shall:

a: notify Contractor promptly in writing of any claims,

b: provide Contractor and/or NEC, with an opportunity to inspect and test the Licensed PRODUCTS claimed to be defective, and

c: (if repair or replacement of the Licensed Product is selected) return the Licensed Product to Contractor or NEC, in accordance with instructions provided.

3.04 The above warranty excludes coverage for Licensed PRODUCTS which were installed, repaired or maintained by an unauthorized service provider or which were subjected to misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, improper temperature, humidity or other environmental condition (including, but not limited to, lightning or water damage), storage, transportation or handling, unless caused by NEC or its authorized representative.

3.05 THE LICENSED PRODUCT WARRANTY CONTAINED IN THIS ATTACHMENT A IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING BUT NOT LIMITED TO PREVENTION, DETECTION OR DETERRENCE OF TOLL FRAUD, COMPUTER VIRUSES OR OTHER UNAUTHORIZED OR IMPROPER USE OF THE SOFTWARE PRODUCTS.

4. TERMINATION

4.01 Upon termination, the LICENSEE shall immediately discontinue the use of the Licensed Product and shall return all copies of the Licensed Product to Contractor.

5. REGISTRATION AND ACTIVATION

5.01 PRODUCT LICENSES delivered through the electronic licensing portals offered by NEC will be required to be registered and activated prior to the licenses being used or technical support being provided.

5.02 At the time of LICENSE registration, the Contractor is required to provide NEC with accurate LICENSEE contact information.
EC AMERICA RIDER TO PRODUCT SPECIFIC TERMS AND CONDITIONS (FOR U.S. GOVERNMENT END USERS)
(V31-OCT-2019)

Scope. This rider (“Rider”) and the attached LinkRunner, LLC d/b/a NetAlly (“Manufacturer”) product specific end-user terms establish the terms and conditions enabling EC America (“Contractor” and/or EC America”) to provide Manufacturer’s information technology products and services to Ordering Activities, as defined in the Schedule Contract, under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”) with the U.S. Government General Services Administration (“GSA”) (hereinafter Manufacturer, EC -America, and GSA may individually be referred to as a “Party” or collectively, as the “Parties”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer’s Specific Terms, as defined below, attached hereto as Attachment A, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and, whereas, the Parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, therefore, the Parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that the Manufacturer Specific Terms are consistent with U.S. Federal Law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with U.S. Federal Law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the Parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting...
under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third-Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless
included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
END-USER TERMS AND CONDITIONS
(GSA v01-Oct-19)

These End-User Terms and Conditions ("General T&Cs") are by and between the eligible Ordering Activity under GSA Schedule contracts set forth in the applicable Order ("Company" or "Ordering Activity"), as further defined below, and sets forth the terms, conditions, rights and restrictions for which LinkRunner, LLC d/b/a NetAlly, and any of its subsidiaries and affiliates (collectively or individually referred to as "NetAlly") is willing to sell devices ("Hardware") and license NetAlly’s proprietary software, as well as any firmware residing on such Hardware, ("Software") (The Hardware and Software may be collectively referred to as the "Product(s)"), and provide maintenance and technical support services ("Maintenance"), to Company. Unless otherwise governed by a signed contract between Company and NetAlly, only these General T&Cs will apply to any Orders made for NetAlly’s Products. NetAlly’s provisioning of Products, Maintenance or any other services to Company is expressly contingent upon Company’s acceptance of these General T&Cs.

Receipt without return of any Products from NetAlly by Company shall be deemed as acceptance of this Order and shall also constitutes Company's confirmation that the Products descriptions, quantities, term, and prices set forth in the Order in accordance with the GSA Schedule Pricelist accurately represent Company's intended purchase. All additional and conflicting terms and conditions presented with or in any communication, shall be deemed null and void.

Definitions.

“API(s)” means the software application interfaces and workflow methods made generally available by NetAlly in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

“Company” means an eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document, which has entered into a commercial agreement with NetAlly, allowing for the licensing or re-licensing of Software or distribution, sale, or resale of Products and Service.

“Company Data” means information that Company uploads or uses in conjunction with Company’s use of the Products.

“Data Protection Act” means the Health Information Portability and Accountability Act (HIPAA) (29 U.S. Code § 1181, et seq.), Gramm Leach Bliley Act (GLBA) (15 U.S Code § 1681), General Data Protection Regulation (GDPR) (EU 2016/679), and other applicable regulations which seek to protect the processing and storage of personal information.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.

“Evaluation Product” means software that contains a license key, which disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Product unusable.

“Order” means the combination of Company’s P.O., a Quote issued by NetAlly or a NetAlly Company, and these General T&Cs.

“Personal Data” means any information relating to an identified or identifiable natural person (hereafter a “Data Subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

“P.O.” means a purchaser order or document, in tangible or
intangible form (e.g. .rtf, .pdf, formats, etc.), issued by Company indicating Company’s acceptance of the Quote and these General T&Cs, without regards to any conflicting terms and conditions presented therein, except with respect to price, quantity, and location of Products or Services.

“Quote” means the document under which NetAlly offers for sale and licenses its Products, Maintenance, and other services.

“Services” means Maintenance as well as any other services offered by NetAlly to Company from time to time.

**Shipment & Delivery Terms.** NetAlly ships all Products, via ground shipment hereunder FOB Destination. Unless otherwise agreed to by the parties, all shipments will be made using the carrier designated by Company. If Company does not designate a carrier, NetAlly reserves the right to choose a carrier at Company's expense. For Software available for electronic download, delivery will be deemed to have occurred once NetAlly has made the Software available for download by Company or Company’s designate agent or representative. Unless otherwise stated conspicuously on the face of the applicable Order, NetAlly reserves the right to fulfill Orders via multiple shipments. For all Products shipped internationally, Company will be the importer of record. Company agrees that it will not remove any NetAlly General T&Cs or other agreement from the NetAlly Product(s), and/or associated packaging. All costs incurred by Company will be in accordance with the GSA Pricelist.

**License Grant and Restrictions.** Subject to payment of the applicable license fee and the terms set forth in an applicable Order, NetAlly grants Company a limited, non-exclusive, non-transferable, revocable license to use the Software and the Documentation for Company's own internal business purposes.

**Evaluation License:** NetAlly hereby grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Evaluation Product set forth in the applicable NetAlly Evaluation Request Form solely for internal testing, evaluation, or demonstration purposes. If Company chooses not to purchase a license for the Evaluation Product, the Evaluation Product must be removed from Company's system(s) and all permitted copies of such Evaluation Product immediately destroyed. A Return Materials Authorization
number ("RMA #") for any Hardware Evaluation Product must be obtained prior to return of such Product.

**Pre-Released Products.** If the Product Company has received with this license is not yet commercially available ("Pre-Released Product"), then NetAlly grants Company a temporary, non-exclusive, non-transferable, revocable license to use the Pre-Released Product and the associated Documentation, if any, as provided to Company by NetAlly solely for internal evaluation purposes. NetAlly may terminate Company’s right to use the Pre-Released Product at any time at NetAlly’s discretion. Company’s use of the Pre-Released Product is limited to thirty (30) days unless otherwise agreed to in writing by NetAlly. Company acknowledges and agrees that (i) NetAlly has not promised or guaranteed to Company that the Pre-Released Product will be announced or made available to anyone in the future; (ii) NetAlly has no express or implied obligation to Company to announce or introduce the Pre-Released Product; (iii) NetAlly may not introduce a product similar to or compatible with the Pre-Released Product; and (iv) any use of the Pre-Released Product or any product associated with the Pre-Released Product is entirely at Company’s own risk. During the term of these General T&Cs, if requested by NetAlly, Company will provide feedback to NetAlly regarding use of the Pre-Released Product. Company will not disclose any features or functions of any Pre-Released Product until NetAlly makes the Pre-Released Product publicly available.

**API License.** NetAlly grants Company a limited, non-exclusive, non-transferable revocable license to use the API, together with applicable documentation, any sample code, and any sample applications provided with the API, solely in connection with the Products for Company’s internal business purposes; provided that Company may not use the API in connection with developing a product or service that competes with Products.

**License Restrictions.** Except as required by law, Company will not, and will not cause or permit others to, derive the source code of the Software, or reverse engineer, disassemble, or decompile the Products. Company may not (i) create derivative works of the Software, (ii) lend, rent, lease, assign, sublicense, and/or make available through timesharing or service bureau the Software, or (iii) transfer the Software or provide third party access to the Software.

**Third-party Technology.** The Products may contain embedded third-party technology ("Third-party Materials"). Such Third-party Materials are licensed for use solely with the Product. Third-party Materials are provided subject to the applicable third-party terms of use. Nothing herein shall bind the Ordering Activity to any Third-party Materials terms unless the terms are provided for review and agreed to in writing by all parties.

**Ownership.** NetAlly and its third-party licensors retain all right, title, and interest in and to the Products, Third party Technology and/or APIs. Company retain all right, title and interest in and to the Company Data.

**Acceptable Use.** Company specifically agrees to limit the use of the Products and/or Services to those specifically granted in these General T&Cs. Without limiting the foregoing, Company specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Software or any portion
thereof; (ii) modify, port, translate, localize or create derivative works of the Software; (iii) remove any of NetAlly's, or its vendors, copyright notices and proprietary legends; (iv) use the Products to (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violate any law, statute, ordinance, or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); or (c) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; and/or (v) file copyright or patent applications that include the Product or any portion thereof.

Company & Personal Data. During the Term, Company may provide to NetAlly Company Data. NetAlly may use Company Data in connection with the performance of its obligations under these General T&Cs. Company hereby agrees to strictly comply with any and all applicable Data Protection Acts with regards to the transfer, handling storage and processing of Personal Data. Company acknowledges and agrees that should Company transfer such Personal Data to NetAlly, or other third-parties, Company will serve as such Personal Data's "Controller", as set forth in the applicable Data Protection Acts. Further, in the event of a breach of Personal Data, attributed to Company's actions or inactions in furtherance of these General T&Cs, in violation of the Data Protection Acts, Company shall promptly (i) take all necessary steps to curtail such breach; (ii) undertake all necessary actions to mitigate damages; (iii) provide the necessary notification and remediation, as set forth in the applicable Data Protection Act; and (iv) aid and assist in NetAlly's efforts to do the same, at Company's sole cost and expense.

{Reserved}

{Reserved}

Warranties. NetAlly warrants, for Company's benefit alone, (i) that the Hardware will be free from material defects for a period of twelve (12) months following the date of shipment of the Hardware ("Hardware Warranty Period"); and (ii) the Software, will conform materially and substantially to the Documentation for a period of ninety (90) days following the date when first made available to Company for download ("Software Warranty Period"). The warranties set forth herein do not apply to any failure of the Software or Hardware caused by (a) Company's failure to follow NetAlly's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Company's mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) modifications or repairs not authorized by NetAlly; (d) use of the Products in combination with equipment or software not supplied by NetAlly or authorized in the Documentation; and/or (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside NetAlly's reasonable control. NetAlly cannot and does not warrant the performance or results that may be obtained by using the Products, nor does NetAlly warrant that the Products are appropriate for Company’s purposes or error-free. If during the Software Warranty Period or Hardware Warranty Period, a nonconformity is reported to NetAlly, NetAlly, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware. THIS REMEDY IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND NETALLY'S SOLE LIABILITY FOR A BREACH OF
WARRANTY. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 8, “WARRANTIES” NETALLY DISCLAIMS ALL WARRANTIES ON MERCHANDISE SUPPLIED UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, AND/OR INCIDENTAL DAMAGES, WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

Relationship with Third parties. The relationship between the parties established by these General T&Cs is that of independent contractors, and nothing contained in these General T&Cs shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking or franchise; (iii) allow Company to create or assume any obligation on behalf of NetAlly for any purpose whatsoever; or (iv) allow any customer, End-User, or other person or entity not a party to these General T&Cs to be considered a third-party beneficiary of these General T&Cs.

General Provisions.

Modification. No modification of these General T&Cs shall be effective unless in writing and signed by both parties.

Severability & Survival. The illegality or unenforceability of any provision of these General T&Cs shall not affect the validity and enforceability of any legal and enforceable provisions hereof. Should any provision of these General T&Cs be deemed unenforceable by a court of competent jurisdiction then such clause shall be re-construed to provide the maximum protection afforded by law in accordance with the intent of the applicable provision. Any provision contained herein, which by its nature should survive the termination of these General T&Cs shall survive, including, but not limited to, Section 7 “Confidentiality”, 9 “Limitation of Liability & Exclusion of Consequential Damages”, 12 “Indemnification”, and 14 “General Provisions”.
Assignment. Neither party may assign any rights or delegate any obligations hereunder, whether by operation of law or otherwise, except with the prior written consent of the other party, which consent will not be unreasonably withheld. These General T&Cs bind the parties, their respective participating subsidiaries, affiliates, successors, and permitted assigns.

Compliance & Export Controls. Company shall comply fully with all applicable laws, rules, and regulations including those of the United States, and any and all other jurisdictions globally, which apply to Company’s business activities in connection with these General T&Cs. Company acknowledges that the NetAlly Products and/or NetAlly Services are subject to United States Government export control laws. Company shall comply with all applicable export control laws, obtain all applicable export licenses, and will not export or re-export any part of the Products and/or Services to any country in violation of such restrictions or any country that may be subject to an embargo by the United States Government or to End-Users owned by, or with affiliation to, such countries embargoed by the United States Government.

14.5. U.S. Government Use Notice. The NetAlly Software is a “Commercial Item”, as that term is defined at 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. § 12.212. Consistent with 48 C.F.R. § 12.212, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government End-Users (a) only as Commercial Items and (b) with only those rights as are granted to all other End-Users pursuant to the terms and conditions herein. For some components of the Software as specified in the Exhibit, Attachment, and/or Schedule, this Software and Documentation are provided on a RESTRICTED basis. Use, duplication, or disclosure by the United States Government is subject to restrictions set forth in 48 CFR 52.227-14, as applicable.

Anti-Corruption and Anti-Bribery. Company will not make or permit to be made any improper payments and will comply with the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Organization for Economic Co-operation and Development (“OECD”) Convention on Anti-Bribery, and other applicable local anti-bribery laws and international anti-bribery standards. Company represents and warrants that it will not pay any commission, finder’s fee, or referral fee, or make any political contribution, to any person in connection with activities on behalf of NetAlly.

Applicable Law & Disputes. The parties specifically agree that the U.N. Convention on the International Sale of Goods, the Uniform Computer Information Transactions Act (“UCITA”), and the International Commercial Terms issued by the International Chamber of Commerce (“Incoterms”) shall not apply to any and all actions performed by either party hereunder in furtherance of these General T&Cs. These General T&Cs and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of the Federal Laws of the United States of America, without reference and/or regard to its conflicts of laws.
Waiver. Each party agrees that the failure of the other party at any time to require performance by such party of any of the provisions herein shall not operate as a waiver of the rights of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

Notices. All notices under these General T&Cs shall be in English and shall be in writing and given to the address indicated upon the cover page and may be sent either by (i) registered airmail; (ii) overnight delivery through a reputable third-party courier; or (iii) via electronic mail (email) sent “read receipt” and “delivery receipt”. With respect to NetAlly’s receipt of electronic notice set forth in (iii) above such notice shall only been deemed received once Company receives a confirmation of “read receipt” and “delivery receipt” and such notice shall only be valid if sent to legal@netally.com.
{End}
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NetApp, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licenssee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor breaches the Manufacturer Specific Terms, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefor. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (MAY 2014). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NETAPP, INC.

NETAPP, INC LICENSE, WARRANTY AND SUPPORT TERMS

PROFESSIONAL SERVICES TERMS

These Professional Services Terms (“Terms”) set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customers purchasing Professional Services directly from NetApp, the NetApp General Terms (attached herein) also apply. For Customers purchasing Professional Services from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms (attached herein) also apply. To the extent there is any conflict between these Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services.

DEFINITIONS. In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

Deliverables. Tangible materials or specific outputs expressly designated as Deliverables in the relevant Engagement Document.

Engagement Document. A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

IP Rights. Patents of any type, design rights, utility models or other similar inventions, copyrights, mask work rights, trade secret, knowhow or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Pre-Existing IP. IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Terms.

Professional Services. The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

Professional Services Materials. Deliverables, materials, software, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the provision of the Professional Services.

Professional Services Resource. A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

2. SCOPE OF SERVICES

2.1. Projects. NetApp will perform Professional Services in accordance with the Order Documentation, including the Engagement Document, and these Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services.

2.2. Change Orders. Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable Order Documentation supporting the change.

2.3. No Unique Services. Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp customers. Any unique services requested by Customer shall be subject to separate written agreement, No custom development activity shall be performed as Professional Services.

2.4. No Superuser Access. In no event will Customer grant to a Professional Services Resource root or “superuser” access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

FEES. An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for Professional Services rendered and any related payment schedules. Customer’s execution of an Engagement Document or NetApp’s acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

EXPENSES. Ordering Activity Licensee agrees to pay any travel expenses in accordance with FTR/JTR, as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT. In relation to Time and Material ("T&M") Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp’s price quotation and Customer’s Purchase Order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a “day” constitutes at least four (4) hours but not more than eight (8) hours in a single calendar day; or whenever aggregate overtime hours (those exceeding eight (8) hours on a calendar day), exceed four (4) hours but not more than eight (8) hours. T&M Professional Services will be available to Customer for one (1) year from the Purchase Order date. Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

PROFESSIONAL SERVICES WARRANTY. NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional Services warranty, NetApp will re-perform such Professional Services. This is Customer’s sole and exclusive remedy in relation to breach of warranty.

INTELLECTUAL PROPERTY RIGHTS. Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed
to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a nonexclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer’s internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp’s prior written consent.

DATA PROTECTION. Performance of Professional Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Professional Services. In the event Customer does provide personal data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

TERMINATION; REMEDIES FOR NON-PAYMENT. Customer may terminate an Engagement Document for convenience upon thirty (30) days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and material costs incurred or expended by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the payment terms, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.

SUPPORT SERVICES TERMS

These Support Services Terms (“Terms”) set forth the terms and conditions under which NetApp will provide Support Services to Customer. To the extent that there is any conflict between these Terms and those contained in the Master Purchase Agreement, these Terms will control and take precedence.

1. DEFINITIONS

In addition to the definitions set forth in the Master Purchase Agreement, the following definitions shall apply:

- AutoSupport. NetApp’s AutoSupport™ remote support diagnostic system.
- Business Day. Monday through Friday, 8:00 a.m. to 5:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.
- Customer Replaceable Unit (CRU). Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.
- Field Replaceable Unit (FRU). A component or disk in the Hardware, excluding filler heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp’s reasonable discretion.
- Remote Technical Support. Telephone and web-based support.
- Software Updates. (i) Enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) Temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

2. SUPPORT SERVICES

2.1. Scope of Support Services. NetApp agrees to provide the Support Services purchased by Customer as set forth in the Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion.

2.2. Combined Use. Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

2.3. Out-of-Scope Services. The following services are not included in the scope of Support Services:

- Subject to the following conditions related to third party products:
- Transit or relocation of Hardware and related services, including services to remediate any associated damage;
- Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables;
- Customer education, training and consulting services;
- Implementation or installation assistance for hardware and software not procured from a NetApp authorized source;
- Services related to any work performed at Customer’s site except as specified in the Order Documentation;
- Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software;
- Services relating to issues arising from a change in Customer’s system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at http://support.netapp.com/matrix/mtx/login.do; and (i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

2.4. Hardware and Software Warranty Disclaimers. All NetApp warranties related to Hardware and Software will be voided where:

(a) Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation; (b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer; (c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the Hardware and Software, in the absence of a prior written agreement with NetApp; (d) A power surge or failure has occurred; (e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at http://hwa.netapp.com;
An issue arises from cleaning, refinishing or cosmetic modification of Hardware, or any electrical or site preparation; and (g) Products or components, including without limitation, software or hardware, have been procured from a source not authorized by NetApp, and then combined with Products.

Support Services Warranty. NetApp warrants that for the duration of the applicable Support Services Period, Support Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Customer’s sole and exclusive remedy in relation to a breach of this warranty is a re-performance of the Support Services by NetApp.

Subcontracting. NetApp may use subcontractors to provide the Support Services under these Terms.

End of Availability and End of Support. The NetApp Service and Support Product Programs End of Availability Index, which is located on the NetApp Support Site, details information related to the last date on which Hardware or Software will be available for quoting from NetApp ("End of Availability" or "EOA"), and the last date on which Hardware or Software will be supported by NetApp ("End of Support" or "EOS"). NetApp will not provide Support Services for any Hardware, or components thereof, or Software after the applicable published EOS date. In relation to Hardware running Software which has passed its EOS date, NetApp may require Customer to update to a supported version of Software as a prerequisite to NetApp continuing to provide Hardware Support Services.

Replacement of Hardware Components and Return Material Authorization. In the event the resolution of a support case initiated with the NetApp Technical Support Center ("TSC") is a Hardware failure, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the receipt of the case and repair request. In such cases, NetApp will provide a Return Material Authorization ("RMA") procedure located on the NetApp Support Site at http://mysupport.netapp.com/NOW/products/rma/ Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupportable under Section 2.3 above shall entitle NetApp to invoice Customer for the cost of the replacement Hardware components supplied, calculated in accordance with the Price List. Customer will ensure that the failed Hardware is free of any legal obligations or restrictions that could prevent its replacement and will return each CRU and FRU individually by separate shipment.

Support Included with Original and Extended Hardware Warranty. During the applicable Hardware warranty period, NetApp will provide Customer with access to 24/7/365 Remote Technical Support, delivery of replacement Hardware components and access to the NetApp Support Site. Customer will also have access to AutoSupport and the NetApp Remote Support Diagnostics Tool, as applicable. In relation to Support Services included with the Hardware warranty, NetApp will use reasonable commercial efforts to deliver replacement Hardware components by the next Business Day. Such delivery is subject to local country limitations, including but not limited to shipment cut-off times, and other factors beyond the reasonable control of NetApp.

Next Business Day Schedule. The cutoff time for next Business Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized Service Engineer is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday).

2.11. Onsite Support Services. If Customer has purchased onsite Support Services, it will receive such services as follows: When Customer initiates a technical support case with the TSC, a Technical Support Engineer ("TSE") will commence issue identification and repair as necessary. If the issue cannot be resolved remotely, and where the TSE and Customer jointly agree that onsite Support Services are necessary and appropriate, the TSE will dispatch an Authorized Support Engineer ("ASE") to the Customer site. The ASE will, at the direction of the TSC, work to diagnose and isolate the issue, make necessary changes and restore the normal operation of the systems. The TRO for onsite Support Services will be the same as that specified for replacement Hardware components in the Documentation. Subject to Section 2.13 below, in relation to onsite Software Support Services, NetApp reserves the right to define the most appropriate method of resources base on the case and restore normal operation. In such cases, NetApp will communicate with Customer the estimated time of arrival for the ASE, which may or may not fall within the TRO specified above.

Non-Returnable Disk. If Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks forming part of the Hardware. Customer will retain such disks and remain solely responsible for their disposal. Customer agrees that if disks covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such disks. NetApp will treat such disks like non-NRD disks and convey them into the NetApp supply chain for repair and/or destruction.

Software Support Services. If Customer has purchased Support Services that include a Software Support Plan ("SSP"), it is entitled to Software Support Services during the applicable Support Services Period. SSP consists of both telephone and web-based support and access to all Software Updates made generally available by NetApp. Customer shall be responsible for installing and implementing Software and Software Updates unless it has purchased a Software Services offering that incudes installation of software updates by NetApp, as described in Section 2.13 below. NetApp may require Customer to implement specific Software upgrades to resolve current or prospective issues. Customer may be required to purchase additional Hardware at its own expense to make use of Software Updates and/or Software upgrades.

Installation of Software Updates. If Customer has purchased such installation services, NetApp will install Software Updates during the provision of Support Services during the Support Services Period. The TSE will determine the method and timing of installation, with Customer’s agreement and participation. NetApp may choose to dispatch an ASE to the Customer site to participate in Software Update activities.

Software Support Services Prerequisites. Provision of Software Support Services is conditional upon Customer having: (a) installed and operated the Software in accordance with the applicable Documentation; (b) described with sufficient specificity the nature of the Software issues Customer is experiencing and the circumstances in which they occur; (c) reproduced the Software issue such that it can be confirmed and evaluated by NetApp; (d) made no changes, additions, or modifications to the Software, directly or indirectly; and (e) installed the Software in an infrastructure/environment that adheres to the published NetApp Interoperability Matrix on the NetApp Support Site.

2.16 AutoSupport. AutoSupport data is deemed to be NetApp Confidential Information.

3. CUSTOMER RESPONSIBILITIES

3.1. Customer Contacts. Customer will designate up to three (3) technically qualified employees to serve as Customer’s primary points of contact in relation to the receipt of the Support Services.

3.2. Customer Information. Immediately on receipt, Customer will register all Hardware and Software on the NetApp Support Site to create Customer’s support profile. Customer will keep this profile up-to-date. TROs, if any, can be met only if Customer has provided NetApp with accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer’s location. If this information is inaccurate or obsolete and/or access to Customer’s location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer’s location.

3.3. NetApp Support Site. During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will be deemed NetApp Confidential Information.

3.4. Miscellaneous Permissions.
In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

3.5. Work Environment. Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

3.6. Equipment Relocation. In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least thirty (30) days prior to such relocation. NetApp will notify Customer if Customer’s existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice.

3.7. Reinstatement of Lapsed Support. In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List.

3.8. Data Protection. Performance of Support Services under these Terms may result in Customer providing NetApp access to Personal Data. NetApp does not need nor request access to Personal Data in order to provide Support Services. In the event Customer does provide Personal Data to NetApp, Customer accepts sole responsibility and liability for the disclosure and protection of such data in accordance with applicable data protection laws.

GENERAL TERMS
Terms for All Transactions

These General Terms (“Terms”) apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. or any of their affiliates (“NetApp”) directly to the Ordering Activity customer acquiring Products and Services for its own use (“Customer”), unless Customer has entered into a separate agreement with NetApp governing such sale. By both parties executing this agreement in writing, Customer agrees to these Terms. NetApp and Customer may each be referred to as a “Party” or collectively, as the “Parties.”

1. DEFINITIONS

1.1. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed or otherwise sold by NetApp for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

1.4. Hardware. NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

1.5. Order Documentation. The applicable NetApp price quotation (and the NetApp engagement document, if required for the purchase of applicable Services), the corresponding Purchase Order, and the associated Documentation for the Products or Services purchased or licensed hereunder.

1.6. Price List. NetApp’s then-current list of Products and Services, and their associated prices for the country of destination.


1.8. Purchase Order. A written or electronic order provided to NetApp consistent with the corresponding price quotation for the purchase of Products and Services.

1.9. Services. NetApp’s consulting services (“Professional Services”) and/or its generally available technical support and maintenance services programs (“Support Services”).

1.10. Software. NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

1.11. Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

2. ORDERS, DELIVERY and ACCEPTANCE

2.1. Orders. All Purchase Orders are subject to acceptance by NetApp.

2.2. Changes, Cancellation, and Rescheduling. Customer may modify or cancel Purchase Orders up to ten (10) days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date one time per Purchase Order without additional charge. Product returns are subject to NetApp approval.

2.3. Delivery. Delivery of hardware and software pre-installed on the hardware occurs according to the applicable trade term specified on the NetApp price quotation or as agreed to by NetApp on a case by case basis. Delivery of software that is not pre-installed on hardware occurs when NetApp makes the enabling key available to Customer or, if an enabling key is not required, when NetApp makes such software available for download or use by Customer.

2.4. Risk of Loss. Risk of loss or damage to the Products and title to any hardware in the Products will pass to Customer upon delivery.

2.5. Acceptance. Acceptance by Customer of Products will occur upon delivery, and acceptance by Customer of Services will occur when such Services are rendered, unless otherwise agreed in a NetApp engagement document.

PRICING AND PAYMENTS

3.1. Reserved.

Payment Terms. Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days from the date of receipt of NetApp’s invoice.

Remedies for Non-payment. Customer payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp’s right to recover the balance of any amount due or pursue any other remedy provided for in these Terms or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent.

3.4. Taxes and Duties. NetApp shall state separately on invoices taxes taxes excluded from the fees, and the Customer agrees either
4. SOFTWARE LICENSE

4.1. License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding Order Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer’s internal business purposes only, and (b) use the Documentation in support of Customer’s use of the Software. The Software associated with Customer’s license is either bundled with a specific storage controller identified by a unique serial number (“Controller-based licenses”), or is independent of a storage controller (“Standalone licenses”), and the license is one of the following license types: (a) “Life-of-controller”: Controller-based licenses granted for the period of time during which Customer’s controller is operable; (b) “Perpetual”: Standalone licenses granted in perpetuity; (c) “Term”: Controller-based licenses or Standalone licenses granted for a fixed period of time; (d) “Capacity”: Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) “Subscription”: Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp’s AutoSupport(TM) Remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp’s prior written agreement, and in the context of non-disruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

4.2. License Restrictions. Customer will not, nor will Customer allow any third party to, (a) reverse engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt, or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

4.3. Reserved.

4.4 Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

5. SERVICES

5.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp’s How to Buy information provided above.

6. DIRECT WARRANTY

6.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, or otherwise specified in the applicable Documentation (“Hardware Warranty Period”). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund the amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.

6.2. Software Warranty. NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law (“Software Warranty Period”). NetApp does not warrant that Customer’s use of the Software will be error-free or uninterrupted. In the event of a material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp.

6.3. Limitations. NetApp will not be liable under this warranty for claims arising from Customer’s, Customer’s subcontractor’s, or any unauthorized third person’s misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp’s prior written approval.

6.4. Exclusion of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER’S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Licensee’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

7.1. General. The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

7.2. IP Claims. Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright (“IP Claim”). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, “Damages”) against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

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7.3. Remedies. NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer’s purchase price. 7.4. Exclusions. Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp’s compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp’s authorization; (c) Customer’s failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

7.5. Entire Liability. Notwithstanding anything to the contrary in these Terms, this Section 7 states NetApp’s entire liability and Customer’s sole and exclusive remedies for IP Claims. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

8. CONFIDENTIALITY

8.1. General. “Confidential Information” means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked “confidential” or “proprietary” at the time of disclosure; (b) if disclosed orally or visually, is designated “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. “Confidential Information” shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party’s lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party. Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

8.2. Treatment of Confidential Information. Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party’s Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

8.3. Return/Destruction. Upon the disclosing Party’s written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 8.3.

9. LIMITATION OF LIABILITY

9.1. Liability Exclusions. Regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer’s failure to comply with applicable “non-erasable” and “non-rewriteable” U.S. government regulations; the acts and omissions of any Cloud Provider; and the failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

9.2. Cumulative Liability. To the extent that limitation of liability is permitted by law, NetApp’s liability to Customer is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

9.3. Exceptions. The limitations set forth in Sections 9.1 and 9.2 will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 7.

10. COMPLIANCE WITH LAWS

10.1. Compliance. Each Party will comply with all applicable laws and regulations.

10.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp end use and end user information upon NetApp’s request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

10.3. Anti-Bribery. Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
11. **MISCELLANEOUS**

11.1. **Termination.** These Terms are effective until terminated. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp’s request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4.2. - 4.4. , 6, 7, 8, 9, 10, and 11 will survive termination of these Terms.

11.2. **U.S. Federal Government Customers.** This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is “commercial” computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 11.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

11.3. **Cloud-Based Offering Notice.** Customers buying Cloud-Based Offerings must also comply with the Cloud Provider’s applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider’s services, compliance, and security. Customers using CloudBased Services to provide customer services may only do so if: (a) its users agree to terms limiting NetApp’s liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

11.4. **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

11.5. **Data Privacy and Recovery.** Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. NetApp assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer’s internal processes and procedures related to the protection, loss, confidentiality, or security of Customer’s data or information.

11.6. **Hazardous Environments.** Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

11.7. **Product Evaluation.** Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer’s needs. Notwithstanding Section 6 above, these Products are provided and licensed to Customer on an “AS IS” basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

11.8. **Reserved.**

11.9. **Reserved.**

11.10. **Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party’s exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

11.11. **Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

11.12. **Assignment.** Customer and NetApp may assign any rights or delegate any obligations under these Terms without the prior written consent of the other party, provided that the assignment is by Customer or NetApp without the other party’s prior written consent will be null and void.

11.13. **Subcontractors.** NetApp may use subcontractors to fulfill its obligations under these Terms.

11.14. **Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

11.15. **Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

11.16. **Audit.** Subject to applicable Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer’s subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit.

11.17. **General.** These Terms will be construed pursuant to the Federal laws of the United States. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer’s use of the Products. If required by NetApp’s agreement with a third party licensor, NetApp’s licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of the Terms will govern, to the extent permitted by applicable laws. These Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms, acknowledgements, or similar communications between the Parties. Order Documentation(s) issued by Customer will be deemed to incorporate and be subject to these Terms, except where the Parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any Purchase Order, Order Documentation form, contractual document or other similar correspondence originating by either Party will have no effect unless the Parties expressly agree in writing. A negotiated
purchase order signed by both parties would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

11.10. Use Restriction. Products and Services are for Customer's use and are not for resale or redistribution.

CHANNEL END USER TERMS

These Channel End User Terms ("Terms") set forth the direct terms and conditions between NetApp, Inc., NetApp B.V., or any of their affiliates ("NetApp") and "Ordering Activity" under GSA Schedule contracts ("Customer") in connection with NetApp Products and Services purchased by Customer from an authorized NetApp reseller, unless Customer has entered into a separate agreement with NetApp in connection with such Products or Services. By both parties executing these Terms in writing, Customer agrees to be bound by these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

1. DEFINITIONS

1.1. Cloud-Based Offering. Hardware, Software, and any Services offered, distributed, marketed, or otherwise sold by NetApp or a NetApp authorized distributor, reseller, or partner for use through a Cloud Provider.

1.2. Cloud Provider. A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.

1.3. Documentation. NetApp supplied then current technical documentation describing the features and functions of the associated Products.

1.4. Hardware. NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.


1.6. Services. NetApp's consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").

1.7. Software. NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.

1.8. Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed, or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

2. SOFTWARE LICENSE

2.1. License Grant. Subject to these Terms and any limitations or restrictions set forth in the corresponding Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer's internal business purposes only, and (b) use the Documentation in support of Customer’s use of the Software.

2.2. License Restrictions. Customer will not, nor will Customer allow any third party to (a) reverse engineer, decompile, or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software or Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

2.3. Reserved. Subject to these Terms and any limitations or restrictions set forth in the corresponding Documentation, Customer's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based licenses"), or is independent of a storage controller ("Standalone licenses"), and the license is one of the following license types: (a) "Life-of-controller": Controller-based licenses granted for the period of time during which Customer’s controller is operable; (b) "Perpetual": Standalone licenses granted in perpetuity; (c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupportTM remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp's prior written agreement, and in the context of nondisruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

2.4. Software Copyright Information and Notices. Software copyright information and other related details are included as part of notices in the documentation published by NetApp (e.g. NOTICES, TXT or NOTICES, PDF).

3. SERVICES

3.1. Services. Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on NetApp's How to Buy information provided above.

4. DIRECT WARRANTY

4.1. Hardware Warranty. NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund amounts received by NetApp for the nonconforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law. For purposes of this Section 4.1 delivery is made pursuant to the applicable trade terms specified on the quotation or as agreed to by NetApp.

4.2. Software Warranty. NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). NetApp does not warrant that Customer’s use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the nonconforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp or a NetApp authorized distributor, reseller or partner. For the purposes of this Section 4.2, if Software is pre-installed on the Hardware, delivery is made pursuant to the applicable trade terms specified on
5.4. NetApp will return the Product and NetApp will refund Customer's purchase price.

5.3. Customer will promptly notify NetApp in writing of the IP Claim; (a) provides information and assistance to NetApp to defend such IP Claim; and (b) provides information and assistance to NetApp to defend such IP Claim.

4.3. Limitations. NetApp will not be liable under this warranty for claims arising from Customer’s, Customer’s subcontractor’s, or any unauthorized third person’s misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp’s prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 2, except as authorized in writing by NetApp.

4.4. Exclusive or revenue. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER’S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

5. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

5.1 General. The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title, or interest in or to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

5.2. IP Claims. Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright (“IP Claim”). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, “Damages”) against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with control of the defense or settlement negotiations.

5.3. Remedies. NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes noninfringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer’s purchase price.

5.4. Exclusions. Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp’s compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp’s prior written authorization; (c) Customer’s failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

5.5. Entire Liability. Notwithstanding any Term to the contrary in these Terms, this Section 5 states NetApp’s entire liability and Customer’s sole and exclusive remedies for IP Claims.

6. CONFIDENTIALITY

6.1. General. “Confidential Information” means any information disclosed by a Party to the other Party in connection with these Terms and Conditions, including all information identified at the time of disclosure as “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. “Confidential Information” shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) in the receiving Party’s lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.

6.2. Treatment of Confidential Information. Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party’s Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

6.3. Return/Destruction. Upon the disclosing Party’s written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 6.3.

7. LIMITATION OF LIABILITY

7.1. Liability Exclusions. Regardless of the basis of claims (e.g., contract, tort, or statute) in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer’s failure to comply with applicable “non-erasable” and “non-rewriteable” U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer’s failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

7.2. Cumulative Liability. To the extent that limitation of liability is permitted by law, NetApp’s liability is limited to the amount of fees paid by Ordering Activity under the order giving rise to such liability. This limitation is cumulative and not per incident.

7.3. Exceptions. The limitations set forth in Sections 7.1 and 7.2 above will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 5.

8. COMPLIANCE WITH LAWS

8.1. Compliance. Each Party will comply with all applicable laws and regulations.
8.2. Export. Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer further agrees to provide NetApp with end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

8.3. Anti-Bribery. Each Party shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

9. MISCELLANEOUS

9.1. Termination. These Terms are effective until terminated. Customer may terminate these Terms immediately upon written notice to NetApp. NetApp may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due (whether payable to NetApp or its authorized third party financing partners in connection with an Approved Financing Agreement, described in Section 9.7 below) and, in the event that the breach is remediable, Customer fails to remedy it within thirty (30) days of NetApp's written notice requiring Customer to do so. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer's possession or under Customer's control. Customer will be solely liable for any costs or expenses incurred by NetApp in connection with the foreclosure of the security interest in the Software and Documentation.

9.2. U.S. Federal Government Customers. This Section 9.2 applies only to U.S. Federal Government Customers. The Software and Documentation is "commercial" computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 9.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect and will remain in effect as written.

9.3. Cloud-Based Offering Notice. Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

9.4. Force Majeure. Neither Party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure").

9.5. Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control, and management of NetApp Hardware and Software including following industry-standard processes, procedures, and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality or integrity of any of Customer's data or information.

9.6. Hazardous Environments. Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

9.7. Product Evaluation. Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer's needs. Notwithstanding Section 4 above, the evaluation Products are provided and licensed to Customer on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise, are up to the maximum extent permitted by applicable laws.

9.8. NetApp Approved Financing. These Terms also apply to "Financed Software," which means Software and Documentation licensed to Customer for a limited period of use pursuant to the terms of a financing agreement between Customer and NetApp or its authorized third party financing partner (an "Approved Financing Agreement" or "AFA"), subject to the following: (a) the Financed Software, period of use, installation site, and other transaction-specific conditions will be as agreed in the applicable AFA; and (b) notwithstanding anything to the contrary in these Terms, all licenses for Financed Software terminate at the expiration of the term of the AFA unless otherwise expressly agreed in the AFA, or when sooner terminated by NetApp (whether in accordance with these Terms or the AFA). Customer agrees that the license granted under Section 2 above and NetApp's termination rights under Section 9.1 above may be affected by an authorized third party financing partner's rights under the applicable AFA, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software.

9.9. Modification, Substitution, Discontinued Product. NetApp will have sole discretion, at any time, to change, substitute, or discontinue Products. NetApp will use commercially reasonable efforts to provide sixty (60) calendar days' prior notice of any such changes.

9.10. Waiver. Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

9.11. Severability. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

9.12. Assignment. Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer without NetApp's prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms.
9.13. **Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

9.14. **Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

9.15. **Audit.** Subject to Government security requirements, Customer grants NetApp and its independent accountants the right to audit Customer or Customer’s subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, NetApp will invoice Customer any fees.

9.16. **General.** These Terms will be construed pursuant to the Federal laws of the United States, excluding its conflicts of law provisions. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer’s use of the Products. If required by NetApp’s agreement with a third party licensor, NetApp’s licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of these Terms will govern, to the extent permitted by applicable laws. These Terms represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the Parties.

9.17. **Use Restriction.** Products and Services are for Customer’s use and are not for resale or redistribution.
APPENDIX 1 TO KEystone Flex Subscription Addendum
U.S. Government End User Rider

The parties agree that the following provisions shall apply to U.S. Government End User that purchase Subscription Services via Customer:

1. Termination for convenience:

End User may terminate for convenience at any time in accordance with FAR Clause 552.212-4(l) and FAR notice procedures. Any termination for convenience following this period shall be subject to payment in full of (A) any past due amounts up to and including the termination date.

2. Non-Appropriation:

If sufficient funds are not appropriated to make payments for Fees required under a Keystone Order, such Keystone Order shall terminate and End User shall not be obligated to make payments under such Keystone Order beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such non-appropriation (an "Event of Non-Appropriation") End User shall, no later than the end of the fiscal year for which payments have been appropriated, deliver possession of the Subscription Products under such Keystone Order to NetApp. If End User fails to deliver possession of the Subscription Products to NetApp upon termination of such Keystone Order by reason of an Event of Non-Appropriation, the termination shall nevertheless be effective.

3. The Subscription Term of the Exhibit B form of Keystone Order shall be for twelve (12) months.

4. The Extensions/Renewals Section of the Exhibit B form of Keystone Order shall be removed in its entirety. The Subscription Term can only be extended in writing by the Parties.

All other terms of the Keystone Flex Subscription Addendum between NetApp and Customer remain in full force and effect and shall be passed to U.S. Government End Users by Customer.
Keystone Flex Subscription Addendum

This Keystone Flex Subscription Addendum (this “Agreement”) is entered into by and between NetApp and Customer Ordering Activity under GSA Schedule contracts effective as of the later of the two signature dates below, or the date set forth in the Purchase Order, as applicable (“Effective Date”) and provides additional terms and conditions regarding use of NetApp’s Subscription Services (as defined below). The “Agreement” consists of this Agreement and the Purchase Terms.

<table>
<thead>
<tr>
<th>“Purchase Terms”</th>
<th>The GSA Schedule Contract, GSA Schedule Pricelist and Purchase Order.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NetApp</strong></td>
<td>[Insert Full legal name]</td>
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<td></td>
<td>[Insert Jurisdiction of organization]</td>
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<td>[Insert Postal address for legal notices]</td>
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<td>[Insert Email address for legal notices]</td>
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<tr>
<td><strong>Customer</strong></td>
<td>See Purchase Order</td>
</tr>
</tbody>
</table>

1. Definitions. Capitalized terms used but not defined in this Agreement have the meanings set forth in the Purchase Terms.

1.1 “Committed Capacity” means the amount of data storage capacity that is specified in a Keystone Order. Committed Capacity is defined in the type of Performance Level and the units increments identified in Exhibit A.

1.2 “Consumed Capacity” has the meaning set forth in Exhibit A.

1.3 “Customer Information” means any information provided by or on behalf of Customer, whether or not it includes Personal Information, that is uploaded onto or used with the Subscription Products.

1.4 “Documentation” means NetApp supplied technical documentation describing the features and functions of the Subscription Services.

1.5 “Fees” means the applicable fees set forth in a Keystone Order as further described in Exhibit A.

1.6 “Keystone Order” means the customer order for Subscription Services entered into by the Parties under this Agreement. A “Keystone Order” constitutes a “Purchase Order” under the Purchase Terms.

1.7 “Performance Level” has the meaning set forth in Exhibit A.

1.8 “Portal” means the web-based tool provided by NetApp through which usage of the Subscription Services can be monitored as further described in Exhibit A.

1.9 “Rate” means the applicable rates set forth in a Keystone Order that are used to calculate the Fees.

1.10 “Service Levels” mean the applicable service levels described in Exhibit A.

1.11 “Subscription Hardware” means hardware, including its components and spare parts, that is used by NetApp as part of the Subscription Services.

1.12 “Subscription Product(s)” means any part or all of the Subscription Hardware and Subscription Software used by NetApp as part of the Subscription Services, whether as part of the original configuration, or subsequently added in the ordinary course of NetApp’s performance of the Subscription Services.

1.13 “Subscription Services” means certain NetApp storage and/or compute capacity, together with any additional services, that are purchased under a Keystone Order and made available to Customer on a subscription basis as described in more detail in Exhibit A. The “Subscription Services” constitute “Services” under the Purchase Terms.

1.14 “Subscription Software” means the software that is used by NetApp as part of the Subscription Services (whether delivered on or with Subscription Hardware or on a standalone basis).

1.15 “Subscription Term” means the use term specified in a Keystone Order, including any renewal or extension periods.

2. Scope of Keystone Flex Subscription. Subject to Customer’s compliance with the terms and conditions of this Agreement, NetApp will provide Customer with the Subscription Services identified in each Keystone Order entered into by the Parties. At a minimum, each Keystone Order will set forth the Subscription Term, the Committed Capacity (including relevant minimum payments), the applicable Performance Level, and the applicable Rates. A sample Keystone Order is attached as Exhibit B. Keystone Orders may be modified only with NetApp’s express written consent. Customer acknowledges and agrees that a Keystone Order is binding and sufficient for the GSA Schedule Contract holder on behalf of NetApp to calculate and invoice Customer for the related Fees. Purchase orders submitted by Customer may (but need not) be accepted by NetApp as an administrative accommodation to Customer, but will not be a necessary condition for invoicing.

3. Delivery and Consumption of Subscription Services.

3.1 Subscription Products. NetApp will determine the Subscription Products used to deliver Subscription Services. In making such determination NetApp may: (a) choose, substitute, and modify Subscription Product configurations; (b) configure, control, and direct the use of Subscription Products; (c) scale Subscription Services by adding or removing any part of the Subscription Products provided by NetApp to adjust to variations in utilization; and (d) refresh Subscription Products with new technology when reasonably deemed appropriate. Customer will cooperate with NetApp to enable the installation, documentation, and utilization of Subscription Products, including providing such access and authorization as is reasonably necessary to complete the installation. NetApp reserves the right to deinstall Subscription Products that NetApp deems unnecessary to fulfill the Service Level requirements at any time. Notwithstanding the foregoing,
NetApp will have no obligation to meet the applicable Service Levels, nor add Subscription Products needed to meet such Service Levels, if Customer increases usage of the Subscription Services during the final 90 days of the Subscription Term, unless the Parties have agreed in writing to renew or otherwise extend the Subscription Term prior to or during such final 90 day period.

3.2 Location and Use of Subscription Services. Customer may only use Subscription Services (a) on the Subscription Products used by NetApp in connection with the applicable Keystone Order, and (b) at the specific physical location identified on a Keystone Order where the Subscription Product are installed and maintained, whether such location is owned by or under the control of Customer or any third party (each such location, a "Customer Site"). Unless otherwise expressly permitted in Exhibit A or the applicable Keystone Order, Customer will not, nor will Customer permit any third party to, combine, commingle, or otherwise use the Subscription Services or the Subscription Products with any hardware storage products or services (including any NetApp hardware storage products or services supplied by NetApp under a separate Keystone Order or agreement).

3.3 Changes to the Subscription Services. The processes for adjusting the Committed Capacity and the Subscription Services are described in Exhibit A.

4. Fees and Payment Terms for Subscription Services. The GSA Schedule Contract holder on behalf of NetApp will invoice Customer for Fees that Customer owes for Subscription Services purchased under each Keystone Order and incurred during the applicable billing period, and Customer will pay such Fees, as described in Exhibit A.

5. Rights of Use for and Ownership of Subscription Products

5.1 Right to Subscription Products. The Subscription Services provide Customer with the right to use Subscription Products, and do not transfer any ownership or title to Customer. The Subscription Services are provided to Customer for Customer’s use for internal business purposes and are not for resale or redistribution.

5.2 Right to Subscription Software. NetApp grants Customer a non-exclusive, non-transferable and revocable right to use the Subscription Software associated with the Subscription Services during the applicable Subscription Term. The Subscription Software may include software that is openly and freely licensed under the terms of a public license designated by a third party. Nothing in this Agreement grants Customer rights that supersede those contained in an applicable license for the open source software.

5.3 Customer as Partner (if applicable).

(a) Subject to the relevant NetApp partner program guide ("Program Guide"), the parties agree that Customer’s "business purposes" may include use of the Subscription Services for the delivery by Customer of the Subscription Services to Customer’s own end users ("End Users"). Except as otherwise provided herein, references to “Customer” in this Agreement that by their sense and context are intended to apply to the ultimate beneficiary of the Subscription Services shall include the End User designated in the Keystone Order.

(b) As between NetApp and Customer, Customer shall at all times remain primarily liable for its obligations under any Keystone Order entered into pursuant to this Agreement. However, where an End User is approved by NetApp, the following conditions apply:

(i) Customer may delegate to End User certain of Customer’s responsibilities under this Agreement, the Service Description and the relevant Keystone Order, including without limitation those described in Sections 5, 6 and 9, and the Service Description;

(ii) For purposes of Section 9, Customer Information will include End User information; and

(iii) Reserved.

(c) Customer in its capacity as Partner may deliver certain portions of Subscription Services (or other services) to eligible End Users; provided that:

(i) Customer has attained the appropriate Services Certified or Operations Specialized Partner Program status as governed by the relevant Program Guide; and

(ii) Reserved.

5.4 Additional Restrictions. In addition to restrictions set forth in the Purchase Terms, Customer will not, nor will Customer permit any third party to: (a) relocate any of the Subscription Products from the Customer Site(s) without the prior written consent of NetApp, which consent will not be unreasonably withheld; (b) reconfigure, modify, add to or impair any portion of Subscription Products, whether with third party products or otherwise, except as expressly permitted in the Keystone Order or as mutually agreed in writing by the Parties; (c) publish or provide any benchmark or comparison test results that pertain to the Subscription Products or the Subscription Services; (d) reverse engineer, decompile or disassemble the Subscription Products, or otherwise reduce Subscription Software to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open source software licenses; (e) modify, adapt, or create a derivative work of the Subscription Products or the Subscription Services; (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Subscription Products and related documentation; (g) use the Subscription Products or Subscription Services in breach or excess of any limitations prescribed by NetApp in this Agreement or the associated Keystone Order or related documentation; (h) use the Subscription Products or Subscription Services and related documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment unless otherwise agreed to in writing by NetApp; (i) assign or otherwise transfer, in whole or in part, Customer’s licenses to the Subscription Services, the Subscription Products, or the related documentation to another party, unless otherwise agreed to in writing by NetApp; (j) use the Subscription Services or Subscription Products (i) in violation of laws or regulations, (ii) to violate the rights of others, (iii) to try to gain unauthorized access to or interrupt any service, device, data, account or network, or (iv) in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Subscription Services or Subscription Products could lead to severe physical or environmental damages. Customer understands and acknowledges that the Subscription Services and the Subscription Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous
environment. NetApp will not be liable for any damages resulting from such uses and Customer assumes the risk of any such uses.
5.5 **Risk of Loss; Title.** NetApp retains sole and exclusive title to the Subscription Products and all of its components. Customer is solely responsible for any loss or damage to the Subscription Products from the date of delivery to the date of final disposition of the Subscription Products as provided in Section 9.2(a) and the applicable Keystone Order. No such loss or damage will relieve Customer of any of its obligations under this Agreement or the applicable Keystone Order.

6. **Customer Responsibilities.**

6.1 **Ongoing Cooperation.** Customer will, at all times during the period from the date of delivery of any Subscription Products to the date of final disposition of such Subscription Products under Section 9.2(a) and the applicable Keystone Order: (a) promptly notify NetApp if the Subscription Products or any part of them are lost, stolen, destroyed or damaged beyond repair, or are the subject of condemnation, confiscation, seizure or requisition of title to or use of the same; (b) ensure that the Subscription Products do not suffer any loss or damage caused, whether directly or indirectly, by Customer or any party acting by or through Customer; (c) permit NetApp to inspect the Subscription Products at any time during Customer’s regular business hours, with reasonable prior notice, subject to Customer’s reasonable security procedures; (d) promptly notify NetApp in writing of any proposed changes to any of the Subscription Products, or of changes caused by planned or unplanned events impacting Customer’s environment (such as space, power, network, security, etc.) that may impact the Subscription Products (e.g., maintenance, upgrades); and (e) provide NetApp remote access to perform implementation and monitoring services beyond basic installation.

6.2 **Portal.** Customer will at all times during the Subscription Term keep the Portal remote client connection fully operational, without disabling, blocking, modifying or otherwise interfering with its functionality or its ability to communicate with NetApp. If the Portal does not function due to Customer interference or conflict with any third-party products that Customer uses, then Customer will promptly remove the interference or the conflicting products. If Customer fails to do so within seven days of notice from NetApp of such failure, or if the Portal is unavailable because of the acts or omissions of Customer for more than 30 days, then NetApp may (i) suspend the provision of Subscription Services until the Portal operability is restored, or (ii) terminate the Subscription Services. In either event, Customer will owe and be invoiced for the Fees for the previous billing period, calculated by multiplying the applicable Rate by 120% ("Holdover Rate"), until active monitoring is restored or the Subscription Products are returned in accordance with Section 9.2(a).

7. **Service Levels and Disclaimers.**

7.1 **Service Levels.** NetApp will provide the Subscription Services in accordance with the Service Levels.

7.2 **Disclaimer of Warranties.** OTHER THAN IN SECTION 7.1 ABOVE, NETAPP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SUBSCRIPTION PRODUCTS AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE SERVICE LEVEL REMEDIES SET FORTH IN EXHIBIT A ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE ON BEHALF OF NETAPP TO PROVIDE THE SUBSCRIPTION PRODUCTS AND THE SUBSCRIPTION SERVICES IN ACCORDANCE WITH THE SERVICE LEVEL COMMITMENTS SET FORTH THEREIN.

8. **Intellectual Property Rights and Protection.**

8.1 **General.** NetApp and its licensors reserve and retain all rights, title, and interest (including any intellectual property rights therein) in and to the Subscription Services and Subscription Products not expressly granted to Customer.

8.2 **IP Claims.** For purposes of IP Claims (as defined in the Purchase Terms), Subscription Services are included in the definition of Covered Products.

9. **Termination.**

9.1 **Termination for Cause.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

9.2 **Effects of Termination.** In addition to the terms set forth in the Purchase Terms:

(a) Upon termination or expiration of this Agreement, the Agreement, or any applicable Keystone Order, Customer will: (i) promptly discontinue use of, and delete, all data uploaded on the Subscription Products by Customer within the affected Subscription Services; and (ii) return in accordance with the guidelines provided or otherwise make available to NetApp any Subscription Hardware provided by NetApp as part of the affected Subscription Services in the same condition as when originally delivered, ordinary wear and tear excepted. Customer must either (1) be responsible for erasing, without destroying or damaging the storage media, all Customer Information from the Subscription Hardware before it is returned to NetApp or (2) if Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks solid state drives and other non-volatile memory components as defined on the NetApp Support Site that are part of the Subscription Hardware. Customer will retain such non-volatile components and remain solely responsible for their disposal or destruction and will promptly deliver a certificate of destruction certifying that Customer has destroyed or disabled such components. Customer agrees that if components covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such components. NetApp will treat such components like other returned parts and convey them into the NetApp supply chain for repair and/or destruction. Failure to return the Subscription Hardware within 15 calendar days following the expiration of the Subscription Term in accordance with the guidelines provided to Customer will entitle NetApp, in its sole discretion, to invoice Customer for (A) the cost of the replacement for such Subscription Hardware, calculated in accordance with NetApp’s then current price list, or (B) the Fees accruing (at the Holdover Rate) until final return. For purposes of (B) in the previous sentence, the Fees
will not be less than the applicable minimum payment amounts payable immediately prior to the expiration of the Subscription Term.
Customer
must also, at NetApp’s request, promptly return or destroy all copies of the Subscription Software and related Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, with all Customer Information or proprietary and confidential information removed. Customer acknowledges that any Customer Information remaining on any Subscription Hardware returned to NetApp may be disposed of or destroyed by or on behalf of NetApp in accordance with Federal data protection laws. All Customer use of the Subscription Services after the scheduled expiration of the Subscription Term will be subject to Fees calculated and billed at the Holdover Rate until the return of all related Subscription Products to NetApp.

(b) In the event of termination or expiration of a Keystone Order, NetApp may also, in its sole discretion, (i) cease the supply of the Subscription Services under any or all affected Keystone Orders, (ii) suspend or terminate delivery of the Subscription Services, and terminate all rights to use the Subscription Software and related documentation, (iii) recover NetApp’s reasonable costs of associated with any damage or loss of Subscription Hardware that occurred while in Customer’s possession, and (iv) require Customer to disable use of and/or access to the Subscription Products, and return the Subscription Products in accordance with this Section 9.2.

(c) If NetApp terminates this Addendum or an applicable Keystone Order for cause under Section 9.1, Customer will promptly pay to NetApp: (i) any past due amounts; (ii) reserved; (iii) reserved; and (iv) any costs associated with any damage or loss of Subscription Hardware that occurred while in Customer’s possession.

9.3 Survival. In addition to such terms that survive by their nature, the following Sections will survive termination or expiration of this Agreement: 1, 3.2, 4, 5.4, 6.1, 7.2, 8, 9.1, 9.2, and 10.

10. Miscellaneous.

10.1 Assignment. NetApp may not assign the Keystone Order without the Customer’s prior written consent.

10.2 General. This Agreement, together with the Keystone Order and the Purchase Terms (a) represent the entire agreement and understanding between the Parties with respect to the Subscription Products and Subscription Services; (b) supersede any previous communications, representations or agreements between the Parties; and (c) prevail over any conflicting or additional terms in any quote, purchase order, acknowledgement, or similar communications between the Parties. Except as otherwise provided for in this Agreement, to the extent there is a conflict between the Purchase Terms and this Agreement, this Agreement will control. Except as otherwise provided for in this Agreement, to the extent there is a conflict between the Keystone Order and this Agreement, this Agreement will control. Keystone Order(s) will be deemed to incorporate and be subject to this Agreement, except where the Parties expressly otherwise agree in writing. Customer will deliver to NetApp such information, instruments and documents (including waivers from third parties with ownership or possessory interests in real property upon which the Subscription Products may be located) and will do all such things from time to time as NetApp may reasonably request to carry into effect the provisions and intent of this Agreement, and to comply with all applicable statutes and laws.

10.3 The parties agree that this Agreement is to apply only to the following jurisdictions (the “Territory” or “Territories,” as applicable). The parties acknowledge that the provision of Subscription Services to Customer or to any Affiliate of Customer in various national jurisdictions outside the foregoing Territory or Territories may be subject to starkly varying costs, tax and/or customs and tax law risks as well as political risks. This Agreement will only apply to the provision of Subscription Services in such other jurisdictions if the parties have executed a jurisdiction-specific amendment, such amendment to appear either within the applicable Keystone Order or in a separate writing in the form of a participation agreement or as otherwise mutually agreed.

10.4 NetApp and Customer agree that, from time to time, an Affiliate of Customer may execute a Keystone Order under this Agreement as “Customer,” and such Keystone Order will incorporate all of the terms and conditions contained herein and bind such Affiliate hereto. It is agreed that, unless expressly agreed in writing, the party executing this Agreement as Customer shall: (a) without notice or demand from NetApp, be jointly and severally liable with such Affiliate for all of the terms and conditions of any Keystone Order executed by it, including, without limitation, all terms and conditions negotiated by such Affiliate with respect thereto and the prompt payment of Fees thereunder, and (b) hold NetApp and any assignee harmless from and against any and all liability, losses, damages and expenses which NetApp may incur by reason of any failure to so perform.

“Affiliate” means any entity which, directly or indirectly, controls, is controlled by, or is under common control with, a party, where “control” means the power to direct or cause the direction of the management and policy of any entity.
Each individual signing below represents that she/he has the authority to bind Customer or NetApp, as the case may be, to the terms of the Agreement.

<table>
<thead>
<tr>
<th>NetApp</th>
<th>Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:____________________</td>
<td>By:____________________</td>
</tr>
<tr>
<td>Name:__________________</td>
<td>Name:___________________</td>
</tr>
<tr>
<td>Title:________________</td>
<td>Title:___________________</td>
</tr>
<tr>
<td>Date:__________________</td>
<td>Date:___________________</td>
</tr>
</tbody>
</table>
1. **Scope of Subscription Services.**

1.1 **General.** This Service Description describes the Subscription Services available to Customer pursuant to the Agreement. The monitoring, operation and management of the Subscription Products can either be administered by Customer ("Customer Operated") or by NetApp ("NetApp Operated") as expressly agreed in a Keystone Order.

1.2 **Definitions.** The following additional defined terms apply to this Exhibit A.

(a) "**Burst**" means, for any Performance Level, the amount by which the Consumed Capacity exceeds the Committed Capacity during a billing period.

(b) "**Burst Limit**" means 120% of Customer’s then-current Committed Capacity. The Burst Limit represents the maximum amount of Usable Capacity available for use by Customer within the Subscription Products for which NetApp will continue to meet associated Service Levels applicable to the then-current Committed Capacity.

(c) "**Capacity Report**" means the report generated by NetApp from the Portal summarizing the Consumed Capacity for the prior billing period.

(d) "**Consumed Capacity**" means, for the Subscription Products made available for use under the terms of a Keystone Order, the sum of the logical sizes of all volumes (ONTAP®) or buckets (StorageGrid®). Consumed Capacity is measured as described in Section 3.2 of this Service Description.

(e) "**Performance Level**" refers to performance levels defined in terms of target input/output operations per second ("**IOPS**") per tebibyte ("**TiB**") ratio, latency and availability, as specified in Section 5 of this Service Description. Applicable Performance Levels and the related Rates to be applied to the Consumed Capacity are as identified in the applicable Keystone Order. Customer’s Subscription Services may be subject to more than one Performance Level.

(f) "**Service Level**" means any of the service level commitments made by NetApp in Sections 5.3 and 5.4 of this Service Description, as applicable.

(g) "**Usable Capacity**" means the capacity (as measured by NetApp in increments of TiB) available for data to be written on the Subscription Products.

2. **Protocols.**

2.1 The Subscription Services offer the following storage protocols:

(a) **File and Block:** Provides unified File (NFS, CIFS) and Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s ONTAP® software platforms.

(b) **Object (S3):** Provides S3 protocol-based storage capacity and based on NetApp’s StorageGrid® Web Scale platform.

(c) **Block:** Provides Block (iSCSI, FC) protocol-based storage capacity based on NetApp’s E-Series platform.

2.2 Supported protocol versions are based on the Subscription Hardware platform and Subscription Software OS version deployed to deliver the Subscription Services.

3. **Monitoring and Measuring Consumed Capacity.**

3.1 **Committed Capacity.**

(a) Use of the Subscription Services requires Customers to subscribe to a certain Committed Capacity for each Performance Level selected. Committed Capacity is defined in increments of TiB. Committed Capacities for each Performance Level are set forth in the applicable Keystone Order and are on per Customer Site basis.

(b) Committed Capacities and Rates (including the corresponding Minimum Payments) that may be selected via a Keystone Order may be included in an exhibit to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order.

3.2 **Monitoring and Measuring the Consumption of Subscription Services.**

(a) **Consumed Capacity.** For purposes of the Subscription Services, Consumed Capacity is measured in increments of TiB, and, where applicable, includes snapshots, clones, mirroring and vaulting.

(b) **Measuring Consumed Capacity.** The amount of Consumed Capacity for an applicable billing period is determined by summing the sizes of all then existing volumes, disks and buckets on Subscription Products, on a per Performance Level basis as further described in the Documentation.
(c) **Portal; Capacity Reports.** The Subscription Services and Subscription Products are monitored and managed through the Portal. Consumed Capacity is recorded daily and is available for Customer to review through the Portal. For each billing period, NetApp will generate a
Capacity Report and NetApp will either provide Customer with such Capacity Report through the Portal or with each invoice. NetApp will use the Capacity Reports to calculate the Fees due under each invoice for Subscription Services and such Capacity Reports will be deemed to contain the final and conclusive summary of the Consumed Capacity used by Customer during the applicable billing period, unless Customer can establish that such Capacity Report contains a material error.

(d) **Bursts.** The Subscription Services are designed to allow Customer’s Consumed Capacity to exceed the Committed Capacity up to the Burst Limit. Customer may in its discretion use the Subscription Services to exceed the Burst Limit, if available.

(e) **No Commitment Over Burst Limit.** NetApp makes no commitment to Customer that there will be capacity available in excess of the Burst Limit. Notwithstanding anything to the contrary in the Agreement, if available and Customer’s use of the Subscription Services exceeds the Burst Limit, NetApp is not responsible for meeting, and will have no liability with respect to, the Service Levels described below during any such time that Customer’s use of the Subscription Services exceeds the Burst Limit.

### 3.3 Fees.

(a) **Minimum Payment.** Each Committed Capacity selected via a Keystone Order is subject to a minimum payment amount for the corresponding Performance Level that is payable during the applicable billing period identified in the Keystone Order (“Minimum Payment”).

(b) **Rates for Bursts.**

(i) All Consumed Capacity up to the Burst Limit will be invoiced at the applicable Rate, as may be included in an exhibit or as otherwise specified in the Keystone Order and corresponding to the applicable Performance Level.

(ii) In the event Customer’s Consumed Capacity exceeds the Burst Limit, such excess Consumed Capacity above the Burst Limit amount will incur a premium charge and will be invoiced at a Rate factor of 1.5 (i.e., 150% of the applicable Rate).

(c) **Invoicing.**

(i) Fees are determined for each billing period by Performance Level and will include Minimum Payments for the Committed Capacity together with any additional amounts payable for any Bursts as described in Section (b) above. Fees will begin to accrue on the earlier of (A) the first day of the calendar month following the date on which NetApp notifies Customer that NetApp has made the Subscription Services available for access and use by Customer, (B) if the installation of the Subscription Products is delayed beyond 15 days from the date of delivery as a result of Customer’s acts or omissions, then the first day of the calendar month following the expiration of such 15 day period, (C) the date designated by NetApp in accordance with Section 8.2(a) of this Service Description, or (D) such other date agreed to by the Parties in writing (“Start Date”).

(ii) Customer will be invoiced in accordance with the billing frequency selected in the Keystone Order. For example, if Customer elects to be billed on a monthly basis, following the Start Date, Customer will be invoiced monthly in arrears within following the end of the applicable month for the applicable Fees (including without limitation any Fee amounts for Bursts) owed for the prior month. If Customer elects to be billed on an annual basis, (A) Minimum Payment invoices will be issued on or prior to the Start Date for the initial year and, for subsequent years, Minimum Payment invoices will be issued thirty days prior to the anniversary of the Start Date, and (B) invoices for Bursts will be issued after the end of each 3-month period of the Subscription Term (commencing on the Start Date). The below table summarizes the invoice schedules under each invoicing option:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Monthly in Arrears</th>
<th>Annual (in advance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Payment</td>
<td>Invoices issued following the month for which the Subscription Service is delivered. For clarity, the Minimum Payment plus Fee amounts attributable to Burst will be billed in one invoice as Consumed Capacity.</td>
<td>First invoice due and payable on the Start Date</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subsequent invoices due and payable on the anniversary of the Start Date for each 12-month period of the Subscription Term (where the Subscription Term is greater than one year)</td>
</tr>
<tr>
<td>Burst</td>
<td></td>
<td>Invoices issued at the end of each 3-month period of the Subscription Term (commencing on the Start Date)</td>
</tr>
</tbody>
</table>

### 4. Data Protection.

4.1 **Scope of Data Protection; Base Protection.** Each order for Subscription Services for file and block Performance Levels includes the Base Data Protection Package. The Base Data Protection Package provides Customer with the ability to clone or generate snapshots. Provisioning of capacity and volumes for snapshots and cloning will count towards the volumes provisioned for the purposes of determining Consumed Capacity.
4.2 **Options.** In addition to the Base Data Protection Package included in all Subscription Services, Customer may choose from the following enhanced NetApp data protection services for file and block Performance Levels (“**Optional Data Protection Packages**” and together with the Base Data Protection Package, the “**Data Protection Packages**”):

(a) **Standard Data Protection Package:** Includes the ability to use SnapMirror® unified replication (asynchronous mirroring) and SnapVault® backup. Fees for the Standard Data Protection Package are based on TiB of capacity to be protected and are set forth in the applicable Keystone Order. Customer can use non-Keystone targets with this package.

(b) **Advanced Data Protection Package:** Includes the ability to use NetApp MetroCluster™. MetroCluster synchronous mirroring is based on TiB of capacity to be protected. The Advanced Data Protection Package is required for the source capacity. Target capacity must also be subject to a separate Keystone Order. Fees for the Standard Data Protection Package are based on TiB to be protected and are as set forth in the applicable Keystone Order. Additional Fees may apply for configurations requiring Long Range (> 2km) SFPs.

4.3 **Fees for Optional Data Protection Packages.** The Rates to be used to determine the Fees payable for Optional Data Protection Packages may be included in an exhibit to the Agreement, or as otherwise expressly agreed between NetApp and Customer in such Keystone Order. Such Fees will be invoiced in accordance with the billing frequency selected in the Keystone Order.

5. **Performance Levels for the Subscription Services.**

5.1 **Performance Levels.** The table below defines the available Performance Levels for the Subscription Services:

<table>
<thead>
<tr>
<th>File and Block</th>
<th>Object</th>
<th>Block</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Workload Type</strong></td>
<td><strong>IOPS per TiB</strong></td>
<td><strong>Premium</strong></td>
</tr>
<tr>
<td>Target IOPS/TiB</td>
<td>6,144</td>
<td>6,144</td>
</tr>
<tr>
<td>Max IOPS/TiB</td>
<td>12,288</td>
<td>12,288</td>
</tr>
<tr>
<td>Max throughput MBps (32kB IOP)</td>
<td>384</td>
<td>384</td>
</tr>
<tr>
<td>Latency</td>
<td>&lt;1 ms</td>
<td>&lt;1 ms</td>
</tr>
<tr>
<td>Minimum capacity</td>
<td>100 TiB</td>
<td>1 PiB</td>
</tr>
</tbody>
</table>

5.2 **IOPS per TiB.** Subject to the terms of this Service Description and the applicable Keystone Order, Performance Levels are defined in terms of target I/O operations per second (“**IOPS**”) per terabyte (“**TiB**”) ratio and latency. See the Documentation for more information.

5.3 **Service Level Objective.** NetApp will use reasonable commercial efforts to provide the targeted IOPS/TiB at the specified block sizes and configured volume size, per the related Performance Level set forth in the Keystone Order (“**SLO**”). Customer inquiries regarding this SLO should be directed to NetApp technical support, or email [xdl-americas-revenue@netapp.com](mailto:xdl-americas-revenue@netapp.com). Customer should include the following minimum information:

(a) NetApp Subscription Services ID; (b) volume impacted; (c) Customer Site; and (d) time, date, and description of the issue.

5.4 **Data Access Availability Service Level Agreement (applies to NetApp Operated Only)**

(a) If Customer selects NetApp Operated Subscription Services, NetApp will use commercially reasonable efforts to provide access to Usable Capacity with a monthly uptime percentage of at least 99.999% during any monthly billing period (“**SLA**”). For purposes of this SLA:

- monthly uptime percentage = [(maximum available minutes – downtime) / maximum available minutes] x 100%
- maximum available minutes = total number of minutes in a billing period
downtime = total accumulated minutes that a client which is directly connected to a controller data point has no volume connectivity in a given system, excluding a period when the Subscription Services are not available due to scheduled or mutually agreed upon time for NetApp maintenance and upgrades
Customer inquiries regarding this SLA should be directed to NetApp technical support, or email xdl-americas-revenue@netapp.com.

(c) NetApp will provide a service credit to Customer under this SLA if monthly uptime percentage in a particular month is less than 99.999%. If a service credit is owed for a missed SLA, such service credit will be applied to future Fees and will be calculated in accordance with the following table:

<table>
<thead>
<tr>
<th>Monthly Availability</th>
<th>Service Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 99.99 %</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99.9 %</td>
<td>10%</td>
</tr>
<tr>
<td>&lt; 99.9 %</td>
<td>15%</td>
</tr>
<tr>
<td>&lt; 99 %</td>
<td>20%</td>
</tr>
</tbody>
</table>

(d) To be eligible for a service credit, Customer must initiate an inquiry with NetApp technical support within four weeks of the missed SLA, and Customer may receive no more than one service credit per month per account. The service credit may only be applied towards Customer’s future Fees and may not exceed 20% of the applicable Minimum Payment for the Committed Capacity for the applicable Performance Level for the affected volume. Availability will be measured and reported separately for each system. This SLA only covers systems comprised of NetApp’s FAS and AFF Subscription Products.

(e) This SLA does not apply to any issues attributable to: (i) scheduled NetApp maintenance and upgrades; (ii) a force majeure event or factors outside NetApp’s reasonable ability to control; (iii) Customer’s equipment, software or other technology and/or third party equipment, software or other technology (other than Subscription Products within its direct control); (iv) Customer’s use of the Subscription Services after having been advised by NetApp to discontinue or modify Customer’s use of the Subscription Services, if Customer did not modify its use as advised; (v) preview, pre-release, early access, alpha, beta or trial versions of the Subscription Services or trial features within the Subscription Services; (vi) Customer’s failure to adhere to restrictions set forth in the applicable Keystone Order or the Agreement; (vii) data in transit authentication and/or encryption (signing and/or sealing); and (viii) any suspension and termination of Customer’s right to use the Subscription Services in accordance with the applicable Keystone Order or the Agreement.


6.1 Committed Capacity Changes

(a) Customer may increase the amount of Committed Capacity at any time during the Subscription Term by providing a written request to NetApp. NetApp will provide Customer with a written confirmation letter of such increase; provided that NetApp will have no obligation to confirm such increase if such increase would require the addition of Subscription Products within 90 days of the expiration of the Subscription Term, unless the Parties have agreed in writing to renew or otherwise extend the Subscription Term prior to or during such final 90 day period. Any such increases will not be effective until Customer signs and returns the applicable NetApp confirmation letter. Once effective, any increases will remain in effect for the remainder of the Subscription Term, and the corresponding Minimum Payment applicable to the new Committed Capacity will be adjusted in accordance with the new agreed upon Committed Capacity. Where Customer has selected annual billing and increases Committed Capacity during the Subscription Term in accordance with this Section, NetApp will promptly invoice Customer for any increases in Minimum Payments owed for the remainder of the Subscription Term.

(b) In addition to the right to increase the Committed Capacity at any time described in Section 6.1(a) above, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may also decrease the Committed Capacity for each 12-month period following the initial 12 months of the Subscription Term, subject to the following: (i) Customer requests for decreases must be in writing and received by NetApp not less than 60 days prior to the start of the 12-month period for which the adjustment will apply; (ii) no such decrease may reduce the Committed Capacity by an amount greater than 25% of the then-current Committed Capacity, and such decrease will be effective only on the commencement of the subsequent 12-month period; (iii) the 90 day restriction relating to the addition of Subscription Products described in Section 6.1(a) applies; and (iv) any reduction under this Section 6.1(b) is subject to written NetApp approval.

6.2 Data Protection Package Changes. Customer may upgrade the then-current Data Protection Package at any time during the Subscription Term by providing a written request to NetApp. Customer cannot downgrade the then-current Data Protection Package during the Subscription Term; provided that, where Customer has selected annual billing and a Subscription Term of at least 24 months, Customer may downgrade the then-current...
Data Protection Package by not more than a single level at the time and in the manner prescribed in Section 6.1(b) above.

6.3 Transition Services. Customer may request an extension for transition Subscription Services beyond the Subscription Term for a period of one calendar month to facilitate an orderly transfer of data out of Subscription Services. This request shall be made in writing and at least 90 days prior to expiration of the current Subscription Term and must be accepted by NetApp.

7. Keystone Success Manager ("KSM"). The Subscription Services include the assignment of a KSM having the following responsibilities: (a) serving as a single point of contact and customer satisfaction owner for the Subscription Services; (b) conducting review calls, including (i) capacity consumption, forecasting, planning review, (ii) performance consumption, forecasting, planning review, (iii) maintenance review, (iv) incident review, (v) billing review, and (vi) best practices review; (c) teaming with service delivery manager (if applicable); (d) serving as escalation point of contact; and (e) serving as a Customer advocate.

8. Responsibilities.

8.1 NetApp Responsibilities. In delivering the Subscription Services, NetApp will provide: (a) required Subscription Products; (b) deployment of the Subscription Services; (c) remote capacity, performance, and health monitoring; (d) technical support; (e) routine maintenance; (f) capacity, performance, and health management; (g) storage capacity consumption dashboards, and billings reports; and (h) KSM.

8.2 Customer Responsibilities.

(a) Customer represents and warrants to NetApp that, on or prior to delivery of the Subscription Products, the Customer Site will be prepared and ready for the prompt installation and deployment of the Subscription Products, including without limitation, all necessary power requirements, racks, cooling, network connectivity, security access, etc. NetApp agrees to provide reasonable assistance to Customer to complete such preparation and installation; provided that NetApp may, in its discretion, provide written notice to Customer that no further action is required upon the part of NetApp for the commencement of the Subscription Term, and designate a Start Date. Such Start Date will be deemed effective upon Customer’s receipt of such notice, and NetApp will be authorized to commence invoicing Customer for the Fees. Chronic or sustained failure by Customer or any authorized agent to ensure and facilitate the prompt installation of any Subscription Products may constitute a material breach under the Agreement.

(b) In addition to the obligations set forth in the Agreement, Customer will be responsible for providing: (i) space, power, cooling; (ii) racks and PDUs; (iii) cabling to storage controller ports; (iv) Internet connectivity to enable (A) continuous outbound transfer of service consumption, health, and other telemetry data to enable delivery of the Subscription Services, and (B) on-demand inbound connection to remotely administer, manage, troubleshoot, repair and update Subscription Products; and (v) Customer network configurations including a (X) DNS Server, (Y) NTP Server, and (Z) firewall.

(c) In addition to the obligations set forth in the Agreement, Customer is solely responsible for: (i) backup, recovery, business continuity and disaster recovery of its data and applications; (ii) conversion and migration of data to the Subscription Products; (iii) integration and or automation of the Subscription Services with Customer environment or applications; and (iv) migration, deletion and wiping of data from the Subscription Products upon the expiration or termination of the Subscription Term and prior to returning the Subscription Products to NetApp.

(d) In addition to the restrictions set forth in the Agreement, Customer may not: (i) modify ONTAP version; (ii) disable or turn OFF ASUP; (iii) add or remove NICs, or alter the Subscription Hardware in any manner; (iv) remove NetApp’s physical or logical access to controller’s management ports; (v) disable data efficiencies, including compression, compaction, deduplication, thin provisioning; or (vi) disable or remove NetApp’s ability to monitor consumption or health.

8.3 Initial Migration Period. Notwithstanding Section 8.2(d) of this Service Description or Section 3.2 of the Agreement, Subscription Products and non-Keystone NetApp ONTAP systems can be part of the same cluster for the limited purposes of initial data migration only, and for up to a maximum of 90 days following the Start Date.
EXHIBIT B

Keystone Order

(form)

**********************

Keystone Order # [1234567800-XX-Y-Z]

Re: Keystone Flex Subscription [Addendum | Agreement] dated [_______] (“Agreement”)

This Keystone Order is submitted by Customer pursuant to the Agreement and, once accepted by NetApp, will constitute a separate and independent agreement for the supply of the Subscription Services specified herein.

<table>
<thead>
<tr>
<th>Customer:</th>
<th>Partner</th>
<th>End User</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Customer Address:</th>
<th>[full entity legal name and registered address]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Customer Primary Contact:</th>
<th>Name, Position, Address, Email, Phone</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bill-to Address: (if different)</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bill-to Primary Contact:</th>
<th>Name, Position, Address, Email, Phone</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Site Location:</th>
<th>[ship to address]</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>End User (if not Customer):</th>
<th>[full entity legal name]</th>
</tr>
</thead>
</table>

Customer is providing a Service Provider Offering for the benefit of the End User

<table>
<thead>
<tr>
<th>Subscription Term:</th>
<th>[Twelve (12) months], commencing on the Start Date</th>
</tr>
</thead>
</table>

| Invoice Period: | Charges are due within thirty (30) days of invoice receipt, payable [monthly, in arrears | annually, at time of purchase+ quarterly in arrears to address Consumed Capacity where there is Burst] |
|-----------------|--------------------------------------------------|

<table>
<thead>
<tr>
<th>Customer POs:</th>
<th>[check if applicable]</th>
</tr>
</thead>
</table>

Customer prefers to receive invoices against a Customer generated purchase order, and agrees to issue and deliver a purchase order to NetApp in the amount of not less than 120% of the aggregate total of Minimum Payments due and owing over the Subscription Term not less than ten (10) days prior to the Start Date.

Invoicing by NetApp which references any Customer purchase order is done for Customer’s administrative accommodation only.

<table>
<thead>
<tr>
<th>Renewals / Extensions:</th>
<th>The Subscription Term may be renewed for successive twelve (12) month</th>
<th>month-to-month] extensions, by both parties exercising an option in writing, or executing a new Purchase Order in writing.</th>
</tr>
</thead>
</table>
**Performance Levels, Minimum Payments and Rates:**

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Extreme</th>
<th>Extreme w/Tiering</th>
<th>Premium</th>
<th>Premium w/Tiering</th>
<th>Standard</th>
<th>Value</th>
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<tbody>
<tr>
<td><strong>Unified File and Block Storage</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Primary Committed Capacity (TiB)</td>
<td>XXX</td>
<td>XXX</td>
<td>XXX</td>
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<tr>
<td>Minimum Payment ($/mo):</td>
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<td>X,XXX.00</td>
<td>X,XXX.00</td>
<td>X,XXX.00</td>
<td>X,XXX.00</td>
</tr>
<tr>
<td>Rate ($/TiB/mo):</td>
<td>XX</td>
<td>XX</td>
<td>XX</td>
<td>XX</td>
<td>XX</td>
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<td>Secondary Committed Capacity (TiB):</td>
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<tr>
<td>Rate ($/TiB/mo):</td>
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<td>XX</td>
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<tr>
<td>Data Protection Basic ($/TiB):</td>
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<td>XXX</td>
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<td>XXX</td>
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<td>Rate ($/TiB/mo):</td>
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<td>Data Protection Advanced ($/TiB):</td>
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<td>Rate ($/TiB/mo):</td>
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<table>
<thead>
<tr>
<th>Service Type</th>
<th>Commitment Capacity (TiB)</th>
<th>Minimum Payment ($/mo):</th>
<th>Rate ($/TiB/mo):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block Storage</td>
<td>Extreme</td>
<td>Premium</td>
<td>Standard</td>
</tr>
<tr>
<td></td>
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<td>0</td>
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<tr>
<td></td>
<td>X,XXX.00</td>
<td>X,XXX.00</td>
<td>X,XXX.00</td>
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</table>

**Object Storage**

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Commitment Capacity (TiB):</th>
<th>Initial Minimum Payment ($/mo):</th>
<th>Rate ($/TiB/mo):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0</td>
<td>X,XXX.00</td>
<td>XX</td>
</tr>
<tr>
<td>Additional Services: *</td>
<td>Committed Capacity (TiB)</td>
<td>Minimum Payment ($/mo)</td>
<td>Rate ($/TiB/mo)</td>
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<tr>
<td>------------------------</td>
<td>--------------------------</td>
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</tr>
<tr>
<td>Non-Returnable Disk</td>
<td>XXX</td>
<td>XX</td>
<td>XX</td>
</tr>
<tr>
<td>SnapLock</td>
<td>N/A</td>
<td>XX</td>
<td>XX</td>
</tr>
</tbody>
</table>

Notes:
* initial values only – subject to adjustment pursuant to the terms of the Service Description

Operation Model: [NetApp Operated] [Partner/Customer Operated]

Minimum Payment: $_____/mo (total amount for this Keystone Order)

Additional Terms and Conditions: The terms and conditions of the Keystone Flex Subscription Addendum are incorporated herein. In addition, the following terms apply to this Keystone Order: [If no additional terms, then enter “N/A”]

[CUSTOMER] [NETAPP]

By: [DO NOT SIGN – FORM ONLY] By: [DO NOT SIGN – FORM ONLY]

Printed Name: ____________________________ Printed Name: ____________________________

Title: ____________________________ Title: ____________________________
NetApp Cloud Services
Global Terms of Service

These Global Terms of Service ("Terms") set forth the direct terms and conditions under which NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") provides You a right to access and use its identified Services. "You" or "Your" means the entity you represent in accepting these Terms. If You are accepting these Terms on behalf of another person, company, or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, You represent and warrant that You have the full authority to bind that entity. If You electronically accept these Terms, then You agree that these Terms exclusively govern NetApp’s delivery of the Services unless You have a separate written agreement with NetApp that specifically governs the Services. If You do not agree to these Terms, then do not subscribe to, access, or use the Services.

CLOUD SERVICES

1.1. Scope. A list of NetApp Cloud Services subject to these Terms is available at https://www.netapp.com/us/howto-buy/stc.aspx (each a “Service”).

1.2. Access Rights. Subject to these Terms and during the specified period of continuous time during which You are duly authorized ("Subscription Term"), You may access and use the Service for Your own internal use, including in support of service offerings You may provide to Your end customers (but, for clarity, not as a standalone product or service). This includes the right, as part of Your authorized use of the Service, to download and use any software that is solely necessary to facilitate Your use of the Service ("Service Enabling Software") use any technical documentation describing the features and functions of the Service ("Documentation"). The rights granted in this section are nonexclusive, non-transferable, non-sublicensable, and revocable.

1.3. Use Limitations. You will not, nor will You allow any third party, to: (a) modify the Service, any applicable Service Enabling Software, or Documentation; (b) publish or provide any benchmark or comparison test results that pertain to the Service; (c) reverse engineer, decompile or disassemble the Service or any applicable Service Enabling Software, or otherwise reduce either to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (d) modify, adapt, or create a derivative work of the Service, any applicable Service Enabling Software, or Documentation; (e) use the Service or any applicable Service Enabling Software in excess of any limitations (e.g., user limits, time limits, capacity limits, free trials) prescribed by NetApp; (f) remove, conceal, or modify any identification, proprietary, intellectual property, or other notices in the Service, any applicable Service Enabling Software, or Documentation; (g) access and use the Service in violation of laws or regulations; (h) use the Service to violate the rights of others; (i) use the Service try to gain unauthorized access to or interrupt any service, device, data, account, or network; or (j) use the Service in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems in which the failure of the Service could lead to severe physical or environmental damages.

1.4. Unauthorized Use. Use of the Service, Service Enabling Software, or Documentation outside of the scope of these terms may constitute a material breach as determined in accordance with the Contract Disputes Act, and Customer agrees to promptly pay to NetApp upon notice any additional fees calculated in accordance with the negotiated GSA Schedule Price List of NetApp’s Products and Services.

1.5. Software Notices. Notwithstanding other statements in this Section 1, third-party software components, including free, copyleft and open-source software components, if any, embedded in the Service or Service Enabling Software ("Third-Party Embedded Software") are distributed in compliance with the licensing terms and conditions applicable to such Third-Party Embedded Software. Copyright notices and licensing terms and conditions applicable to Third-Party Embedded Software are available for review with the Documentation at https://mysupport.netapp.com/ or may be included on the media on which Customer receives the Service Enabling Software, within a "NOTICE" file (e.g., NOTICE.PDF or NOTICE.TXT) or included within the downloaded files, and/or reproduced within the materials or Documentation accompanying the Service or Software.

ORDERS

2.1. Pay Per Use, Monthly, Annual, and Multi-Year Service Subscriptions. The Services offered may be ordered by either a pay per use basis, monthly subscription basis, annual subscription basis, or multi-year subscription basis.

2.2. Order Acceptance. NetApp may also require additional information before accepting or processing any order. NetApp will provide You with an email confirmation upon receipt of Your Service order. Such order confirmation only represents NetApp’s confirmation of receipt, and does not signify NetApp’s acceptance of Your order, nor does it constitute confirmation of NetApp’s offer to sell. However, if NetApp cancels an order after You have submitted payment, NetApp will refund the amount paid.

2.3. Changes, Cancellation, and Renewals.

2.3.1. Monthly Service Subscriptions. Unless otherwise agreed to in writing, monthly Service subscription will automatically renew for an additional one-month term not to exceed the annual term in the order or September 31st of the current Fiscal Year unless cancelled in accordance with this agreement. You must cancel Your monthly subscription no later than 14 days prior to Your monthly billing date. Your monthly billing date is the earlier of (i) the date of the month you originally started your subscription on or (ii) the last day of the month. For instance, if You signed up for Your product on January 31st, Your monthly billing date would be the 31st of any month with 31 days, or the day the relevant month ends, which -may be the 28th, 29th or 30th depending on the month in which You decide to cancel. In the event You cancel Your monthly subscription, You will not receive a refund, but You will receive the Service for the remainder of the billing month You cancel in, and no further charges will be incurred.

2.3.2. Annual and Multiyear Subscriptions. Your Annual Service subscription may be renewed for additional successive terms equal to the current term by executing a written order for the subsequent Renewal Term.

2.4. Delivery. Delivery of a Service occurs when NetApp makes the enabling key or access credentials available electronically via e-mail or otherwise to You or, if an enabling key is not required, when NetApp makes such Service available for Your use electronically via e-mail or otherwise.

PRICING, PAYMENT AND TAXES

3.1. Invoicing. NetApp is entitled to invoice You for a Service on a periodic basis, as determined by NetApp, upon the start of a Subscription Term. If You are using a Service on a pay per use basis, NetApp calculates and bills fees and charges monthly based on Your actual usage of the Service, and NetApp will be entitled to invoice you for the Service on a periodic basis, as determined by NetApp, in arrears.
3.2 Payment Terms. You will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than 30 days of the receipt date of NetApp’s invoice.

3.3. Remedies for Non-Payment. Your payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp’s right to recover the balance of any amount due or pursue any other remedy provided for under these Terms or by law or in equity.

3.4. Taxes and Duties. Vendor shall state separately on invoices taxes excluded from the fees, and the You agree either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). If You are tax-exempt, then You will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than 30 days from the start of the Subscription Term. If You do not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice.

3.5. Third Party Payment Processing. NetApp may make available a third-party payment processor as a means of payment for a Service and use of such processors will be subject to the processor’s own terms and conditions. NetApp reserves the right, in its sole and absolute discretion, to change the permitted methods of payment, including without limitation, the credit cards and/or other types of payment options NetApp will accept, at any time. NetApp is not responsible for, any liability resulting from the acts or omissions of any third-party payment processor.

BETA, NO-CHARGE, AND TRIAL SERVICES

4.1. Beta Service. NetApp may make a Service or feature of a Service available to You that is identified as alpha, beta, pre-release, demonstration, or preview (each a “Beta Service”). Unless otherwise agreed in writing by NetApp, a Beta Service may only be used in non-production environments and not for commercial purposes.

4.2. No Charge Services. NetApp may offer a Service at no cost to You, up to certain limits prescribed by NetApp (“No Charge Service”). You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a No Charge Service.

4.3. Trial Services. NetApp may offer a no cost, no obligation trial to a Service ("Trial Service") to You. The Trial Service will commence on the initial date You access the Trial Service and will conclude at the end of the trial period delineated by NetApp, or sooner if: (a) You purchase a pre-paid subscription to the Service, (b) You use the Service on a pay as you go basis, or (c) NetApp terminates Your use of the Trial Service. You acknowledge and agree that these Terms are applicable and binding upon You for Your access and use of a Trial Service.

CUSTOMER CONTENT AND SECURITY

5.1. Ownership. You retain all right, title, and interest in any information that You provide to NetApp, including personal information (as defined in NetApp’s Privacy Policy as “information relating to, directly or indirectly, an identified or identifiable natural person or household”), that NetApp manages, and where such management is on the Your behalf as part of providing the Service (“Customer Content”). NetApp acquires no rights in Customer Content, other than the rights You grant to NetApp to provide the Service.

5.2. Use. NetApp will use Customer Content solely to provide the Service and, if applicable, related technical support.

5.3. Disclosure. NetApp will not disclose Customer Content outside of NetApp or its subsidiaries and affiliates except to the extent required to make the Service available for Your use or to the extent such disclosure is required by applicable law. NetApp will give You reasonable notice of a request of a governmental or regulatory body for Customer Content to allow You to seek a protective order or other legal remedies (except to the extent NetApp’s compliance with this section would cause it to violate a court order or other legal requirement).

5.4. Security. NetApp will implement reasonable technical and organizational safeguards designed to protect Customer Content against unauthorized loss, destruction, alteration, access, or disclosure. NetApp may modify such safeguards from time to time, provided that such modifications will not materially reduce the overall level of protection for Customer Content. NetApp also maintains a compliance program that includes independent third-party audits and certifications.

5.5. Security Incident. If NetApp discovers that a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Content in the possession or control of NetApp (a “Security Incident”) has occurred, NetApp will notify You promptly and without undue delay, unless otherwise prohibited by law or otherwise instructed by a law enforcement or supervisory authority. In addition to providing such notification, NetApp will promptly take reasonable steps to mitigate the effects of the Security Incident and to minimize any damage resulting from the Security Incident. You must notify NetApp promptly about any possible misuse of its accounts or authentication credentials of which it becomes aware related to the Service.

PERFORMANCE AND OPERATIONS


6.2. Support. During the Subscription Term, NetApp will provide You support for the Service in accordance with the Documentation.


WARRANTY

7.1. Warranty and Remedy. NetApp warrants that during the Subscription Term, the Service will perform substantially in accordance with the applicable Service Level Agreement. If NetApp does not meet this limited warranty, then Your sole and exclusive remedy is as set forth in the applicable Service Level Agreement.
7.2. Disclaimer. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE RELATED TO THE SERVICE AND SOFTWARE. NETAPP AND ITS SUPPLIERS DO NOT WARRANT THAT SERVICES WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT SERVICES WILL MEET OR ARE DESIGNED TO MEET YOUR BUSINESS REQUIREMENTS. ANY-beta, NO-CHARGE OR TRIAL SERVICE THAT NETAPP PROVIDES TO YOU IS PROVIDED “AS IS”. INTELLECTUAL PROPERTY RIGHTS AND PROTECTIONS

8.1. General. The Service, Service Enabling Software, and Documentation are protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to You.

8.2. IP Claims. Subject to the terms and conditions of this section, NetApp will have the right to intervene to defend or settle any claim brought by a third party against You that the Service, Service Enabling Software, or Documentation sold or delivered to You under these Terms infringe any patent, trademark, or copyright (“IP Claim”). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, “Damages”) against You to the extent such Damages are specifically attributable to the IP Claim, if You:

(a) promptly notify NetApp in writing of the IP Claim; (b) provide information and assistance to NetApp to defend such IP Claim; and (c) provide NetApp with control of the defense or settlement negotiations. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.3. Remedies. NetApp may, at its option, substitute or modify the applicable Service, Service Enabling Service Enabling Software or Documentation, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Service, Service Enabling Software or Documentation, If NetApp determines that none of these alternatives is reasonably available, then You may terminate Your subscription and NetApp will refund Your purchase price less any Services already rendered.

8.4. Exclusions. Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp’s compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by You or on behalf of You; (b) modifications made by or on behalf of You without NetApp’s prior written authorization; (c) Your failure to upgrade or use a new version of the Service Enabling Software; (d) to make a change or modification requested by NetApp, implement or configure the Service or Service Enabling Software in a manner set forth by NetApp, or to cease using the Service or Service Enabling Software, if requested by NetApp; (e) the Service or Service Enabling Software, or any portion thereof, in combination with any other product or service; (f) Your breach of the use limitations prescribed by NetApp; or (g) any content or information stored on or used by You or a third party in connection with the Service.

8.5. Entire Liability. Notwithstanding any term to the contrary in these Terms, this section states NetApp’s entire liability and Your sole and exclusive remedies for IP Claims.

CONFIDENTIALITY

9.1. General. “Confidential Information” means any information disclosed by a party to the other party in connection with this Agreement that (a) is marked “confidential” or “proprietary” at the time of disclosure; (b) if disclosed orally or visually, is designated “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. “Confidential Information” shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party’s lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving party. Each party (“Disclosing Party”) may disclose Confidential Information to the other party (“Receiving Party”). Confidential Information will remain the exclusive property of the Disclosing Party. Each party will have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. The Receiving Party agrees to disclose the Disclosing Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The Receiving Party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care.

9.2. Period of Disclosure. Each party’s obligations regarding the other Party’s Confidential Information will expire 3 years from the date of disclosure.

9.3. Legally Compelled Disclosure. The Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that, unless prohibited by applicable law, the Receiving Party gives the Disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

9.4. Return/Destruction. Upon the Disclosing Party’s written request, all Confidential Information (including all copies thereof) of the Disclosing Party will be returned or destroyed, unless the Receiving Party is required by law to retain such information, and the Receiving Party will provide written certification of compliance with this Section. NetApp recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

LIMITATIONS

10.1. Limitation of Liability. Regardless of the basis of the claim (e.g., contract, tort, or statute), the total liability of NetApp under or in connection with these Terms will not exceed the amounts received by NetApp for the applicable Service in the 12 months preceding the event that gave rise to the claim or the minimum amounts permitted by applicable laws, if greater. NetApp will not be liable for: (a) any indirect, consequential, incidental, exemplary, or special damages; (b) loss or corruption of data; (c) loss of revenues, profits, goodwill, or anticipated savings; (d) procurement of substitute goods and/or
11.1 Suspension. NetApp may suspend or terminate Your access and use of any Service in accordance with the Contract Disputes Act if You (a) fail to remit payments when due; (b) otherwise breach these Terms; or (c) use the Services in a manner that violates the law. NetApp will provide reasonable notice before suspending or Your access to a Service unless NetApp, in its sole discretion, believes an immediate suspension or termination is required.

11.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, NetApp shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11.3 Effect of Service Expiration or Termination. Termination or expiration of these Terms will not (a) relieve You from your payment obligations with respect to any sums accrued prior to termination or expiration, which will become immediately due and payable, or (b) entitle You to any refund. NetApp will use commercially reasonable efforts to notify You that your access to the Service will be discontinued and that all Customer Content will be deleted, at a time to be determined by NetApp, without the option of recovery. NetApp expressly disclaims all liability if You do not receive or act in accordance with this notice, or if any Customer Content is deleted. Any provision that by its nature extends beyond termination or expiration of the Terms will remain in effect until fulfilled and will apply to each party’s successors and permitted assigns.

COMPLIANCE WITH LAWS

12.1 Compliance. Each party will comply with all applicable laws and regulations.

12.2 Export. You acknowledge that the Services and any applicable Service Enabling Software are subject to export controls under the laws and regulations of the United States, the European Union, and other countries (as applicable), and the Services may include technology controlled under export and import regulations, including encryption technology. You agree to comply with such laws and regulations and to provide NetApp destination end use and end user information upon NetApp’s request. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Services or Service Enabling Software to comply with all obligations set forth in this section.

12.3 Anti-Bribery. Each party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

12.4 Privacy. In the event You provide NetApp with access to personal information (as defined above) for NetApp to provide the Service, the parties will ensure that such personal information is disclosed and handled in accordance with all applicable data protection laws and the confidentiality provisions set forth in these Terms. Article 28 (1) of the European Union General Data Protection Regulation (“GDPR”) requires an agreement between a controller and processor, and between a processor and sub processor, that processing of personal information be conducted in accordance with technical and organizational measures that meet the requirements of the GDPR and ensure the protection of the rights of data subjects. To the extent NetApp acts as a data processor of personal information on Your behalf: (a) additional terms and conditions applicable to NetApp acting in a role as a data processor are set forth at https://www.netapp.com/how-to-buy/sales-terms-and-conditions/; and (b) NetApp will not retain, use, or disclose such personal information for any purpose other than providing or improving the Service in accordance with these Terms. NetApp certifies that it understands the foregoing restrictions and will comply with them.

MISCELLANEOUS

13.1 U.S. Federal Government Customers. This section applies only to U.S. Federal Government customers. The Services and any applicable Service Enabling Software are “commercial” computer software and are licensed to You in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software. Any dispute will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these Terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other provisions of these Terms remain in effect as written.

13.2 Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

13.3 Waiver. Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either party’s exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

13.4 Severability. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

13.5 Assignment and Subcontracting. You may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by You without NetApp’s prior written consent will be null and void. NetApp may use subcontractors to fulfill its obligations under these Terms. Provided that NetApp remain liable for the actions and services provided by such subcontractors at all times unless Subcontractor is acting under the direction of the customer.

13.6 Independent Contractors. The relationship of the parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither party will act or represent itself, directly or by implication, as an agent of the other party.

13.7 Publicity. No advertising, publicity releases, or similar public communications concerning these Terms, the Services or any applicable Service Enabling Software will be published or caused to be published by either party without the prior written consent of the other party. Notwithstanding the
foregoing, You agree to be mentioned in the list of buyers of the Service to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 and that Your name may be used for this purpose only.

13.8. Audit. You grant NetApp and its independent accountants the right to audit You or Your subcontractors once annually during regular business hours upon reasonable notice and subject to Government security requirements to verify compliance with these Terms. If the audit discloses Service or applicable Service Enabling Software over-usage or any other material noncompliance, You will promptly pay to NetApp any fees.

13.9. Governing Law and Enforcement Rights. These Terms will be construed pursuant to the Federal laws of the United States.

13.10. Functional Data. NetApp retains all right, title and interest in data which is generated in the performance of the Service and that informs NetApp in the development, deployment, operations, maintenance, and securing of the Service. Without limiting the foregoing, NetApp may collect and use Functional Data to improve and enhance the Services and NetApp’s other products and services.

13.11. Improvements. You are entitled to provide NetApp with any suggested improvements to the Service (“Suggestions”). If you provide any Suggestions, NetApp will be entitled to use the Suggestions without restriction.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached NetScout Systems, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to any GSA Customer orders, and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 701 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 701 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
NETSCOUT SYSTEMS, INC.

NETSCOUT SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

Definitions

"APIs" mean the software application interfaces and workflow methods made generally available by Contractor through NetScout in certain Products to enable integration, implementation, and interoperability with third party hardware and software.

"Documentation" means any installation guides, reference guides, operation manuals and release notes provided with the Product in printed, electronic, or online form.
“Enterprise” means an entity that has been assigned a Maintenance account number. In the event an entity has multiple Maintenance account numbers, each Maintenance account is a separate Enterprise and requires a separate Enterprise License.

“Enterprise License” means the Software identified in the Quotation as an Enterprise License.

“Evaluation Product” shall have the meaning set forth below in Section 8.

“Hardware” means hardware products generally available on the schedule price list.

“Maintenance” means technical support services for the Products that Contractor through NetScout makes available upon purchase in accordance with the support services terms described herein.

“Managed Services” means your use of Products to perform network management and monitoring services for Service Provider Customers. Title to the Hardware and licenses to Software remain with you and are not resold to Service Provider Customers.

“Outsourcer” means a third party facility manager or outsourcer who has entered into a then-current services agreement with you in which you may permit access to and operation of the Products at your authorized data center and access to Maintenance for Outsourcer solely to perform Outsourcing Services.

“Outsourcing Services” means network management and monitoring services performed by Outsourcer strictly for you and as described in Section 6.

“Pre-Released Products” shall have the meaning set forth below in Section 8.

“Product” means Software and Hardware provided by Contractor through NetScout.

“Quotation” means the document under which Contractor offers for sale and license its Products, Maintenance, and associated services.

“Service Provider” means Ordering Activity when acting in the capacity of providing Managed Services to Service Provider Customers.

“Service Provider Customer” means a third party, who has an agreement with You for Managed Services, provided that such Managed Services would not be a violation of United States (“U.S.”) export restrictions.

“Software” means NetScout proprietary programs in object code and the firmware contained on the Hardware. The term Software does not include APIs.

“Software Development Kit” or “SDK” means the NetScout API, together with applicable documentation, any sample code, and any sample applications provided with the API.

“Unsupported Products” shall have the meaning set forth below in Section 8.

“Updates” means maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid Maintenance contract.

“You” or “Your” means Ordering Activity.

1. License Grant. Subject to payment of the applicable license fee and the terms set forth in this Attachment A, Contractor grants You a limited, non-exclusive, non-transferable license to use the Software and the Documentation for Your own internal business purposes. Such usage is limited to the number of licenses for which You paid the applicable license fee and is subject to the limitations set forth in the Documentation. You may make a copy of the Software for archival or backup purposes only (“Copy”). The Copy may not be used to implement fault tolerant, redundant, or contingency environments (collectively “Redundant Environments”). If You are purchasing an Enterprise License, the foregoing license grant is hereby extended to allow You to install, copy, and use an Enterprise License throughout your Enterprise for Your internal use only, subject to the terms and limitations set forth in this Attachment A and the Documentation.

2. License Restrictions.

(a) Without limiting this Attachment A, Contractor retains all right, title, and interest in and to the Software, including without limitation the Enterprise License, and all Updates, Documentation, and Copies, and all patents, copyrights, trade secrets, trademarks, and other intellectual property rights therein. Contractor retains all rights to the intellectual property associated with the Hardware except as expressly granted in this Attachment A, and the above Software restrictions will apply to Hardware to the extent applicable. The Software, Documentation, and Copies are protected under copyright laws, and any permitted Copies must include all copyright, government-restricted rights, and other proprietary notices or legends included on the Software when it was shipped or first provided to You. Without limiting the generality of the foregoing, You, Your employees, and Your consultants will not and will not authorize or permit any third party to: copy or reproduce any part of the Software or Documentation, except as permitted above; transfer the Software without Contractor’s prior written authorization. Transfers will only be permitted for products with no more than minimal differences in price, features and functionality and provided that the transfer does not increase the number of licensed copies; sell, market, distribute, sublicense, lease, provide timeshares, rent, or grant other rights in the Software to others or permit third parties to access the Software, without the written consent of Contractor; or modify, develop, port, translate, localize, reverse engineer, de-compile, disassemble, or create derivative works based on the Software, except to the extent expressly permitted by applicable law and solely to extent the parties shall not be permitted by that applicable law to exclude or limit such rights.

(b) In the event You are purchasing an Enterprise License and if You use the Enterprise License Software on or with hardware that does not meet the technical specifications set forth in the Documentation, then: (i) Contractor will not warrant the performance or results obtained by using the Enterprise
License Software and Contractor disclaims all liability with respect to the foregoing, (ii) You assume the risk as to the results and performance of the Enterprise License Software, and (iii) Your rights and Contractor's obligations with respect to Maintenance, warranty, and indemnification for the Enterprise License Software are waived. The Enterprise License is strictly limited to the NetScout Software identified in a Quotation as an Enterprise License and does not apply to any other NetScout Software. An Enterprise License may not be deployed for government entities, for which the scope of the license must be separately determined in each case.

(c) For Service Providers, the Software License may be used for Service Provider's internal business purposes only, including for monitoring and managing Service Provider's own networks and to perform Managed Services for Service Provider Customers. Separate Enterprise Licenses must be purchased for deployment and use for each end user customer of such Service Provider. Service Provider will maintain MasterCare Maintenance for Products associated with the Managed Services on behalf of its Service Provider Customers and, if Service Provider has signed a Partner Enabled Support addendum, will provide directly to Service Provider Customer technical telephone support. Updates identified for such Service Provider Customer and received under a valid Maintenance contract, return material authorization, Maintenance, and shipping and telephone logistical support. Service Provider will provide the name and address of the Service Provider Customer for whom Service Provider is purchasing Hardware or licenses to Software for Managed Services.

Service Provider will not replace or make repairs or modifications to (collectively "Repairs") the Hardware or any of its components. Transfers of Products from an identified location to a different location will require Contractor's prior written consent, and Service Provider will notify Contractor of the name and new address the Service Provider Customer associated with such transfer.

3. License Term. The license is effective until terminated. You may terminate the license at any time by destroying the Software, Documentation, and Copies, and providing written certification to Contractor that all of the foregoing have been destroyed.

4. Limited Warranty. Contractor warrants that the media on which the Software is recorded will be free from defects in materials and workmanship under normal use and service for a period of 90 days from the original date of shipment of the Software ("Media Warranty Period"). Contractor warrants that the Software for a period of 90 days ("Software Warranty Period") and the Hardware for a period of 12 months ("Hardware Warranty Period"), in each case from its original date of shipment or when first made available to You for download, will substantially conform to the Documentation. If, during (a) the Media Warranty Period, a defect in the media occurs and is reported to Contractor, the media may be returned to Contractor, and Contractor will replace the media without charge to You, or (b) the Software Warranty Period or Hardware Warranty Period, a failure of the Software or Hardware to conform as warranted occurs and is reported to Contractor, Contractor, at its option, will use commercially reasonable efforts to repair or replace the non-conforming Software or Hardware.

The foregoing warranties will apply provided You give Contractor prompt written notice of the material defect or nonconformity within the warranty period specified above and return the defective media or non-conforming Software or Hardware to Contractor in accordance with Contractor's return process.

5. Warranty Limit. The warranty set forth in Section 4 does not apply to any failure of the Software or Hardware caused by (a) Your failure to follow NetScout's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Your mishandling, misuse, negligence, or improper installation, de-installation, storage, servicing, or operation of the Product; (c) unauthorized modifications or repairs; (d) use of the Products in combination with equipment or software not supplied by Contractor or authorized in the Product Documentation; and (e) power failures or surges, fire, flood, accident, actions of third parties, or other events outside Contractor's reasonable control. Contractor cannot and does not warrant the performance or results that may be obtained by using the Products, nor does Contractor warrant that Products are appropriate for Your purposes or error-free.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 4, THE WARRANTY SET FORTH IN SECTION 4 IS YOUR REMEDY AND CONTRACTOR'S LIABILITY FOR DEFECTIVE MEDIA OR NONCONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

6. Outsourcing. Outsourcer may perform Outsourcing Services, provided that (a) Outsourcer accesses such Products and Maintenance to process Your data solely for Your internal business purposes and does not use such Products and Maintenance to perform any services for customers other than You, (b) Outsourcer uses the Products and Maintenance in accordance with the terms of this Attachment A, and (c) You provide written notification to Contractor of the proposed transaction and identification of the proposed Outsourcer and the affected Products and Maintenance. In any event, You will remain responsible for all payment and other obligations hereunder, which will remain in full force.

If You want to relocate any Products from Your own site(s) to the data processing facility of Outsourcer, the installation and operation of the Products will be strictly limited by You and Outsourcer to computer processors exclusively dedicated for access, use and benefit solely for You and as to which access, use or benefit for any other person or entity is precluded. You acknowledge and agree that the Software cannot, at any time, be (a) simultaneously operating on more than a single computer, unless otherwise indicated in Section 1, or (b) copied to implement a Redundant Environment without collective payment of the applicable GSA fee.

7. U.S. Government Restricted Rights. All NetScout Software, including the Documentation and technical data, sold or delivered pursuant to this Attachment A for Government use are commercial as defined in Federal Acquisition Regulation ("FAR") 2.101 and any supplement and further is provided with RESTRICTED RIGHTS. All Software was fully developed at private expense. Use, duplication, release, modification, transfer, or disclosure (for purposes of this section, "Use") of the Software is restricted by the terms of this Attachment A and further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulations Supplement ("DFARS") for military Government agency purposes, or the similar acquisition regulations of other applicable Government organizations, as applicable and amended. The Use of the Product is restricted by the terms of this Attachment A, in accordance with DFARS Section 227.7202 and FAR Section 12.212. All other Use is prohibited except as described herein.

8. Additional Terms and Limitations for Unsupported Products.

(a) Evaluation Products. Prior to You making a decision to purchase Products, Contractor through NetScout may distribute Product for testing, evaluation, or demonstration purposes ("Evaluation Product"). Subject to the terms of this Attachment A, if NetScout provides You with an Evaluation Product, then NetScout grants You a temporary, revocable, non-exclusive, non-transferable license to use the Evaluation Product set forth in the
applicable NetScout Evaluation Request Form and the Documentation solely for testing, evaluation, or demonstration purposes ("Purpose"). Evaluation Product that is Software contains a license key that disables the Software after 30 days, or other term as agreed to by the parties, and which will render the Evaluation Product unusable. If, after using the Evaluation Product, you wish to continue such use, you must purchase the Product.

(b) Pre-Released Product. Subject to the terms of this Attachment A, if the product You have received with this license is not yet commercially available ("Pre-Released Product"), then Contractor grants you a temporary, revocable, nonexclusive, non-transferable license to use the Pre-Released Product as provided to You by Contractor and the associated Documentation, if any, solely for testing purposes at the direction of Contractor. Additionally, You acknowledge that (i) Contractor has not promised or guaranteed to You that the Pre-Released Product will be announced or made available to anyone in the future; (ii) Contractor has no express or implied obligation to You to announce or introduce the Pre-Released Product; and (iii) You understand that Contractor may not introduce a product similar to or compatible with the Pre-Released Product. Accordingly, You acknowledge that any use of the Pre-Released Product or any product associated with the Pre-Released Product is done entirely at Your own risk. During the term of this Attachment A, if requested by Contractor, You will provide feedback to Contractor regarding use of the Pre-Released Product, including error or bug reports. If You have been provided the Pre-Released Product pursuant to a separate written agreement, Your use of the Pre-Released Product is also governed by such agreement. Upon receipt of a later, unreleased version of the Pre-Released Product or release by Contractor of a publicly released commercial version of the Pre-Released Product, whether as a stand-alone product or as part of a larger product, You agree to return or destroy all copies of earlier Pre-Released Product received from Contractor and to abide by the terms of this Attachment A for any such later versions of the Pre-Released Product.

(c) APIs. Contractor through NetScout may make APIs generally available. You may use the SDK to design, develop, and test software programs; make a single copy of the SDK for back-up purposes only; copy the runtime components of the SDK ("Runtime Component") into software code created through your use of the SDK; and reproduce and distribute such Runtime Component solely as a component of Your software code. You may not use the SDK to develop a product or service that competes with products or services offered by NetScout, or incorporate the Runtime Component in a product that competes with the products offered by NetScout.

(d) Unsupported Products. If the product You have received with this license is or includes (i) Evaluation Products, (ii) Pre-Released Products, or (iii) SDKs (collectively "Unsupported Products"), then You acknowledge and agree that You will take all precautions and safeguards necessary to protect Your data and systems from loss or damage. Additionally, to the extent that any provision in this section is in conflict with any other term or condition in this Attachment A, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. Furthermore, You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to You "AS-IS" and Contractor disclaims any warranty obligations to You of any kind. Maintenance is not available for the Unsupported Products. Contractor through NetScout may change, suspend, or discontinue any aspect of the Unsupported Products at any time, including the availability of any Unsupported Product, and impose limits on certain features and services or restrict Your access to parts or all of Pre-Released and SDK Products. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Contractor. The restrictions in Section 2 herein, apply to Your use of Unsupported Products.

(e) Contractor's ownership rights in Section 2 apply to Unsupported Products, including any output such as the Runtime Component, but do not include any original software code you may develop. The inclusion of the Runtime Components in Your original code created through your use of the SDK in no way alters Contractor's ownership rights in the Runtime Component. Contractor may develop software programs substantially similar or identical to those developed by You through Your use of the SDK and reserves the right to sell and distribute those software programs.

9. Product Returns. Prior to returning Evaluation Products or Pre-released Products to Contractor through NetScout, You must remove any (i) confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information (as such is defined under applicable local law, regulation or directive, including without limitation, in the U.S., the Gramm-Leach-Bliley Act, and Health Insurance Portability and Accountability Act, HITECH Act), and (ii) removable media such as floppy disks, CDs, or PC Cards. In addition, You are responsible for backing up Your data on the Evaluation Products or Pre-Released Products. NetScout is not responsible for any of your confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

EXHIBIT A – MAINTENANCE AND SUPPORT SERVICES

Maintenance Descriptions. Contractor through NetScout offers the following Maintenance support services. Remote access to NetScout Products and systems, networks, and equipment may be necessary to perform Maintenance services. "Normal Business Hours" are Monday through Friday, 8:00 a.m. – 8:00 p.m. EST for North America and 8:00 a.m. – 5:00 p.m. local time for all other regions. Unless otherwise agreed to in writing by NetScout, Product eligibility for Maintenance support services provided such Product remains in the location to which such Product was originally shipped, and with respect to Hardware, provided such Hardware is within the Hardware Coverage Period.

A. MasterCare Support. Subject to the terms herein, MasterCare Support services includes: 24x7 access to technical support engineers; one hour priority response on severity 1 technical support calls; maintenance releases, enhancements, corrections, bug fixes, and modifications made to the Software that are provided to Ordering Activities generally as part of Maintenance pursuant to a valid maintenance contract (collectively referred to as “Updates”) for covered Products; access to electronic incident submission and technical documentation such as user guides, frequently asked questions, and release notes; advanced replacement or onsite repair of Hardware during the Coverage Period; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; discount on unlimited registrations to NetScout's user forum conference; and registered access to the MasterCare portal. Live technical telephone support is provided 24x7 for severity 1 issues received by telephone and non-severity 1 issues received by telephone during Normal Business Hours. All non-severity issues received by telephone message, email or web outside of Normal Business Hours will be returned next business day. NetScout's service level guidelines are located at http://www.netscout.com/library/Support/NetScout_mc_Mastercare_Support.pdf.

B. Gold Support. Subject to the terms herein and for existing Ordering Activities who wish to renew previously purchased legacy Gold Support services, Gold Support services include: live telephone technical support during Normal Business Hours; Updates for covered Products; 72-hour return repair or onsite repair of Hardware, depending on the Product family; 24x7 access to self-help on the MasterCare portal for technical answers; knowledge transfer through NetScout's online learning center; electronic MasterCare newsletter; and registered access to the MasterCare portal. 72-hour return repair on Hardware means the time from which the Hardware is received at Contractor through NetScout to the time the repairs are completed. It does not include the shipping time back to the Ordering Activity. 72-hour return repair on Hardware is on a per Hardware unit basis. If multiple Hardware units are returned for repair, additional time may be required.
C. Supplemental Maintenance Offerings. Ordering Activities purchasing MasterCare Support may also purchase one of the following Supplemental Maintenance Offerings. If an engineer or technical account manager is not available due to a holiday, paid time off, or training, a Contractor through NetScout remote back-up support engineer or technical account manager will provide remote back-up coverage during that time and to the extent practicable.

OnSite Engineer Services. Onsite Engineer Services ("OSE Services") are provided by a Contractor through NetScout technical support engineer located at customer's designated site and may include any one or more of the following, as agreed to by the parties: local assistance with day-to-day administration of customer’s network performance management environment, including: (i) installation of operating system and Software upgrades; (ii) Hardware maintenance; Software patches, and service pack installation, and (iii) oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports and workspaces, discovering and configuring complex, custom or unknown applications, and integrating third-party tools; implementation assistance for installing and configuring new NetScout Products; testing new NetScout Products and features when requested; and resolving support issues, and escalating service needs. The OSE Services will be performed 40 hours a week from 9:00 a.m. to 5:00 p.m. local time, Monday through Friday, excluding Ordering Activity holidays and paid time off, provided the number of Ordering Activity holidays is at least equal to the number of holidays NetScout provides to its employees in the applicable territory. For a maximum period of two weeks during the initial term and renewal terms, the onsite engineer will not be at Ordering Activity's designated site performing the OSE Services due to training at NetScout's corporate headquarters.

Remote Site Engineer Services. Remote Site Engineer Services ("RSE Services") is an annual service available to Ordering Activities, provided by a Contractor through NetScout shared remote technical support engineer located at a NetScout facility, and may include any one or more of the following, as agreed to by the parties: daily health and stability check on both devices and data; remote assistance with day-to-day administration of customer's NetScout performance management environment, including operating system and Software upgrades, Hardware maintenance, Software patches and service pack installation, and oversight of monitored element changes; backup maintenance, such as regular configuration, password and community string backups, and offsite storage of the data required during disaster recovery efforts; customization assistance for designing new reports, defining targeted workspaces, discovering and configuring complex, custom and unknown applications, and integrating third-party tools; implementation assistance installing and configuring new NetScout Products; facilitation of beta testing of new Products and features when requested; and annual onsite technical review visit to assist with planning, migration, implementation and resolution of outstanding support issues. The RSE Services will be performed 20 hours per week, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. local time in Westford, Massachusetts, and excluding NetScout holidays and paid time off.

Technical Account Manager Services. Technical Account Manager Services ("TAM Services") are provided by a Contractor through NetScout shared remote technical account manager located at a NetScout facility as the point of contact for all technical issues regarding NetScout Products and includes the following: 24x7 remote assistance; support for five Ordering Activity contacts; escalation of technical service requests as required; ownership of all client Ordering Activity care issues; acting as a direct liaison to NetScout engineers, quality assurance and other technical support experts; communication and knowledge transfer on product introductions, updates, new features, filters, and patches; provide a conduit for networking and sharing best practices; managing monthly status calls to discuss open issues, upcoming rollouts, or other projects affecting Ordering Activity's NetScout environment; providing monthly NetScout server "health checks" to ensure products are stable and running efficiently; unlimited free registration for NetScout User Forum events.

Term and Renewal. Unless otherwise agreed to by the parties in writing, the initial term for (i) MasterCare Support will be 12 months commencing on the date specified in Contractor's quote, (ii) OSE Services will be 12 months commencing on the date the engineer arrives at Ordering Activity's designated site, and (iii) RSE and TAM Services will be 12 months commencing on the date that the account becomes active, or as agreed to by the parties. MasterCare or Gold Support may be renewed for up to two years after discontinuation of sale of the applicable Product.

Continuing Availability. If Contractor through NetScout discontinues a Product, NetScout will continue to make MasterCare or Gold Support available for no less than two years from the date of discontinuation of sale. For Software, such MasterCare or Gold Support will include bug fixes and telephone technical support for the then-current Software release and immediately preceding release.

Substitutions; Software Updates. Contractor through NetScout reserves the right to substitute functionally compatible products not affecting network configurations. Updates include all bug fixes and enhancements which become elements of the standard Product.

Warranty. Contractor warrants that Maintenance support services will be performed in a good and workmanlike manner. Ordering Activity's remedy for breach of this warranty will be for Contractor to re-perform the Maintenance support services at no expense to Ordering Activity. NetScout Products are warranted in accordance with these Attachment A terms. EXCEPT FOR THE FOREGOING WARRANTY, CONTRACTOR MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO MAINTENANCE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH MAINTENANCE.

Limitations and Exclusions. Contractor through NetScout is not obligated to provide Updates containing additional features and enhancements other than defect corrections, or to provide MasterCare or Gold Support on Software beyond one release back from the current version. NetScout is not liable for delays caused by third parties. Geographical restrictions or limitations may apply to the Maintenance support services described herein and such services may not be available in all areas. If Ordering Activity has a party other than NetScout make repairs to the Products, such acts will void any warranty related to the Products. NetScout is not obligated to provide Maintenance support services with respect to claims resulting from the fault or negligence of Ordering Activity or a third party; improper or unauthorized use of the Products; repair of Products by a party other than NetScout or its authorized contractor; a force majeure event and any causes external to the Product such as power failure or electric power surge; modification to factory default configurations; or use of the Products in combination with equipment or software not supplied by NetScout or recommended in the Product documentation. Functional upgrades such as faster processors, increased memory / flash, etc. are not covered under MasterCare or Gold Support and are separately chargeable at the then-current GSA price.

Repairs. A Return Material Authorization ("RMA") number must be obtained prior to the return of defective Products for repair or replacement. If Contractor through NetScout receives Products without a valid or correct RMA number identified on the outside of the packaging of such Products, NetScout will have no obligation to provide MasterCare or Gold Support with respect to such Products. Prior to returning defective Products to NetScout
for repair or replacement, Ordering Activity must remove any confidential, proprietary, or personal information, including without limitation, personal health information or personally identifiable information, as such is defined under applicable local law, regulation or directive, including without limitation, in the United States, the Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, and HITECH Act. In addition, Ordering Activity is responsible for backing up Ordering Activity's data on the hard drive(s) and any other storage device(s) in the hardware. NetScout is not responsible for any of Ordering Activity's confidential, proprietary, or personal information or removal thereof; lost or corrupted data; or damaged or lost removable media.

Ordering Activity Obligations.

A. Access to Products. Ordering Activity will grant the Contractor through NetScout engineer reasonable access to NetScout Products and any related systems, networks or equipment reasonably necessary to enable the engineer to perform MasterCare or Gold Support. Additionally during any OSE Services term, Ordering Activity will (i) make available to the engineer a dedicated office space, telephone, and telephone line in a location that is within a reasonable proximity of the Products ("Office Area"), and (ii) designate an employee of Ordering Activity to act as a central point of contact for the engineer to coordinate the performance of OSE Services.

B. MasterCare Support Coverage for Products. OSE, RSE and TAM Services are an extension of MasterCare Support, therefore, Ordering Activity must purchase and continuously maintain throughout the OSE, RSE or TAM Services term MasterCare Support coverage on all NetScout Products it has provisioned from Contractor through NetScout. Contractor will not be obligated to provide OSE, RSE or TAM Services if customer does not fulfill its payment obligations, or procure and continuously maintain MasterCare Support coverage on all NetScout Products owned or in the possession of Ordering Activity.

ATTACHMENT A – ARBOR NETWORKS, INC.

LICENSING AGREEMENT

THIS LICENSING AGREEMENT ("Agreement") is entered into by and between Arbor Networks, Inc., a Delaware corporation with its principal office at 76 Blanchard Road, Burlington, MA 01803 ("Arbor") and the Ordering Activity under GSA Schedule contracts ("You"/"Your" or "Ordering Activity"). Arbor and You are also referred to individually as a "Party" and collectively as "Parties." PURPOSE AND SCOPE. This Agreement sets forth the terms and conditions under which Arbor agrees to grant a license to use Arbor’s Product ("Software") and to provide related Services to You. It is intended by the Parties that this Agreement govern any purchase made during the term of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

1. License to Use. Arbor grants You a limited, revocable, non-exclusive, non-transferable license (the "License") to use Arbor’s software in machine-readable form that is shipped to You or identified on the attached form ("Form") and accompanying documentation (collectively "Product") on the machines on which the software has been installed or authorized by Arbor. The term of the license shall be as stated on the Form. Your affiliate(s), purchasing agents, and outsourcing vendors ("Affiliates") may on your behalf purchase or use Product so long as each is bound to terms as in this Agreement and You indemnify Arbor for their breach of this Agreement. Any future trial or purchase of Product and services is governed exclusively by this Agreement and may be effected by You or Your Affiliates providing a purchase order or trial request. Trial term licenses for Product shall be for the longer of thirty (30) days from date of Product’s delivery to You or as stated on the Form supplied by Arbor. Any feed, release, revision or enhancement to the Software that Arbor may furnish to You becomes a part of Product and is governed by this Agreement. Specifically for Product, if You have not purchased a license by the end of a Product trial term or You breach this Agreement, You agree to return Product and any machine provided by Arbor to Arbor in its original condition less normal wear and tear in original packaging or equivalent and in accordance with Arbor’s RMA process within 10 days. You agree to pay for any damage to Product occurring prior to receipt by Arbor. If You purchase a license to Product, this Agreement will control that purchase and title to machines (where applicable) provided hereunder vests in You.

2. Proprietary Rights and Restrictions. Arbor and/or its licensors and outsourcing vendors (together, "Vendors") retain all right, title, and interest in the Software and in all copies thereof, and no title to the Software or any intellectual property or other rights therein, are transferred to You other than as specified herein. No right, title or interest to any trademarks, service marks or trade names of Arbor or its Vendors is granted by this Agreement. Software is copyrighted and contains proprietary information and trade secrets belonging to Arbor and/or its Vendors. You will only use Software for Your own internal business purposes. You may not make copies of the Software, other than a single copy in machine-readable format for back-up or archival purposes. You may make copies of the associated documentation for Your internal use only. You shall ensure that all proprietary rights notices on Software are reproduced and applied to any copies. Licenses are limited to use in accordance with the "Description" on the Form and user documentation. You agree not to cause or permit the reverse engineering or decompilation of the Software or to derive source code therefrom. You may not create derivative works based upon all or part of Software. You may not transfer, lend, lease, assign, sublicense, and/or make available through timesharing, Software, in whole or in part. If you are purchasing spare Product, you are only licensed to use such spare during such time as another Product is removed from service for repair.

3. Confidentiality. When disclosing information under this Agreement, the disclosing party will be the "Disclosing Party" and the receiving party will be the "Receiving Party." The term "Confidential Information" includes: (a) a party’s technical, financial, commercial or other proprietary information including without limitation product roadmaps, pricing, software code and documentation, Software, techniques or systems and (b) information or data that is confidential and proprietary to a third party and in the possession or control of a party. The Receiving Party will not disclose any of the Disclosing Party’s Confidential Information to any third party except to the extent such disclosure is necessary for performance of the Agreement or it can be documented that any such Confidential Information is in the public domain and generally available to the general public without any restriction or license, or is required to be disclosed by any authority having jurisdiction so long as Disclosing Party is provided advance notice of such disclosure by the Receiving Party. Each party’s respective Confidential Information shall remain its own property. Notwithstanding the foregoing, Arbor may use anonymized data from the Product for its business purposes provided that Arbor shall not identify You to any third party as the source of such data.

4. Product Warranty, Indemnification. Arbor warrants, for sixty (60) days from shipment, that Product will perform in compliance with user manuals accompanying Product. If, within sixty (60) days of shipment, You report to Arbor that Product is not performing as described above, and Arbor is unable to correct it within sixty (60) days of the date You report it, You may return the non-performing Product at Arbor’s expense, and Arbor will refund amounts paid for such Product. The foregoing is Your sole and exclusive remedy. Arbor agrees to defend You from and against any third party claim or action based on any alleged infringement of any U.S. patent or copyright arising from use of the Product according to the terms and conditions of this Agreement ("Claim"), and Arbor agrees to indemnify You from damages awarded against You in any such Claim or settlement thereof, provided that (i) Arbor is promptly notified in writing of such Claim, (ii) You grant Arbor sole control of the defense and any related settlement negotiations, and (iii) You cooperate with Arbor...
in defense of such Claim. Notwithstanding the foregoing, Arbor shall have no liability to You if the infringement results from (a) use of the Product in combination with software not provided by Arbor; (b) modifications to the Product not made by Arbor; (c) use of the Product other than in accordance with the Documentation or this Agreement; or (d) failure to use an updated, non-infringing version of the applicable Product. The foregoing states the entire liability of Arbor with respect to infringement.

5. Limitations. EXCEPT AS OTHERWISE PROVIDED HEREIN, ARBOR AND ITS THIRD-PARTY VENDORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARBOR’S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PERFORMANCE OF PRODUCT PROVIDED HEREUNDER, AND/OR ARBOR’S PERFORMANCE OF SERVICES, SHALL NOT EXCEED THE AMOUNT PAID UNDER THIS AGREEMENT FOR PRODUCT WITHIN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM, WHETHER A CLAIM IS BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, IN NO EVENT SHALL ARBOR OR ITS VENDORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA, OR BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ARBOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ARBOR BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. YOUR SOLE COURSE HEREUNDER SHALL BE AGAINST ARBOR AND YOU SHALL HOLD THIRD PARTY VENDORS HARMLESS.

6. Product Installation and Support. Installation purchased directly from Arbor with Product is governed by this Agreement, but Arbor shall not be required to continue any installation for longer than 90 days following receipt of Product. If a perpetual license is granted hereunder, You agree to purchase support ("Support") for at least the initial year from shipment. Thereafter, Arbor will invoice approximately sixty (60) days prior to the end of the Support term for additional one-year periods so long as Product is covered by Support. Failure to pay such invoice will result in a lapse of Your Support. If Support lapses, upon renewal of Support a 10% reinstatement fee will be assessed and you shall pay all Support fees back to the date Support lapsed. Each annual renewal service price shall be no less than the previous service price. With Support, Arbor will provide You (i) telephone and email based technical support in accordance with the level purchased and (ii) all new maintenance releases to Product when and if available during Your participation in Support. Arbor shall not be required to provide Support on any Product (i) for more than twelve months after its general release, or (ii) more than one release behind the currently shipping release. Arbor shall be permitted to subcontract any or all of its services or Support obligations under this Agreement to an affiliated company including, without limitation, Arbor Networks, Inc. in the United States.

7. Export Regulation and Government Rights. You agree to comply strictly with all U.S. export control laws, including the U.S. Export Administration Act and Export Administration Regulations ("EAR"). Product is prohibited for export or re-export to the list of terrorists supporting countries or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. If Product is being shipped by Arbor, then it is exported from the U.S. in accordance with the EAR. Diversion contrary to U.S. law is prohibited. If You are licensing Product or its accompanying documentation on behalf of the U.S. Government, it is classified as "Commercial Computer Product" and "Commercial Computer Documentation" developed at private expense, contains confidential or proprietary information that is owned by Arbor, and is subject to "Restricted Rights" as that term is defined in the Federal Acquisition Regulations ("FARs"). Contractor/Manufacturer is: Arbor Networks, Inc., and its subsidiaries, Burlington, Massachusetts, USA.

8. General. This Agreement is made under the laws of the Commonwealth of Massachusetts, USA, excluding the choice of law and conflict of law provisions. You consent to the federal and state courts of Massachusetts as sole jurisdiction and venue for any litigation arising from or relating to this Agreement. This Agreement is the entire agreement between You and Arbor relating to Product and supersedes all prior, contemporaneous and future communications, proposals and understandings with respect to its subject matter, as well as without limitation terms and conditions of any past, present or future purchase order. No modification to this Agreement is binding unless in writing and signed by a duly authorized representative of each party. The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder. If any provision of this Agreement is held invalid, all other provisions shall continue in full force and effect. All licenses and rights granted hereunder shall terminate upon expiration of the term or Your breach of this Agreement. Neither party shall be liable for the failure to perform its obligations under this Agreement due to events beyond such party's reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God or acts in compliance with any applicable law, regulation or order of any court or governmental body. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be void; except to a successor by merger, acquisition or restructuring that assumes the rights and duties of this Agreement. The following sections survive termination or expiration of this Agreement: Proprietary Rights and Restrictions, Confidentiality, Limitations, Export and Government Rights, and General. All Product shipments are FCA Shipping Point and title to machines shall pass upon shipment.

IN WITNESS WHEREOF, the duly authorized officers or representatives of the parties have executed this Agreement as of this day __________, 20__, intending legally to be bound.

Arbor Networks, Inc.
Company Name

BY: _______________________________  BY: ___________________________
Print Name: _________________________  Print Name: _____________________
Title: _______________________________  Title: __________________________
Date: ________________  Date: __________________________

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached NNDATA Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2i, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms...
shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NNDATA CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

NNCOMPASS TERMS & CONDITIONS

These Terms & Conditions ("Agreement" or "Terms") govern your acquisition and use of NNData’s NNCompass software. You agree to the terms and conditions outlined herein. This Agreement replaces any prior agreement(s) and is effective between the Ordering Activity under GSA Schedule contracts ("Ordering Activity", "You" or "Your") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, NNData, as of the date of execution of a proper Order of NNCompass.

INTELLECTUAL PROPERTY

The Software, including without limitation all copyrights, patents, trademarks, trade secrets, and other intellectual property rights are, and shall remain, the sole and exclusive property of NNData. The Software incorporates confidential and proprietary information developed or acquired by or licensed to NNData and that in performing under this Agreement you will learn additional information that is confidential and proprietary to NNData and the NNCompass software (the "Confidential Information"). The User will take all commercially reasonable precautions necessary to safeguard the confidentiality of the Confidential Information, including (i) those taken to protect your own confidential information and (ii) those which NNData may reasonably request from time to time. The User will take all commercially reasonable precautions necessary to not allow the removal or defacement of any confidentiality or proprietary notice placed on the Software or other items of Confidential Information. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

LIMITED LICENSE TO USERS

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DISCLAIMER AND LIMITS

NNData warrants that the software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with the NNData written materials accompanying it. Except as expressly set forth in the foregoing, the NNCompass software is provided "as-is," "as available," and all warranties, express or implied, are disclaimed (including but not limited to the disclaimer of any implied warranties of merchantability and fitness for a
particular purpose). The software may contain bugs, errors, problems or other limitations. No advice or information, whether oral or written, obtained by you from us through the use of the software shall create any warranty, representation or guarantee not expressly stated in this agreement.

MISCELLANEOUS
This Agreement shall be governed by and construed in accordance with the Federal law of the United States. Should any part of this Agreement be held invalid or unenforceable, that portion shall be construed consistent with applicable law and the remaining portions shall remain in full force and effect. Our failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision nor of the right to enforce such provision.
1. **Scope.** This Rider and the attached Northrop Grumman Systems Corporation, acting through Systems Modernization and Services Division ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   **Contracting Parties.** The GSA Customer (“Licenser”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Delegation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Government are hereby superseded.

   **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 41 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1976 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14; but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

NORTHROP GRUMMAN SYSTEMS CORPORATION

This License Agreement (“Agreement”) is made and entered into and effective as of the last signature below (the “Effective Date”) by and between Northrop Grumman Systems Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America, by and through its Information Systems Sector, Civil Division with offices at ______________ (hereinafter referred to as “Licensor”) and the United States of America (“Government”), acting through ______________, with offices at ______________ (hereinafter referred to as “Licensee”) either or both of which may be referred to as “Party” or “Parties”.

1. Commercial Items. The software and documentation provided hereunder are “Commercial Items” as defined by Federal Acquisition Regulation ("FAR") 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government’s use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

2. Grant of License. Licensor hereby grants to Licensee for the term identified in Schedule A, non-exclusive, non-transferable and personal, irrevocable, indivisible right and license to use the licensed subject matter (software and documentation) specified in Schedule A in accordance with the terms and conditions of this Agreement. Licensee shall use the licensed subject matter solely as installed in sites listed in Schedule A on the number of workstations for which Licensee has paid a license fee. Licensee shall not decompile, disassemble, or otherwise reverse engineer the licensed software. The right to revise, modify or enhance the licensed software is expressly prohibited. All terms and conditions of this Agreement are material terms of the license granted by this Agreement.

2. Permitted Use. The Permitted Use is set forth in Schedule A and has the meaning set forth below. Named Users: The number of users is limited to those for whom Licensee has paid a license fee in accordance with Schedule A. For purposes of this Agreement, a “Named User” is a person who has usage rights to the software. Named users who directly or indirectly use the Software must be counted towards the number of named users for whom Licensee has paid a license fee. Further, each person accessing the software’s functionality is a user of the software, whether or not using software components to access the software’s functionality, and must be counted towards the number of authorized concurrent users who may use the Software at the same time without regard to the number of different “registered” or “named” users. Each concurrent user may make unlimited use of Software from any computers or devices at any locations worldwide.

Core-Based Server License: The number of cores is limited to those for whom Licensee has paid a license fee in accordance with Schedule A for each such license. For purposes of this Agreement, an unlimited (until Core capacity is reached) number of authorized users may use the software, provided that the total number of cores residing on all computers where the software is installed does not exceed the permitted number of cores identified on Schedule A. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward the total number of Cores licensed. “Core” means the processor or execution core contained in the same integrated circuit within a computer’s central processing unit, whether such Cores are virtual or physical. Licensee may not permit any unauthorized third party to access or to use the software. Licensee may not use the Software in the operation of a service bureau, commercial time sharing or in any other resale capacity.

3. Proprietary Rights. Licensee acknowledges that the licensed software contains valuable trade secrets of the Licensor. Licensee shall not assign, license, disclose or otherwise transfer the licensed software or any copy thereof without the written consent of Licensor. All copyright, patent, trade secret, confidential information and other intellectual and proprietary rights in the licensed software and shall remain the valuable property of Licensor. Title to the licensed subject matter and all rights therein, including rights in patents, trade secrets and copyrights shall remain vested in Licensor.

4. Copies. Licensee may make copies of the licensed software solely for archival and backup purposes. All archival and backup copies of the software are subject to the provisions of this Agreement. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies. Except as provided in this section, Licensee may not copy the licensed subject matter (software and documentation) in whole or in part, for any purpose. Licensee agrees not to extract ideas, algorithms or procedures from the licensed subject matter (software and documentation) for any purpose, including without limitation, for the purpose of creating any works that are intended to be used as a substitute for the software or to be used by or for a third party.

5. Export. Licensee agrees to comply with all applicable export laws and regulations including those of the United States of America (US). Licensee shall not export, re-export or transmit, directly or indirectly, the licensed subject matter or any part thereof to any country for which US Export Administration Regulations or US International Traffic in Arms Regulations require prior authorization unless such prior authorization is obtained.

6. Confidentiality. The licensed subject matter, including the design and elements of the database tables, as well as any information that is marked confidential, and the rights represented proprietary in Section 3, is confidential information. the disclosure of which would harm Licensor. Licensee agrees, to the full extent permitted by law: (i) to hold the confidential information in strict confidence; (ii) not to disclose any confidential information to any third party unless authorized in writing by Licensor; (iii) not to disclose any confidential information to any third party unless required by law or court order; and (iv) to use the confidential information solely in accordance with the terms of this Agreement.

7. Warranty. Licensor warrants for a period of thirty (30) days that the licensed software will substantially conform to the applicable technical specifications for the Software that is published in the documentation supplied to Customer. Except as expressly stated in the foregoing, Licensor furnishes the licensed subject matter, and Licensee agrees to accept same, on a strictly “as is” basis. Licensor makes no representations, warranties, guarantees, affirmations or obligations as to the uses, suitability, performance, capabilities, reliability or accuracy of the licensed subject matter for use in any fashion by Licensee. Licensor expressly disclaims any warranty of merchantability and warranty of fitness for a particular purpose. Notwithstanding the foregoing, Licensor agrees to repair defects in the licensed software for a period of ninety (90) days from delivery of the licensed software. Licensor does not warrant that the operation of the licensed software will be uninterrupted or error-free.

8. Limitation of Liability. Licensee shall have no liability to Licensee for any loss, claim, remedy, suit, action, damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee or third party bodily injury, or property damage based on products liability, strict liability, or negligence concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed subject matter. Licensee shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages arising out of or in connection with the license granted under this or any business activity of Licensee. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Licensee’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. Services. The license fees do not include any maintenance, online help, implementation support or other support services. The Parties will enter into a separate software maintenance agreement. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely as set forth in that agreement. Under a separate agreement, Licensor will make training available to Licensee pursuant to Licensor’s standard training procedures, at Licensor’s standard rates at a location to be mutually determined by the Parties. Licensee shall limit use of the licensed software to its employees who have been appropriately trained.

10. Governing Law. Any allegation that the Licensor has breached this Agreement shall be governed by the Contract Disputes Act, 41 U.S.C. § 7101 et seq. Any dispute under this License may be resolved only in a forum expressly authorized by federal law for that dispute. The statute of limitations for, and the resolution of, such disputes will be governed by applicable federal law.

11. General. This Agreement may be modified or amended solely in writing by both Parties. The provisions of this Agreement shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this Agreement or any of the rights granted therein without the prior written consent of Licensor. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive termination of this Agreement. This Agreement is separate and distinct from any services associated with the software delivered hereunder.

**SCHEDULE A**

The Licensed Subject Matter consists of the following:

**A. Licensed Software.**

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**B. Licensed Documentation.**

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**C. License Fee.** The License Fee of $_________ is payable upon the Effective Date of this Agreement.

**D. Delivery.** Licensor shall deliver the licensed subject matter electronically within thirty (30) days of the Effective Date of this Agreement.

**E. Terms and Conditions.** The terms and conditions applicable to term software licenses (special item number 132-32), perpetual software license (special item number 132-33) and maintenance as a service (Special item number 132-34) of general purpose commercial information technology software per GSA Schedule GS-35F-0511T.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Nutanix ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently perform under the Schedule Contract.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be public to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its own bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 577(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT:

DO NOT ORDER OR PURCHASE THE SOFTWARE
DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN “ACCEPT” BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE
DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT

This Agreement is between You, on behalf of the company, partnership or business entity that You represent (“You” or “Your”) and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as “Nutanix”).

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You must not cause, encourage or permit any third party to do any of the foregoing.

If You believe that any of the foregoing restrictions are prohibited by Federal law, You agree to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, on such use of the Software, or offer to provide alternatives to ensure that Nutanix’s proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix’s proprietary rights.

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Term and Termination. This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

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Confidentiality. "Confidential Information" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to retain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.
Technical Information. You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services.

Compliance with Laws: Export Control. Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Non-Personal List on the U.S. State Department Specially Designated Nationals or Debarred list; and (2) You will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

Governing Law. To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive Federal laws of the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

Miscellaneous. If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties’ original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement, together with the terms of the GSA Schedule Contract, constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words “includes” and “including” and the abbreviation “e.g.” will be deemed to be followed by the words “without limitation”.

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EXHIBIT A - Support Terms & Conditions

SOFTWARE SUPPORT. Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer’s term of Support which may include bug fixes, patches releases, and major updates (“Releases”), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix’s discretion. Any Releases may only be installed as an update to the Customer’s original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the GSA Schedule Contract of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from http://support.nutanix.com. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.

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HARDWARE SUPPORT. Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time (“TDT”), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix’s TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer’s location is remote and/or if common carriers encounter delays or require special transportation arrangements reaching Customer’s site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix’s option. Defective parts must be returned to Nutanix. If Customer has purchased Nutanix no-return disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement without affecting Customer’s reasonable use.

SOFTWARE SUPPORT. Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer’s production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product...
features are unavailable with no acceptable workaround, but Customer’s production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer’s production use is continuing; P4 — all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer’s problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix’s sole discretion), Nutanix will provide on-site technical support in Nutanix’s discretion, and if so provided in Nutanix’s discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer’s problem was not caused by Nutanix Products and if the onsite Support was requested by Customer, then Nutanix may invoice Customer Nutanix’s then-current daily time and materials rate under the GSA Schedule price list.

EXCLUSIONS. Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix’s official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

CONDITIONS TO NUTANIX’S SUPPORT OBLIGATIONS. Customer needs to do the following as a condition to Nutanix’s provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer’s only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer’s site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix’s automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer’s site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer’s systems data, information and other materials reasonably required by Nutanix for the Support ("Customer Materials"), the accuracy of which is Customer’s responsibility. Subject to Customer’s rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein.; Customer will have no other rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix’s right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer’s data in order to perform Nutanix’s obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for any party’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.

RESTATEMENT OF SUPPORT. If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix’s certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days; (ii) the pro rata Support fees that would have been payable at Nutanix’s then applicable annual rate of Support for the period the Products were not covered by Support; and (iii) the Support fees for the annual period commencing upon the reinstatement of Support.

NON-TRANSFERABILITY. If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix’s then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in each case at Nutanix’s then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer’s remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix’s sole and absolute discretion.

RELATIONSHIP OF THE PARTIES. Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.

ENGLISH. All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et to Nutanix les documents connexes soient rédigés en anglais selon la volonté exprimée des parties.

CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at www.nutanix.com/support.

EXHIBIT B – LIMITED WARRANTY

EQUIPMENT. Nutanix warrants solely to the Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the “Hardware Warranty Period”). Nutanix’s entire liability, and Customer’s sole and
exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a
reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the
Product and refund the portion of any remaining term of Support for the Product. If Customer has purchased Nutanix's no-return disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix’s property. Nutanix will not be responsible for Customer’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at www.nutanix.com/support.

REPLACEMENT PARTS. All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

SOFTWARE. Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix’s official Product specifications for
the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or
error free, or that all defects can be corrected. Nutanix’s entire liability, and Customer’s exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

SERVICES. Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform
within ten (10) of the date on which such failure first occurs. Nutanix’s entire obligation, and Customer’s exclusive remedy, under this warranty will be for Nutanix, at Nutanix option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

EXCLUSIONS. Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix’s typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

WARRANTY DISCLAIMER. EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF Limited Warranties Page
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

HAZARDOUS USE RESTRICTION. THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION. 8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at www.nutanix.com/support.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached OpenGov, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   - **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
   
   - **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
   
   - **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
   
   - **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
   
   - **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
   
   - **Equitable Remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
   
   - **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
   
   - **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
   
   - **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
   
   - **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
   
   - **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
OPENGOV, INC.

**OPENGOV, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

1. SOFTWARE SERVICES

1.1 Subject to the terms and conditions of these OpenGov Terms and Conditions (the “Agreement”), OpenGov will use commercially reasonable efforts to perform the software services (the “Software Services”) identified in the applicable Software Agreement entered into by OpenGov and Ordering Activity (“Software Agreement”).

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1.2 Ordering Activity understands that OpenGov’s performance depends on Ordering Activity timely providing OpenGov with a copy of the Ordering Activity’s chart of accounts in .csv or .xls format. In addition, Ordering Activity agrees to provide OpenGov with five or more years of general ledger data, also in .csv or .xls format, including budget data for the current year and actual expense and revenue data for past years. Any dates or time periods relevant to OpenGov’s performance will be extended appropriately and equitably to reflect any delays caused by Ordering Activity’s failure to timely deliver any such materials. OpenGov shall not be liable for any delays in performance under this Agreement resulting from Ordering Activity’s failure to meet these obligations.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 This is a contract for access to the Software Services and Ordering Activity agrees not to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Software Services, documentation or data related to the Software Services, except to the extent such a restriction is limited by applicable law; modify, translate, or create derivative works based on the Software Services; or copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit, transfer, or encumber rights to the Software Services; or remove any proprietary notices.

2.2 Ordering Activity will use the Software Services only in compliance with all applicable laws and regulations (including, but not limited to, any export restrictions).

2.3 Ordering Activity shall be responsible for obtaining and maintaining any equipment and other services needed to connect to, access or otherwise use the Software Services and Ordering Activity shall also be responsible for (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) for all uses of Ordering Activity user accounts with or without Ordering Activity’s knowledge or consent.

3. OWNERSHIP

OpenGov retains all right, title, and interest in the Software Services and all intellectual property rights (including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature) therein.

4. RESERVED.

5. DATA LICENSE

Ordering Activity grants OpenGov a non-exclusive, transferable, perpetual, worldwide, and royalty-free license to use any data or information submitted by Ordering Activity to OpenGov for the development of new software or the provision of the Software Services.

6. RESERVED.

7. RESERVED.

8. WARRANTY AND DISCLAIMER

8.1 OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Software Services shall be performed in a professional and workmanlike manner in accordance with generally prevailing industry standards.

8.2 Ordering Activity represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; (ii) it owns all right, title, and interest in and to all data provided to OpenGov for use in and in connection with this Agreement, or possesses the necessary authorization thereto; and (iii) OpenGov’s use of such materials in connection with the Software Services will not violate the rights of any third party.

8.3 OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED “AS IS” AND OPENGOV DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

9. RESERVED.

10. RESERVED.
This End User License Agreement ("EULA") is between the Open Text Inc. ("OT") and the Government Ordering Activity ("Licensee"), and is effective on the last signature date ("Effective Date").

OT and Licensee agree as follows:

1.0 DEFINITIONS

“Affiliate” means any entity controlled by, controlling, or under common control with a party to this EULA, including an entity of the procuring federal agency. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA.

“Claim” means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights of which OT is aware existing under the laws of the Covered Countries;

“Covered Countries” means Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, New Zealand, Norway, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and the United States.

“Documentation” means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available to OT customers by OT;

“Licensee” means a Government Ordering Activity or End User of the U.S. Government who purchases services and/or supplies through the issuance of a task order, delivery order and contract. A Licensee is not a government employee, or person acting on behalf of the Federal Government in his or her personal capacity.

“Government Ordering Activity” means here any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

“License Documents” means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications available at www.opentext.com/agreements, and any other documents provided by OT setting out permitted uses of the Software;

“License Fees” means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

“License Model” means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software;

“License Model Schedule” for each individual Software License means the schedule entitled “License Model Schedule” attached hereto as Exhibit A.

“Physical Media” means the physical media or hardware containing or enabling Software, such as a compact disc; “Reseller” means an authorized OT reseller;

“Software” includes software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee; and may, where the meaning so implies, refer to all of the Software or portions thereof; “Software License” means a license for the Software granted under this EULA to the Licensee;

“Support Software” means all maintenance and support software, updates, upgrades, patches, fixes, modifications, , or new versions of the Software provided to Licensee pursuant to an OT maintenance and support program, together with all related Documentation provided to Licensee pursuant to such program;

“Taxes” means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software under this EULA, except taxes imposed on OT’s income;

“Third Party Software” means software products owned and licensed directly by third parties to the end user;

“Transaction Document” includes: a) a written government task or delivery order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, or d) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

2.0 OWNERSHIP OF THE SOFTWARE

2.1 Ownership. None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

3.0 LICENSE GRANT

3.1 Grant of License. Except as otherwise stated in the License Documents and subject to Licensee’s payment of the License Fees, OT grants to Licensee a worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license
(unless otherwise stated in the License Model Schedule) to download, install and execute the Software identified in the applicable Transaction Document subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.

3.2 Applicable License Models. The License Model and any restrictions for use of the Software will be stated in the Transaction Document.

3.3 Allocation of Licenses. Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to an entity of the procuring federal agency, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

4.0 AUTHORIZED REPRODUCTIONS

4.1 Software and Documentation. Subject to the applicable License Model for the Software licensed hereunder, OT agrees that Licensee will have the rights to 1) use or copy for use Software licensed with computer(s) for which it was acquired, including use at the applicable Government installation to which the computer(s) may be transferred; 2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative; 3) reproduced for safekeeping (archived) or backup purposes; 4) disclose to and reproduce for use by support service contractors, subject to the restrictions set forth in the contract, and 5) use or copy for use with a replacement computer. Licensee may reproduce copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee may not modify the Documentation. Documentation may: (a) only be used to support Licensee’s use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

5.0 RESTRICTIONS

5.1 General Restrictions. Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means, to any unauthorized party; (b) rent, loan or use the Software for service bureau or timesharing purposes, or in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.

5.2 Further Restrictions. Licensee will not disclose to any unauthorized persons results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (w) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (x) in the design, construction, operation or maintenance of any nuclear facility; (y) medical or surgical applications; or (z) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law and granted herein, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.

5.3 Derivative Works. Licensee is prohibited from creating any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work based on, incorporating, or using, the original Software. Notwithstanding, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA (“Licensee Software”). As between Licensee and OT, Licensee shall own all software prepared by Licensee using Licensee Software, except such portions of same which consist of Software which portions shall be excluded from the definition of “Licensee Software”, shall remain solely owned by OT and/or OT's licensors, and shall be used by Licensee in accordance with the terms of this EULA for the sole purpose of Licensee conducting Licensee's internal business operations and not for any other purpose (including redistribution).

5.4 Interfacing and Interactive Software. Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

6.0 ORDERING SOFTWARE LICENSES

6.1 Direct Orders. Any supplies or services to be furnished under this EULA shall be ordered by issuance of delivery orders or task orders that shall be submitted directly to OT.

6.2 Orders through an OT Reseller. Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply to the correct License Model.

6.3 Risk of Loss and Shipping Terms. The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT from OT's shipping facility or made available to Licensee for electronic download.

6.4 Invoicing And Payment. OT may invoice Licensee for License Fees. All License Fees due to OT by Licensee are due and payable in accordance with the terms and conditions of contract GS-35F-0480J.

6.5 Over Usage. OT may invoice Licensee for fees and payable by Licensee due to use of Software or access to the Software in excess of the number or type of Software Licenses negotiated and granted by OT and purchased by Licensee under the government contract.

7.0 OT Support and Maintenance.

7.1 OT Support and Maintenance Program. All Support Software provided to Licensee under an OT maintenance or support program is governed by this EULA. The provision of maintenance and support services by OT will be governed by the then-current version of the applicable OT Software Maintenance Program Handbook (available upon request or at www.opentext.com/agreements).
8.0 Audits and Noncompliance.

8.1 Audit. During the term of this EULA, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (no less than 30 days) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee’s responses to the questionnaire accurately and fully reflect Licensee’s usage of the Software. Furthermore, subject to government security requirements, OT may once per year audit Licensee’s records to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT’s audit team accurately respond in a reasonable timeframe to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee’s usage of the Software.

8.2 Conduct. OT will coordinate with the Licensee’s authorized representative and/or Contracting Officer the date and time to conduct such audit. Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee’s business. OT will provide Licensee with 15 days prior notice of each audit. OT will comply with all applicable data protection regulations.

8.3 Noncompliance. If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses. Discrepancies found in an audit may result in a charge by OT or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at 522.212-4(d); no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process. Any audit requested by OT will be performed at OT’s expense, without reimbursement by the Government.

9.0 LIMITED WARRANTIES

9.1 Limited Software Warranty. OT warrants to Licensee that Software: (a) will be free of all known viruses at the time of first delivery; and (b) will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery. OT’s entire liability, and Licensee’s sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct, repair or work around the portion of the Software giving rise to such breach within a commercially reasonable time. In the event OT is unable to fulfill or comply with the requirements of this entire paragraph 9.1, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach.

9.2 Warranty Exclusions. The warranties do not apply to any breach caused by: (a) any unauthorized change to the Software, except where the changes were made by OT through Support Software; (b) Licensee’s failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium such as internet connections, used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

9.3. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT’S LICENSORS, MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.

9.4 Inability to Exclude Warranties. If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT’s total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section and as expressly available under federal law.

10.0 OT INFRINGEMENT INDEMNITY

10.1 Infringement Claims.

Any clause of this EULA requiring the OT or licensor to defend or indemnify Licensee is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

OT shall indemnify the Licensee and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this EULA, provided OT is reasonably notified of such claims and proceedings.

10.2 Licensee Obligations. Licensee shall notify OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT’s interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retention of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded, for which all avenues of appeal have been exhausted, or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

10.3 Licensee’s Continued Use. If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization. If OT or licensor believes the ordering activity to be in breach of the EULA it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).
11.0 LIMITATION OF LIABILITY

11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF
THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL,
CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS,
LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.

11.2 LIMITATION OF LIABILITY. OT’S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF LICENSE FEES
PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT
THIS SECTION. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from OT’s negligence; (2) for
fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under an applicable FAR, GSAR or
Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

11.3 DISCLAIMER. THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF
ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED
IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN
IF LICENSEE’S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW OT’S
LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.

12.0 TERMINATION

12.1 Termination for Default by either party will be handled in accordance with FAR Subpart 12.302 and 12.4 FAR and Part 49, where applicable, and any
breach is handled in accordance with The Contract Disputes Act.
12.2 Effect of Termination or Expiration. Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a
term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must
either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee’s possession or control. Within 15
days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any
terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

13.0 MISCELLANEOUS PROVISIONS

13.1 Confidentiality. Information exchanged under this EULA will be treated as confidential if identified as such at disclosure or if the circumstances
of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or
exercising rights under this EULA and may only be shared with employees, agents, or contractors with a need to know such information. Confidential
information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains
confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without
obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency.
OT recognizes that federal agencies are subject to the Freedom of Information Act (FOIA) (5 USC 552), which requires that information that does not
fail under certain exceptions must be released when requested. OT acknowledges and agrees to release information that courts of competent
jurisdiction may require to be released in accordance with the Freedom of Information Act (FOIA) (5 USC 552), despite being characterized as
“confidential” by OT.

13.2 Automated Verification. The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the
Software License, and may contain devices or functionality to monitor Licensee’s compliance with this EULA.
13.3 Developer Tools. OT is not responsible or liable for Licensee’s development or use of additional software code or software products
(“Licensee Software”) using software developer tools licensed by OT.
13.4 Independent Contractors. OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.
13.5 Waiver, Amendment, Assignment. Any amendment of this EULA must be in writing and signed by both parties. OT may not assign,
transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of
control, operation of law, or otherwise, without the prior written consent of the Contracting Officer. Neither party will be deemed to have waived any
of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized
representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in
contravention of this section will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the
benefit of the respective successors and assigns of the parties.
OT or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other
financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third
party makes payment (e.g., use of the credit card), OT may not assign its rights to receive payment under this contract.

13.6 Governing Law. This EULA is governed by the federal laws of the United States excluding (a) its conflicts or choice of law rules, and (b) the
United Nations Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version,
adopted by any state, does not apply to this EULA.

13.7 Force Majeure. OT shall be excused from delay if the occurrence for nonperformance is beyond the reasonable control of OT such in the
cause of a force majeure such as Acts of God, or the public enemy, acts of the ordering activity in either its sovereign or contractual capacity, fires,
floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers.
13.8 Severability. If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

13.9 Export Laws. The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

13.10 Omitted

13.11 Attribution Notices. Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software. Licensee is not liable for the disclosure, use, or reproduction of such Software that was delivered with omitted markings.

13.12 Resale of Third Party Software. The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

13.13 Entire License Agreement. The executed License Documents, the underlying GSA Schedule Contract, the Schedule Pricelist and any applicable purchase, task or delivery Orders, and Statement of Works including all exhibits and attachments, if any, set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and unexecuted written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents unless expressly executed by bilateral agreement, or which conflict with the License Documents are void.

13.14 Third Party Rights. This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

13.15 Legal Review and Interpretation. Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section. The parties confirm that this Agreement and all related documentation is and will be in the English language.

13.16 Notices. Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party’s address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT’s general counsel at 275 Frank Tompa Drive, Waterloo, Ontario Canada, N2L 0A1.
2.5. Certain Services may contain or require the use of Separately Licensed Third-Party Technology. Customer is responsible for complying with the notices in connection with such Separately Licensed Third-Party Technology, and such notices will not bind the Ordering Activity to any Third-Party terms unless the terms are provided for review and agreed to in writing by all parties. The third-party owner, author or provider of such Separately Licensed Third-Party Technology retains all ownership and Intellectual Property rights to the ORock Infrastructure, Services, including ORock Software and Ancillary Programs, Separately Licensed Third-Party Technology, and to anything developed or delivered by or on behalf of ORock under this Agreement. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

2.6. As part of certain Services, ORock may provide Customer with access to Third Party Content within the ORock Infrastructure. The type and scope of any Third-Party Content is defined in the Order(s). The Third-Party owner, author or provider of such Third-Party Content retains all ownership and Intellectual Property rights in and to that content, and such Third-Party Content may have additional terms applicable to such content as specified by such third-party owner, author or provider.

OWNERSHIP AND RESTRICTIONS

3.1. Customer retains all ownership and Intellectual Property rights in and to Customer Content, Customer Hardware, and Customer Applications, except as expressly provided herein. ORock or its licensors retain all ownership and Intellectual Property rights to the ORock Infrastructure, Services, including ORock Software and Ancillary Programs, Separately Licensed Third-Party Technology, and to anything developed or delivered by or on behalf of ORock under this Agreement. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

3.2. Customer may not, or cause or permit others to:

remove or modify any program markings or any notice of ORock's or its licensors' proprietary rights;
make the programs or materials resulting from the Services (excluding Customer Content and Customer Applications) available in any manner to any third party for use in the third party’s business operations (unless such access is expressly permitted for the specific Services Customer has acquired);
modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the ORock Infrastructure or the Services (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by programs), or access or use the ORock Infrastructure or Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to ORock;
perform or disclose any benchmark or performance tests of the Services, including the ORock Software;
perform or disclose any of the following security testing of the ORock Infrastructure or the Services without ORock’s prior written consent: the ORock Assessment, network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and Customer makes every reasonable effort to prevent unauthorized third parties from accessing the Services.

3.3. The rights granted to Customer under this Agreement are also conditioned on the following:

3.4. ORock makes no representations or warranties of any kind, express or implied, with respect to the Services, ORock Infrastructure, or ORock Software.

4. THE SERVICES

4.1. The Services are subject to and governed by the Service Descriptions applicable to the Services subscribed and described in executed Order(s). At ORock’s discretion and at ORock’s expense, customer agrees to have a qualified third party conduct an ORock Assessment (audit) for compliance with the Service Descriptions, of the Customer’s intended use of the Services, including, but not limited to, any applicable Separately Licensed Third-Party Technology which is licensed by Customer or any Third-Party Software. Such ORock Assessment will be made pursuant to the terms set forth on Service Descriptions provided on the quote and accepted order. Customer acknowledges that use of the Services in a manner not consistent with the Service Descriptions on the Order may adversely affect Services performance and/or may result in additional fees in accordance with the GSA Pricelist. If the Services permit Customer to exceed the ordered quantity (e.g., limits on counts for Users, sessions, storage, compute, data transport, etc.), then Customer is responsible for promptly purchasing additional quantity to account for Customer’s excess usage and will be invoiced by ORock accordingly. Any such assessment will not happen more than once in a 12-month period and will be subject to applicable Government Security requirements.

4.2. ORock may make non-material changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) from time to time during the Services Period, including to reflect changes in technology, industry practices, governmental requirements, changes in applicable standards, patterns of system use, security, privacy, and availability of Third-Party Content. The Service Descriptions are subject to change at ORock’s discretion; however, ORock changes to the Service Descriptions will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Services Period.

4.3. The Order(s) will specify the Data Center Location in which the applicable Customer Hardware, Customer-Controlled Infrastructure, including, but not limited to any Customer Content, Separately Licensed Third-Party Technology which is licensed by Customer, and Customer Applications will reside on the ORock Infrastructure. As described in the order, Service Descriptions and to the extent applicable to the Services that Customer has ordered, ORock will provide production, test, quality assurance, and backup systems within the Customer Environment. ORock and its Affiliates may perform certain aspects of Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide. ORock will remain responsible for work performed by its Affiliates and/or subcontractors.

4.4. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered, for any Services options offered by ORock for the original Services ordered and for any additional Services. Any additional Services ordered during the Services Period will be co-terminus with the Services on the original Order unless otherwise provided on the Order.

4.5. In the event that the Customer desires to utilize ORock’s Federal Authorization Application Services (“FAAS”), Customer and ORock will enter into a separate Professional Services Agreement in the form attached hereto as Schedule A, which will define the services to be performed in one or more statements of work. ORock may also perform certain Services in accordance with the terms of other professional services agreements to be mutually agreed upon between Customer and ORock.

USE OF THE SERVICES

5.1. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, Separately Licensed Third-Party Technology and Customer Applications, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. Customer is also responsible for controlling against unauthorized access to Customer-Controlled Infrastructure, except to the extent such unauthorized access is caused directly by ORock’s breach of its obligations under this Agreement. Customer shall ensure that Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications are free from malware, including without limitation, viruses, trojan horses and worms, that could affect the Services, ORock Infrastructure, ORock Software or any ORock Customers. By associating Customer’s and Users’ usernames, passwords and accounts with ORock, Customer accepts responsibility for the timely and proper termination of User records in Customer’s local (intranet) identity infrastructure or on Customer’s local computers. Customer is responsible for any actions taken by their Users in the CustomerControlled Infrastructure. ORock is not responsible for any harm caused by Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not confidentially maintained or were not terminated on a timely basis in Customer’s local identity management infrastructure or Customer’s local computers. Customer is responsible for all activities that occur under Customer’s and Users’ usernames, passwords or accounts or as a result of Customer’s or Users’ access to the Services, and Customer agrees to notify ORock immediately of any unauthorized use of the Services, Customer-Controlled Infrastructure, or Customer Applications.
5.2. Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Customer Content, Customer Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters; (e) constitute an infringement of Intellectual Property or other proprietary rights, or (f) otherwise violate applicable Laws. In addition to any other rights afforded to ORock under this Agreement, ORock reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the temporary removal or disablement of access to such material. ORock shall have no liability to Customer if ORock takes such action; however, permanent removal or disablement of access to such material requires the Ordering Activity’s written consent or must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). Customer shall have sole responsibility for the obtaining appropriate consent for use, confidentiality, accuracy, quality, integrity, availability, legality, reliability, appropriateness and ownership, of all of Customer Content and Customer Applications.

5.3. Customer is required to accept all Patches, bug fixes, updates, maintenance and service packs (collectively, “Patches”) necessary for the proper function and security of the Services and the ORock Infrastructure, including for the ORock Software, as such Patches are generally released by ORock. Except for emergency or security-related maintenance activities, ORock will coordinate with its customers regarding the scheduling of application of Patches, where possible, based on ORock’s next available standard maintenance window.

5.4. Reserved.

FEES AND TAXES

6.1. All fees payable to ORock in accordance with the GSA Pricelist are due net 30 from the invoice receipt date which will not be issued until access is provided to Customer. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this agreement. ORock shall state separately on its invoices that taxes are excluded from the fees and the Ordering Activity agrees to either pay the amount of the taxes to ORock or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6.2. Customer understands that Customer may receive multiple invoices for the Services it ordered. Invoices will be submitted to Customer pursuant to ORock's invoicing policy.

6.3. Customer agrees and acknowledges that it has not relied on the future availability of any services, programs or updates in entering into the payment obligations in the Order(s); however, the preceding does not relieve ORock of its obligation during the Services Period to deliver Services that Customer has ordered per the terms of this Agreement.

SERVICES PERIOD; END OF SERVICES

7.1. Services provided under this Agreement shall be provided for the Services Period defined in the Order(s), unless earlier suspended or terminated in accordance with this Agreement or the Order.

7.2. Upon the end of the Services, Customer no longer has rights to access or use the Services, including the associated ORock Software and ORock Infrastructure; however, at Customer’s request, and for a period of up to ninety (90) days after the end of the applicable Services or such later date as mutually agreed between the parties, ORock will make available to Customer, Customer Content and Customer Applications as existing in the ORock Infrastructure on the date of termination. Customer will continue to pay for the Services during such ninety (90) day period at the then current GSA pricelist fees being charged to the Customer. At the end of such ninety (90) day period, and except as may be required by Law, ORock will delete or otherwise render inaccessible by Customer any of the Customer-Controlled Infrastructure, Customer Hardware, Customer Content and Customer Applications that remain in the ORock Infrastructure.

7.3. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ORock shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.4. If this Agreement is terminated by Customer for any other reason, Customer will pay to ORock, on the date of termination, the total amount due for all Services ordered and performed under the Agreement up to the date of termination.

7.5. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive including, but not limited to, Sections 3, 6, 7, 8, 11, 12, 15, 16, 18, 19, 20 and 21.

7.6. As part of the Services, ORock shall develop and upon Customer’s approval, implement and perform all functions and services necessary to accomplish the successful transition to Customer as described in a transition plan ("Transition Plan") attached to or incorporated within the applicable Order (the “Transition Services”). ORock shall perform the Transition Services in accordance with the Transition Plan without causing a disruption to Customer’s business. The Transition Plan shall include a Transition acceptance test for each Service that is transitioned that will ensure a complete and satisfactory transition of Services. ORock shall perform a post-transition review within thirty (30) days of the transition completion date to ensure stabilization of the transitioned environment. Any separate fees for the Transition Services shall be as set forth in the applicable Order and/or GSA pricelist.

7.7. During the period ORock is providing Transition Services, ORock shall maintain a “critical path analysis” for the transition project that will indicate the impact on the transition project time schedule and transition milestones based upon any occurrences of acts, omissions or breaches by ORock, Customer or third parties. ORock’s critical path analysis shall be provided to and reviewed with Customer on at least a weekly basis and shall be presented to the management of Customer at each meeting during the transition project.

7.8. Certain Orders may require the transfer or management of equipment, facilities or third-party contracts to ORock. All such transfers or management responsibilities will be identified in the

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NONDISCLOSURE

8.1. By this Agreement, the parties may have access to information that is confidential to one another (“Confidential Information”). The parties each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to Customer Content, Customer Applications residing in the ORock Infrastructure, the specifications or other details of the ORock Infrastructure made available to Customer, all information clearly identified as confidential at the time of disclosure and all information that by its nature or the circumstances of its disclosure a reasonable person would conclude is confidential and/or proprietary. Other than Customer’s use of the Cloud Services, Customer shall not provide any Personal Data (except business card information of Customer representatives), personally identifiable information, personal health information or other similar information to ORock.

8.2. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party, without the use of Confidential Information, as evidenced by written documentation.

8.3. The parties each agree not to disclose each other’s Confidential Information to any third party other than as set forth in the following sentence for a period of five (5) years from the termination of this Agreement; however, Customer’s Confidential Information that resides within the Customer-Controlled Infrastructure shall not be available to ORock in unencrypted form, and ORock shall not itself provide any such Customer Content to a third party, except as directed by Customer as part of Customer’s use of the Services. Each party may disclose Confidential Information only in connection with the Services and then only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. ORock will protect the confidentiality of Customer Content or Customer Applications residing in the ORock Infrastructure in accordance with the ORock security practices applicable to the Order(s).

8.4. Nothing shall prevent either party from disclosing any information, including Customer Content or Confidential Information under this Agreement as required by Law; provided, however, in the event of the foregoing, the disclosing party shall provide advance written notification to the nondisclosing party.

8.5 Notwithstanding the foregoing, ORock recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

DATA PROTECTION AND SECURITY

9.1. In performing the Services, ORock will comply with the ORock Services Privacy Policy, which is attached hereto as Schedule F. and applicable to the Ordering Activity’s purchase of Cloud Services hereunder.

9.2. ORock shall be responsible for maintaining the Services and the ORock Base Infrastructure in accordance with the following:

a) The Cloud Services and the ORock Base Infrastructure have each been Validated as set forth in the ORock Assessment.

i. ORock will not materially reduce the overall level of controls identified in the ORock Assessment during the Services Period; ii. ORock will provide the Customer access to the ORock Assessment; and iii. Validation of each of the Cloud Services and the ORock Base Infrastructure demonstrates the Cloud Services and the ORock Base Infrastructure to be consistent with the NIST Framework for Improving Critical Infrastructure Cybersecurity.

9.3. Customer is responsible for the security of Customer-Controlled Infrastructure, and the Customer Applications. As a condition to using the Customer-Controlled Infrastructure in connection with the Services or ORock Base Infrastructure, Customer must satisfy, as determined in ORock’s sole discretion, the minimum requirements set forth in the Procedures Manual. Customer is responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer’s configuration and use of the Customer-Controlled Infrastructure, Customer Content and Customer Applications, including, but not limited to, any viruses, Trojan horses, worms or other programming routines contained in Customer Content or Customer Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

9.4. ORock’s Data Processing Terms for ORock Services (the “Data Processing Terms”), which is available at Schedule B and incorporated herein by reference, describes the parties’ respective roles for the processing and control of Customer Content that Customer provides to ORock as part of the Services. ORock will act as a data processor and will act on Customer’s instruction concerning the treatment of Customer Data residing in the ORock Infrastructure, including the Customer-Controlled Infrastructure, as specified in this Agreement, the Data Processing Terms and the applicable Order. Customer agrees to provide any notices and obtain any consents related to Customer’s use of the Services and ORock’s provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Customer Content.

9.5. COMPLIANCE WITH LAWS.

All Services hereunder shall be performed by ORock in compliance with all Laws as they relate to delivery of the Services or ORock’s business or operations, ("ORock Laws"). Without limitation to the foregoing, ORock shall reasonably cooperate with and assist Customer in complying with all Laws, including without limitation export Laws and import Laws of the United States and other countries, as applicable to Customer in connection with its receipt of the Services. Customer is responsible for complying with all Laws in connection with their use of the Cloud Services. Customer will conduct appropriate assessments, when combined with the ORock Assessment, will ensure that all Laws are met by Customer’s use of the Services. The Services are designed to allow Customer to configure the Customer-Controlled Infrastructure, when combined with the ORock Base Infrastructure, to comply with Laws related to privacy and data security, including, but not limited to, Gramm-Leach-Bliley Act of 1999 ("GLBA"), the Federal Information Security Management Act of 2002 (“FISMA”), and Massachusetts 201 CMR 17.00, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (collectively, “Privacy and Security Laws”). The Services are designed such that the Customer Content will be encrypted and ORock will not have access...
to the encryption keys; therefore, ORock will not have access to Customer Content and will not have the ability to take action relating to the Services necessary to implement the standards and requirements of HIPAA and regulations issued thereunder, any other Laws applicable to the exchange of health information by electronic means, GLBA, FISMA, and any other applicable Privacy and Security Laws regarding the privacy of information pertaining to individuals (collectively, Privacy and Security Compliance). Except as set forth herein, Customer shall be responsible for all such Privacy and Security Compliance. If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232q ("FERPA") apply, ORock acknowledges that ORock may be a “school official” with “legitimate educational interests” in Customer Content, as those terms have been defined under FERPA and its implementing regulations, and ORock agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Customer understands that ORock may possess limited or no contact information for Customer’s students and students’ parents. Consequently, Customer will be responsible for obtaining any parental consent for any User’s use of the Services that may be required by applicable Law and to convey notification on behalf of ORock to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student’s parent) of any judicial order or lawfully issued subpoena requiring the disclosure of Customer Content in ORock’s possession as may be required under applicable Law. If Customer is a “covered entity” or a “business associate” and includes “protected health information” (as each of those terms are defined in 45 CFR § 160.103) in Customer Content, Customer’s Agreement includes execution of the HIPAA Business Associate Agreement ("BAA"), the full text of which identifies the Services to which it applies. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of ORock’s employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify the legal department of ORock at legalcompliance@orocktech.com. Federal Acquisition Regulation flowdowns, as applicable. See Schedule C.

If ORock becomes aware of any unlawful access to any Customer Content stored on ORock Infrastructure, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Content (each a “Security Incident”), ORock will (1) promptly notify Customer of the Security Incident, but in any event within seventy two (72) hours; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notification(s) of Security Incidents will be delivered to one or more of Customer’s administrators by any means ORock selects, including via email. It is Customer’s sole responsibility to ensure Customer’s administrators maintain accurate contact information on each applicable Services portal. ORock’s obligation to report or respond to a Security Incident under this section is not an acknowledgement by ORock of any fault or liability with respect to the Security Incident.

ORock shall, upon Customer’s direction or governmental order, permit applicable government authorities to audit Customer Content and the Services and ORock Infrastructure, to the extent either directly relates to Customer Content. Customer hereby agrees and consents to such access and audits. In lieu of any audit or assessment by Customer of the ORock Infrastructure, ORock will provide Customer and any regulator of Customer who so requires, access to the ORock Assessment, subject to ORock’s reasonable security processes and requirements which may include coming to ORock’s premises for review. By purchasing the Services, Customer agrees to the Data Processing Terms set forth as Schedule B.

As set forth above, the Services are designed to allow Customer to configure the Customer-Controlled Infrastructure and Customer Applications, when combined with the ORock Base Infrastructure, to keep all of Customer Content that is Nonpublic Personal Information (as defined in the GLBA) and the Interagency Guidelines Establishing Information Security Standards adopted by the federal regulators of depository institutions (the “Security Standards”) confidential and will allow such maintenance and use of such information in accordance with applicable Laws, rules, and regulations, including but not limited to the GLBA. ORock acknowledges the importance of maintaining the security and integrity of Nonpublic Personal Information and agrees to take all steps reasonably necessary to provide Customer with the means to configure the Customer-Controlled Infrastructure to prevent the unauthorized disclosure or use of the Nonpublic Personal Information and to prevent the Nonpublic Personal Information from entering the public domain. ORock hereby represents and warrants that it is familiar with the Security Standards and agrees to provide Customer with the means to configure the Customer-Controlled Infrastructure to implement and maintain through the Services Period appropriate security measures designed to meet the objectives of the Security Standards, which include (i) ensuring the security and confidentiality of customers’ Nonpublic Personal Information; (ii) protecting against anticipated threats and hazards to the security and integrity of such information; (iii) protecting against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customers; and (iv) ensuring the proper disposal of customers’ Nonpublic Personal Information.

WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

10.1. ORock warrants that it will perform Services in all material respects as described in the Service Description. If the Services provided to Customer were not performed as warranted, Customer must promptly provide written notice to ORock that describes the deficiency in the Services (including, as applicable, the service request number notifying ORock of the deficiency in the Services).

10.2. In the event that Customer places Customer Hardware in any of the Customer-Controlled Infrastructure, the warranties contained in this Agreement shall be invalid, the Data and Security Provisions set forth in Section 9 will be inapplicable, the Service Level Agreement, or SLAs, set forth in Schedule D will be inapplicable, and the Support Agreement set forth in Schedule E will be inapplicable, and ORock will not provide any indemnification related to the Customer Hardware or ORock’s Infrastructure.

10.3. ORock does not guarantee that (a) the Services will be performed error-free or uninterrupted, or that ORock will correct all Services errors, (b) the Services will operate in combination with Customer Content or Customer Applications, or with any other hardware, software, systems or data not provided by ORock, (c) the Services will meet Customer’s Requirements, specifications or expectations and (d) the functionality or security of Customer-Controlled Infrastructure. Customer acknowledges that ORock does not control the transfer of data over communications facilities, including the internet, and that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. ORock is not responsible for any delays, delivery failures, or other damage resulting from such problems. ORock is not responsible for any issues related to the performance, operation or security of the Services that arise from Customer Content, Customer Applications or Third-Party Content. ORock does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of Third-Party Content or Separately Licensed Third-Party Technology, and disclaims all liabilities arising from or related to Third Party Content and Separately Licensed Third-Party Technology.
10.4. For any breach of the Services warranty, Customer’s exclusive remedy and ORock’s entire liability shall be the correction of the deficient Services that caused the breach of warranty, or, if ORock cannot substantially correct the deficiency in a commercially reasonable manner, Customer may end the deficient Services and ORock will refund to Customer the fees for the terminated Services that Customer pre-paid to ORock for the period following the effective date of termination.

10.5. To the extent not prohibited by Law, these warranties are exclusive and there are no other express or implied warranties or conditions, including, but not limited to, for software, hardware, systems, networks or environments or for merchantability, satisfactory quality, non-infringement, quiet enjoyment, fitness for a particular purpose or any warranties arising out of any course of dealing or usage of trade.

10.6. Reserved.

LIMITATION OF LIABILITY

Neither ORock nor its Affiliates will be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of revenue or profits, data, or data use, even if a party has been advised of the possibility of such damages. Further, neither ORock nor any of its Affiliates or licensors will be responsible for any compensation, reimbursement, or damages arising in connection with: (a) Customer’s inability to use the Services, including as a result of any (i) termination or suspension of this Agreement or Customer’s use of or access to the Services in accordance with the FAR and Contract Disputes Act, (ii) [reserved], or, (iii) without limiting any obligations under the SLA, any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures or other interruptions; (b) the cost of procurement of substitute goods or services; or (c) CustomerControlled Infrastructure. ORock’s maximum liability for all damages arising out of or related to this agreement and the Order(s), whether in contract or tort, or otherwise, shall in no event exceed, in the aggregate, the amount of the Contract Price paid. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from O’Rock’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

INDEMNIFICATION

12.1. Indemnification by ORock. Unless prohibited by applicable Law, ORock shall indemnify, defend and pay for any third party damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) awarded by a court of competent jurisdiction or agreed to in a settlement arising from or related to a third party’s claim that the Services, ORock Software or ORock Base Infrastructure infringes, misappropriates or otherwise violates the third party’s US patents or copyrights (collectively “Intellectual Property Rights”). The foregoing indemnification is contingent upon Customer (i) notifying ORock promptly in writing, not later than 30 days after Customer receives notice of the claim (or sooner if required by applicable Law); (ii) giving ORock control of the defense and any settlement negotiations; and (iii) giving ORock the information, authority and assistance ORock needs to defend against or settle the claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

12.2. Indemnification Exclusions. Notwithstanding anything to the contrary in this Agreement, ORock shall not indemnify, defend or hold Customer harmless from or against Losses, to the extent the Losses arise from or relate to (i) Customer configuration of Customer-Controlled Infrastructure; (ii) Customer’s alterations or unauthorized use of the Services, ORock Software or ORock Base Infrastructure; (iii) Customer using a version of the Services, ORock Software or ORock Base Infrastructure which has been superseded, if the Losses could have been avoided by using an unaltered current version which was made available to Customer; (iv) Customer continuing to use the applicable Services, ORock Software or ORock Infrastructure after the end of the license, or (v) Customer Hardware, Customer Content, or Customer Applications. ORock will not indemnify Customer for any portion of an infringement claim that is based upon the combination of the Services, ORock Software or ORock Infrastructure with any products or services not provided by ORock, including without limitation the Customer-Controlled Infrastructure, Customer Applications, Separately Licensed Third-Party Technology, and Customer Hardware. ORock will not indemnify Customer to the extent that an infringement claim is based on Customer Content, Third Party Content or any other material from a third-party portal or other external source that is accessible to Customer within or from the Services. ORock will not indemnify Customer for infringement caused by Customer’s actions against any third party if the Services, ORock Software or ORock Infrastructure as delivered to Customer and used in accordance with the terms of this Agreement would not otherwise infringe any third-party Intellectual Property rights. ORock will not indemnify Customer for any Intellectual Property infringement claim(s) known to Customer at the time Customer’s rights to Services, ORock Software or ORock Infrastructure are obtained.

12.3. Infringement Claims. If ORock believes or it is determined that the Services, ORock Software or ORock Infrastructure or any part thereof may have violated a third party’s Intellectual Property Rights, ORock may choose to either modify the Services, ORock Software or ORock Infrastructure to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, ORock may end the license for, and require Customer to cease use of, in whole or in part, the Services, ORock Software and/or ORock Infrastructure and refund any unused, prepaid fees Customer may have paid to ORock for such Services, ORock Software and/or ORock Infrastructure. If such action materially affects ORock’s ability to meet its obligations under the relevant Order, then ORock may, at its option and upon 60 days prior written notice, terminate or modify the Order.

12.4. Reserved. Customer Controlled Infrastructure, Customer Content, Customer Hardware or Customer Applications.

12.5. This Section 12 provides Customer’s exclusive remedy for any claims or damages related to ORock’s alleged infringement, misappropriation or other violation of a third-party Intellectual Property right.

THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

13.1. The Services may enable Customer to link to, transmit Customer Content to, or otherwise access, other web sites, content, products, services, and information of third parties. Customer acknowledges and agrees that ORock does not control and is not responsible for such web sites or any such
content, products, services and information accessible from or provided through the Services, and Customer bears all risks associated with access to and use of such websites and Third-Party Content, products, services and information.

13.2. Any Third-Party Content made accessible by ORock in or through the ORock infrastructure or Services is provided on an “as-is” and “as available” basis without any warranty or any kind, and ORock hereby disclaims all warranties, whether express or implied, relating to Third Party Content. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and Customer acknowledges that ORock is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, ORock reserves the right to take remedial action if any such content violates applicable restrictions under this Agreement, including the removal of, or disablement of access to, such content.

13.3. Customer acknowledges that: (i) the nature, type, quality and availability of Third-Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. ORock may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third-Party Content, Third Party Services or APIs. If any third-party ceases to make its Third-Party Content or APIs available on reasonable terms for the Services, as determined by ORock in its sole discretion, ORock may cease providing access to the affected Third-Party Content or Third-Party Services without any liability to Customer. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Customer’s obligations under this Agreement or the applicable Order, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

SERVICES TOOLS AND ANCILLARY PROGRAMS

14.1. ORock may use Tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Customer’s service requests. The Tools will not collect or store any of Customer Content or Customer Applications residing in the ORock Infrastructure, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Customer Content and Customer Applications) may also be used to assist in managing ORock’s product and service portfolio, to help ORock address deficiencies in its product and service offerings, and for license and Services management. Customer hereby grants ORock the right to use Customer Content and related metadata for the purposes identified above, the purposes identified in Section 15 below and for any related purpose. For purposes of this paragraph, ORock will use Customer Content and related metadata in an aggregated form.

14.2. As part of the Services, ORock may provide Customer with on-line access to download certain Ancillary Programs for use with the Services. If ORock does not specify Separate Terms for such Ancillary Programs, Customer shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate Customer’s access to, operation of, and/or use of the Services, subject to the terms of this Agreement and the Order(s). ORock’s right to use such Ancillary Programs will terminate upon the earlier of ORock’s notice (which may be through posting on the portal), the end of the Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

SERVICE ANALYSES

ORock may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the ORock Infrastructure in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as “Service Analyses”). ORock may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content or Confidential Information in a form that could serve to identify Customer or any individual. ORock retains all Intellectual Property rights in Service Analyses.

EXPORT

Export Laws and regulations of the United States and any other relevant local export Laws and regulations apply to the Services. Customer agrees that such export Laws govern Customer’s use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer agrees to comply with all such export sanctions, Laws and regulations including the International Traffic in Arms Regulations, and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, and uses or end users and “deemed export” and “deemed re-export” regulations. Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these Laws, or will be used for any purpose prohibited by these Laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

FORCE MAJEURE

Excusable delays shall be governed by FAR 52.212-4(f).

GOVERNING LAW AND JURISDICTION

This Agreement is governed by the substantive and procedural of the Federal Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

NOTICE

19.1. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a dispute with ORock or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: ORock Technologies, Inc., 11921 Freedom Dr., Suite 1180, Reston, VA 20190; Attention: Contract Administrator.

19.2. To request the termination of Services in accordance with this Agreement, Customer must submit a service request to ORock at the address specified in the Order(s).
19.3. ORock may give notices applicable to ORock’s Services customer base by means of a general notice on the ORock portal for the Services and notices specific to Customer by electronic mail to Customer’s e-mail address on record in ORock’s account information or by written communication sent by first class mail or pre-paid post to Customer’s address on record in ORock’s account information. Customer agrees that it is solely responsible for maintaining accurate and up-to-date contact information on record with ORock.

ASSIGNMENT

Customer or ORock may not assign, directly or by operation of Law, this Agreement or give or transfer the Services (including the ORock Software) or an interest in them to another individual or entity without the prior written approval of the other party. Any attempted assignment in violation of the foregoing shall be void. The foregoing shall not be construed to limit the rights Customer may otherwise have with respect to Separately Licensed Third-Party Technology licensed under open source or similar license terms.

OTHER

21.1. ORock may modify this Agreement and any such modification to this agreement shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating these terms.

21.2. ORock is an independent contractor and the parties agree that no partnership, joint venture, or agency relationship exists between ORock and Customer. Each party will be responsible for paying our own employees, including employment related taxes and insurance ORock shall remain liable for the actions and services provided by ORock’s business partners, including any third-party firms retained by Customer to provide consulting services or applications that interact with the Services.

21.3. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

21.4. Except for actions for nonpayment or breach of ORock’s proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than six (6) years after the cause of action has accrued.

21.5. Customer shall obtain at Customer’s sole expense any rights and consents from third parties necessary for Customer Content, Customer Applications, and Third-Party Content, as well as other vendor’s products provided by Customer that Customer uses with the Services, including such rights and consents as necessary for ORock to perform the Services under this Agreement.

21.6. Customer agrees to provide ORock with all information, access and full good faith cooperation reasonably necessary to enable ORock to provide the Services and Customer will perform the actions identified in the Procedures Manual.

21.7. Customer remains solely responsible for Customer’s regulatory compliance in connection with Customer’s use of the Services. Customer is responsible for making ORock aware of any technical requirements that result from Customer’s regulatory obligations prior to entering into an Order governed by this Agreement. ORock will cooperate with Customer’s efforts to determine whether use of the standard ORock Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by ORock or changes to the Services.

21.8. ORock may audit Customer’s use of the Services not more than once in a 12-month period (e.g., through use of software tools) to assess whether Customer’s use of the Services is in accordance with the Order(s). Customer agrees to cooperate with ORock’s audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer’s normal business operations and shall be subject to Government Security requirements. Customer agrees to pay within 30 days of receipt of invoice any fees applicable to Customer’s or Users’ use of the Services in excess of Customer’s rights. Customer agrees that ORock shall not be responsible for any of Customer’s reasonable costs incurred in cooperating with the audit.

21.9. The purchase of Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other Order. Customer understands that Customer may purchase Services, Professional Services, or other service offerings, programs or products independently of any other Order. Customer’s obligation to pay under any Order is not contingent on performance of any other service offerings or delivery of programs or products.

21.10. Customer agrees that this Agreement and the information which is incorporated into this Agreement by written reference, together with the applicable Order, the underlying GSA Schedule Contract, and Schedule Pricelist, is the complete Agreement for the Services ordered by Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

21.11. In the event of any inconsistencies between the terms of an Order and the Agreement, the Order shall take precedence. No third-party beneficiary relationships are created by this Agreement. The failure by ORock to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by ORock must be in writing to be effective.

APPENDIX 1

AGREEMENT DEFINITIONS

“Affiliate” means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person (ii) any officer, director, manager, member or trustee of such Person, or (iii) any Person who is an officer, director, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms "controlling," "controlled by," or "under common control
with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least 50% of the directors, managers, or persons exercising similar authority with respect to such Person or entities.

“Ancillary Program” means any Software agent or tool owned or licensed by ORock that ORock makes available to Customer for use or download as part of the Services for purposes of facilitating Customer’s access to, operation of, and/or use with, the ORock Infrastructure. The term “Ancillary Program” does not include Separately Licensed Third-Party Technology.

“APIs” has the meaning set forth in Section 13.3.

“BAA” has the meaning set forth in Section 9.5(c).

“Confidential Information” has the meaning set forth in Section 8.1.

“Cloud Services” means all ORock Cloud Services as specified on customer quote and Order. The term “Cloud Services” does not include Professional Services.

“Customer Applications” means all Software, including, but not limited to, Third Party Software that Customer or Users provide, load onto, or create using, any Services. Services under this Agreement, including ORock Software, ORock Base Infrastructure, ORock Intellectual Property, are not included in the definition of “Customer Applications.”

“Customer Content” means all Customer Data and any additional data and information provided by third parties.

“Customer-Controlled Infrastructure” means the ORock Infrastructure that is provided to Customer as a part of Autonomous Cloud and/or other Cloud Services that allows Customer, as a feature of the Services, to configure or otherwise implement changes to the ORock Infrastructure for Customer’s purposes only, as set forth in the Procedures Manual.

“Customer Data” means all data and information (other than Software), whether held by Customer or Customer’s Affiliates, including all of Customer’s and its Affiliates’ Confidential Information, whether in written or electronic form, submitted to ORock by Customer or any of Customer’s Affiliates, or obtained, developed or produced by ORock in connection with the Services or otherwise reside in, or run on or through, or are used on the ORock Infrastructure, including, without limitation, information relating to Customer’s, or any of Customer’s Affiliates’, underwriting information, process and methods, Customer Data, financial data, suppliers, employees, technology, operations, facilities, consumer markets, text, files, images, graphics, illustrations, audio, video, photographs, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Customer Data includes, any data derived from data created as a result of the Services, and any data that is produced as a result of calculations using, in whole or in part, Customer Data.

“Customer Hardware” means any Infrastructure provided by Customer to be placed in an ORock facility as part of the Customer-Controlled Infrastructure that is not otherwise approved in writing by ORock and in advance of installation.

“Data Center Location” refers to the physical location (s) of the ORock Infrastructure ordered by Customer. The Data Center Location applicable to the Services is set forth in the Order(s).

“Data Processing Terms” has the meaning set forth in Section 9.4.

“Environment” means the ORock Base Infrastructure and the Customer-Controlled Infrastructure that the Customer has ordered pursuant to the terms of an Order.

“FAAS” has the meaning set forth in Section 4.5.

“FAR” means the Federal Acquisition Regulations.


“FERPA” has the meaning set forth in Section 9.5(c).

“FISMA” has the meaning set forth in Section 9.5(b).

“Framework for Improving Critical Infrastructure Cybersecurity” means the Framework for Improving Critical Infrastructure Cybersecurity Version 1.0 issued by NIST pursuant to Executive Order 13636, as such Framework may be amended during the Services Period.

“GLBA” means Title V of the Gramm-Leach-Bliley Act of 1999 and the various regulations promulgated thereunder by the federal and state regulators of financial institutions.

“HIPAA” has the meaning set forth in Section 9.5(b).

“Infrastructure” means the core physical or hardware-based resources and components, including all information technology infrastructure devices, equipment and technologies, that comprise a data center. Infrastructure includes, as applicable, servers, computers, routers, switches, firewalls, biometric security systems, storage area network (SAN), flash storage, backup/tape storage, data center management software and related software. Infrastructure also includes non-computing resources, such as: power and cooling devices, air conditioners or generators, physical server racks and chassis, cables, and internet networking connection devices and entry points.
“Intellectual Property” means any and all Intellectual Property rights existing under any law or regulations, including without limitation patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law (together with all of the goodwill associated therewith), unfair competition law, publicity rights law, or privacy rights law, other proprietary rights, and applications, renewals, extensions and restorations of any of the foregoing, now or hereafter in force and effect worldwide. For purposes of this definition, rights under patent law shall include rights under any and all patent applications and patents (including letters patent and inventor’s certificates) anywhere in the world, including, without limitation, any provisional applications, substitutions, extensions, supplementary patent certificates, reissues, renewals, divisions, continuations in part (or in whole), continued prosecution applications, requests for continued examination, and other similar filings or stages thereof provided for under the Laws of the United States.

“Laws” means all applicable Laws (including common law), statutes, codes, rules or regulations, reporting requirements, ordinances, order, decree, judgment, consent decree, settlement agreement, or other pronouncement having the effect of law of the United States, any foreign country, or any domestic or foreign state, county, city or other political subdivision, including those promulgated, interpreted or enforced by any governmental or regulatory authority, or the NYSE or other self-regulatory authority, including, without limitation, HIPAA, GLBA, any other applicable Laws or regulations regarding the privacy of individuals’ information, the Foreign Corrupt Practices Act of 1977 (“FCPA”), immigration Laws, and import and export Laws.

“Losses” has the meaning set forth in Section 12.1.

“NIST” means National Institute of Standards and Technology.


“Order” or “Order(s)” means the order or multiple orders for Services as set forth in a quote and executed by the applicable parties.

“ORock Assessment” means the assessment for certain Services described in the Service Descriptions set forth in the statement of work and/or Order.

“ORock Base Infrastructure” means the ORock Infrastructure that is not Customer-Controlled Infrastructure. For all Services purchased under FedRAMP, there is no Customer-Controlled Infrastructure.

“ORock Infrastructure” means the Infrastructure that ORock uses to provide the Services to Customer. ORock Software, Third Party Content, Customer-Controlled Infrastructure, Customer Content and Customer Applications may be hosted in the ORock Infrastructure.

“ORock Laws” has the meaning set forth in Section 9.6(a).

“ORock Software” refers to the Software owned or licensed by ORock, and to which ORock grants Customer access as part of the Services, including Program Documentation, and any Software updates provided as part of the Services. The term “ORock Software” does not include Separately Licensed Third-Party Technology.

“Patches” has the meaning set forth in Section 5.3.

“Person” means any individual, Company (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, or other entity.

“Personal Data” means, unless otherwise defined under and international, federal or state Privacy or Data Security Law, any data about an individual maintained by ORock, including (1) any data that can be used to distinguish, identify, or trace an individual, directly or indirectly, by reference to that data such as, but not limited to: (i) name; (ii) identification number (including a social security number); (iii) date and place of birth; (iv) the name of the individual’s parent or other family members; (v) biometric records; (vi) location data the individual or the individual’s family; (vii) online identifier, including persistent identifiers that can be used to recognize a user over time and across different websites or online services; (viii) any other data, alone or combined with other information, that is linked or linkable to an individual, such as but not limited to medical, financial, educations, and employment data; or (ix) any data specific to the physical, physiological, genetic, mental, economic, culture or social identity of the individual. The term “Personal Data” includes (i) data:

created or received by a health care provider, health plan, employer or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual and (ii) provided by an individual to a financial institution, resulting from any financial transaction or financial service with an individual or otherwise obtained by a financial institution.

“Privacy and Security Compliance” has the meaning set forth in Section 9.5(b).

“Privacy and Security Laws” has the meaning set forth in Section 9.5(b).

“Procedures Manual” means the documentation provided to customers related to the operation of the Cloud Services.

“Professional Services” means, collectively, the consulting and other professional Services which Customer has ordered. Professional Services will be subject to a separate agreement between ORock and Customer. The term “Professional Services” does not include Cloud Services.

“Program Documentation” refers to the program user manuals for the ORock Services and ORock Software for applicable Services, as well as any help windows and readme files for such ORock Software that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the ORock Services and ORock Software.

“Security Incident” has the meaning set forth in Section 9.6.

“Security Standards” has the meaning set forth in Section 9.9.
“Separate Terms” refers to separate license terms that are specified in the Order, readme or notice files, or otherwise specified by ORock and that apply to Separately Licensed Third-Party Technology.

“Separately Licensed Third-Party Technology” refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement, and which may include, without limitation, open source Software. Customer Hardware may be Separately Licensed Third-Party Technology.

“Services” means, collectively, the Cloud Services implementation, training, support and other Services related to delivery of the Services that Customer has ordered and that ORock is obligated to provide pursuant to this Agreement.

“Service Analyses” has the meaning set forth in Section 15.

“Service Descriptions” means the descriptions that are applicable to the Services under the Order(s) and other descriptions referenced or incorporated in such descriptions as set forth in a statement of work and/or Order.

“Service Level Agreement” or “SLA” means the Service Level Agreement set forth on Schedule D.

“Support Agreement” means the Support Agreement attached hereto as Schedule E.

“Services Period” refers to the period for which Customer ordered Services as specified in the Order(s).

“Software” means any applications, operating systems, tools, utility programs, communications software, computer software languages, interfaces and any other computer programs (i.e., any set of statements or instructions, whether or not in a machine readable medium, to be used directly or indirectly in a computer in order to bring about a certain task or result), and documentation and supporting materials relating thereto, in whatever form or media, together with all corrections, improvements, modifications, updates, updates and new releases thereof.

“Spillage” NIST Special Publication 800-53 Revision 4, Security and Privacy Controls for Federal Information Systems and Organizations defines “Spillage” as: Information Spillage refers to instances where either classified or sensitive information is inadvertently placed on information systems that are not authorized to process such information. Such information spills often occur when information that is initially thought to be of lower sensitivity is transmitted to an information system and then is subsequently determined to be of higher sensitivity. At that point, corrective action is required. The nature of the organizational response is generally based upon the degree of sensitivity of the spilled information (e.g., security category or classification level), the security capabilities of the information system, the specific nature of contaminated storage media, and the access authorizations (e.g., security clearances) of individuals with authorized access to the contaminated system.

“Third Party Content” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of ORock and made available to Customer through, within, or in conjunction with Customer’s use of, the Services. Examples of Third-Party Content include data feeds, rss feeds from blog posts, and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third-Party Technology.

“Third Party Services” has the meaning set forth in Section 13.3.

“Tools” has the meaning set forth in Section 14.1.

“Users” means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer’s behalf to use the Services in accordance with this Agreement and the Order(s).

“Validated” means that ORock has engaged an independent third party to assess the effectiveness of controls to the applicable NIST 800-53 controls listed in the ORock Assessment.

SCHEDULE A

FORM OF PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is made as of the date last signed below between ORock Technologies, Inc., a Delaware corporation with its principal place of business at 11921 Freedom Dr., Suite 1180, Reston, VA 20190 (“ORock”), and the Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”).

Professional Services.

OROCK shall provide consulting, integration, implementation, design, development, architecture reviews and other work under the terms and conditions of this Agreement (the “Services”), as specified in one or more statements of work that OROCK and Customer may enter into from time to time (each, an “SOW”).

Payment.
Payment. In consideration of the Services rendered under this Agreement, Customer shall pay OROCK as set forth in each SOW. All payments hereunder are due net 30 days from the receipt date of the invoice. Overdue payments are subject to a late interest charge governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. ORock shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Reserved.


Work Product. “Work Product” means the deliverable materials, including documentation and customized software, delivered by OROCK to Customer under a SOW, excluding any of Customer’s Confidential Information that may be included in such deliverables.

Ownership of Work Product and Other Intellectual Property. Unless otherwise specified in the SOW, OROCK is the exclusive owner of all software (including the Work Product and revisions, modifications and enhancements thereto) and any other specifications, documentation, ideas, know-how, techniques, processes, inventions or other Intellectual Property that OROCK or its subcontractors may develop, conceive or deliver under this Agreement, including all patents, copyrights and other Intellectual Property rights thereto.

License for Work Product. OROCK hereby grants, and Customer hereby accepts, a perpetual (unless terminated as set forth in Section 8(C)), non-exclusive, non-transferable, royalty-free license to use and modify the Work Product solely for Customer’s internal business purposes. Customer may make a reasonable number of copies of the Work Product for backup, testing, disaster recovery or archival purposes only, so long as Customer also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained on the Work Product and does not remove any such marks from the original.

Restrict on License for Work Product.

Restrictions on Access, Copying and Sublicensing. Customer shall not cause or permit (a) access (except to its employees, agents and consultants with a “need to know”) who are bound in writing by non-disclosure obligations suitable to protect OROCK’s interests in the Work Product but no less restrictive than Customer’s obligations herein), (b) copying (except as set forth in Section 3(C) above), or (c) sublicensing or other dissemination of the Work Product, in whole or in part, to any third party without OROCK’s prior written consent.

Third Party and Other Proprietary Software. If the Work Product contains or is bundled with third party software or other proprietary ORock Software, then (a) such software is governed by OROCK’s standard license agreement for such software or other applicable license agreement under which such software is provided to Customer, and (b) Customer may use such third-party software or other proprietary ORock Software solely for the purpose such software is included with the Work Product.

4. Warranty.

Services Warranty. OROCK warrants that the Services it provides hereunder will be of a professional quality conforming to generally accepted industry standards and practices. If Customer discovers a deficiency in the Services, then Customer shall, within 30 days after completion of the deficient services, submit to OROCK a written report describing the deficiency in reasonable detail, and OROCK shall re-perform the deficient Services. If OROCK is unable to re-perform the Services, then, upon Customer’s request, OROCK shall refund any payments that Customer has made for such Services.

WARRANTY DISCLAIMER: OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, OROCK DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER’S SOLE REMEDY FOR BREACH OF SUCH EXPRESS LIMITED WARRANTIES IS RE-PERFORMANCE OR REFUND AS SET FORTH IN THIS SECTION 4.

5. Additional Obligations.

Insurance. OROCK shall maintain, at its own expense, sufficient insurance to cover its performance of Services hereunder, including but not limited to workers’ compensation insurance when required by law.

OROCK Personnel. OROCK shall ensure that its employees and contractors performing the Services are reasonably qualified and experienced. OROCK shall use its best efforts to replace any OROCK employee or contractor that Customer reasonably requests to be replaced. OROCK conducts background investigations of all its employees.


EXCEPT FOR SECTION 7, THE LIABILITY OF EACH PARTY AND ITS LICENSORS, SUPPLIERS AND SUBCONTRACTORS IS LIMITED IN ANY EVENT TO ACTUAL DIRECT DAMAGES TO THE EXTENT CAUSED SOLELY BY SUCH PARTY’S ACTS OR OMISSIONS, UP TO A MAXIMUM LIABILITY EQUAL TO THE AMOUNT OF THE CONTRACT PRICE. IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS, SUPPLIERS OR SUBCONTRACTORS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, LOST BUSINESS PROFITS, OR LOSS, DAMAGE OR DESTRUCTION OF DATA, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. OROCK EXPRESSLY DISCLAIMS ALL LIABILITY ASSOCIATED WITH ANY THIRD-PARTY OPEN SOURCE CODE INCLUDED IN THE WORK PRODUCT. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY, DEATH, OR FRAUD IS HEREBY INTENDED. Neither party shall bring any action, whether in contract or tort, including negligence, arising out of or in connection with this Agreement, more than six (6) years after the cause of action has accrued.

7. Confidentiality.

Confidential Information. As a result of the relationship entered into by the parties under this Agreement, the parties acknowledge that they may from time to time require or gain access to information that is confidential or proprietary to one another. All information disclosed by a party hereunder that (1) is in
writing and marked with an appropriately restrictive legend indicating the confidential or proprietary nature of the information, (2) is disclosed orally and reduced to a writing marked with an appropriately restrictive legend promptly after the oral disclosure, or (3) by its nature or under the circumstances of its disclosure should reasonably be understood to be confidential is referred to herein as “Confidential Information.” Customer agrees that it will not provide any personally identifiable information to OROCK.

Obligations. The receiving party (1) shall hold all Confidential Information in confidence; (2) shall use the Confidential Information only for the purpose of performing its obligations under this Agreement; (3) shall reproduce the Confidential Information only to the extent necessary for such purpose; (4) shall restrict disclosure of the Confidential Information to its employees, consultants, agents and representatives with a need to know and who are bound to protect the confidentiality of such Confidential Information (and shall advise such employees, agents and representatives of the obligations assumed herein); and (5) shall not disclose or cause to be disclosed the Confidential Information to any third party without prior written approval of the disclosing party, except as allowed under (4) above.

Exceptions. The foregoing restrictions do not apply to Confidential Information that (1) is or becomes a part of the public domain through no wrongful act or omission of the receiving party; (2) was in the receiving party’s lawful possession before the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party without reference to or in reliance on the Confidential Information; or (5) the disclosing party agrees in writing. ORock recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor. ORock makes no representations to Customer except as expressly set forth herein or in the SOW. In the event of a conflict between this Agreement and a SOW, the SOW shall govern.

Reserved.

8. Termination.

Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, ORock shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Survival. Except as otherwise specified in Section 8(C) below, Sections 3, 4, 6, 7, 8(B), 8(C) and 9 survive any termination of this Agreement.

Effect of Termination for Breach. If Customer materially breaches Section 3 above, then, ORock may bring the matter to the Contracting Officer. Upon ORock’s request Customer shall, at ORock’s option, either return to ORock, or destroy and certify in writing to ORock that it has destroyed, the original and all copies, in whole or in part, in any form, of the Work Product and any other Confidential Information disclosed by ORock hereunder.


Export Laws. The Work Product may subject to certain export control Laws and regulations that may restrict exports, re-exports and disclosures to foreign persons of cryptographic items. Performance of this Agreement is expressly made subject to any export Laws, regulations, orders or other restrictions imposed by any country or governmental entity on the Work Product or information relating thereto. Notwithstanding any other provision of this Agreement to the contrary, Customer shall not directly or indirectly import, export or re-export any Work Product or information pertaining thereto to any country or foreign person to which such import, export or re-export is restricted or prohibited unless Customer first secures, if applicable, an appropriate export license or other governmental approval. Customer unconditionally accepts full responsibility for compliance with these requirements.

Governing Law. The validity, construction and performance of this Agreement shall be governed by the Laws of the United States of America. The Uniform Computer Information Transactions Act does not apply to this Agreement or to Orders placed under it.

Entire Agreement; Modification. This Agreement and each SOW, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitute the entire understanding between Customer and ORock with respect to the subject matter hereof, and ORock makes no representations to Customer except as expressly set forth herein or in the SOW. In the event of a conflict between this Agreement and a SOW, the SOW governs. Terms and conditions set forth in any purchase order or other document provided by Customer to ORock that differ from, conflict with, or are not included in this Agreement or SOW are not part of any agreement between ORock and Customer unless specifically accepted by ORock in writing. This Agreement shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement of the parties hereto. The failure of either party, in any one or more instances, to enforce any of the terms of this Agreement shall not be construed as a waiver of future enforcement of that or any other term.

Assignability. Neither party may assign this Agreement, or any of its rights or obligations hereunder, without the other party’s written consent, which consent shall not be unreasonably withheld.

Severability. If any provision of this Agreement is for any reason held illegal or unenforceable, then such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect or impair the validity or enforceability of the remaining provisions of this Agreement.

Notice. All notices given by either party to the other party under this Agreement shall be in writing and personally delivered or sent by guaranteed overnight courier, by registered or certified mail, return receipt requested, to the other party’s General Counsel, at its address set forth above.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Counterparts. The parties may execute this Agreement in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Language. This Agreement has been drawn up in and shall be construed in accordance with the English language.
Independent Contractors. The relationship between Customer and ORock is solely that of independent contractors and not that of an agency, partnership, or joint venture. Neither party has the authority to represent or bind the other.

SCHEDULE B

DATA PROCESSING TERMS

The Data Processing Terms (DPT) include the terms in this section. Capitalized terms not set forth herein have the meanings ascribed to them in the Service Agreement.

The Data Processing Terms also include the “Standard Contractual Clauses,” pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of Personal Data to processors established in third countries under the EU Data Protection Directive. The Standard Contractual Clauses are enclosed as an attachment to the Data Processing Terms. In addition,

Execution of the Service Agreement includes execution of Standard Contractual Clauses, which is countersigned by ORock Technologies, Inc. (“ORock”);

The terms in Customer’s Cloud Services Agreement (“Service Agreement”), including the DPT, constitute a data processing agreement under which ORock is the data processor; and

The DPT control over any inconsistent or conflicting provision in Customer’s Service Agreement and, for each subscription, will remain in full force and effect until all the related Customer Data is deleted from ORock’s systems in accordance with the DPT.

Customer may opt out of the “Standard Contractual Clauses” or the Data Processing Terms in their entirety. To opt out, Customer must send the following information to ORock in a written notice (under terms of the Customer’s Service Agreement):

the full legal name of the Customer and any Affiliate that is opting out;

if Customer has multiple Service Agreements, the Service Agreement to which the opt out applies;

if opting out of the entire DPT, a statement that Customer (or Affiliate) opts out of the entirety of the Data Processing Terms; and

if opting out of only the Standard Contractual Clauses, a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses only.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

In the DPT, the term “Cloud Services” applies to all ORock cloud services. “Customer Data” includes only Customer Data that is provided through use of those Cloud Services.

Location of Customer Data at Rest

ORock operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its sub-processors operate such facilities. ORock does not control or limit the regions from which Customer or Customer’s end users may access or move Customer Data.

Privacy

Customer Data Deletion or Return. No more than 90 days after expiration or termination of Customer’s use of an Online Service, ORock will disable the account and delete Customer Data from the account.

Transfer of Customer Data. Unless Customer has opted out of the Standard Contractual Clauses, all transfers of Customer Data out of the European Union, European Economic Area, and Switzerland shall be governed by the Standard Contractual Clauses. ORock will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

ORock Personnel. ORock personnel will not process Customer Data without authorization from Customer. ORock personnel are obligated to maintain the security and secrecy of any Customer Data as provided in the DPT and this obligation continues even after their engagement ends.

Subcontractor Transfer. ORock may hire subcontractors to provide certain limited or ancillary services on its behalf. ORock is not a controller or processor of Customer Data for purposes of data protection law. ORock personnel will not process Customer Data without the express authorization of Customer.

Security

### General Practices

ORock has implemented and will maintain and follow for the Cloud Services the following security measures, which, in conjunction with the security commitments in the Service Agreement, are ORock’s only responsibility with respect to the security of Customer Data.

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<tr>
<th>Domain</th>
<th>Practices</th>
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</table>
| **Organization of Information Security** | **Security Ownership.** ORock has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.  
**Security Roles and Responsibilities.** ORock personnel with access to Customer Data are subject to confidentiality obligations.  
**Risk Management Program.** ORock performs a risk assessment before initially processing the Customer Data or launching the Cloud Services service.  
ORock retains its security documents pursuant to its retention requirements after they are no longer in effect. |
| **Asset Management**           | **Asset Inventory.** ORock maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to ORock personnel authorized in writing to have such access.  
**Asset Handling** ORock does not classify Customer Data.  
ORock imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.  
ORock personnel must obtain ORock authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside ORock’s facilities. |
| **Human Resources Security**   | **Security Training.** ORock informs and trains its personnel about relevant security procedures and their respective roles. ORock also informs and trains its personnel of possible consequences of breaching the security rules and procedures. ORock will only use anonymous data in training. |
| **Physical and Environmental Security** | **Physical Access to Facilities.** ORock limits access to facilities where information systems that process Customer Data are located to identified authorized individuals only.  
**Physical Access to Components.** Unless otherwise disclosed by customers, ORock maintains only limited records of the authorized senders/ recipients, date and time, and that media is loaded to the Cloud Services.  
**Protection from Disruptions.** ORock uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.  
**Component Disposal.** ORock uses industry standard processes to delete Customer Data when it is no longer needed. |
<table>
<thead>
<tr>
<th>Communications and Operations Management</th>
<th><strong>Operational Policy.</strong> ORock maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data. <strong>Data Recovery Procedures</strong> On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), ORock maintains single or multiple copies of Customer Data from which Customer Data can be recovered based on the particular Cloud Services. ORock stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located. ORock has specific procedures in place governing access to copies of Customer Data. ORock reviews data recovery procedures at least every six months. ORock logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process. <strong>Malicious Software.</strong> ORock has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks. <strong>Data Beyond Boundaries</strong> ORock encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks. ORock restricts access to Customer Data in media leaving its facilities. <strong>Event Logging.</strong> ORock logs, and enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.</th>
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<tbody>
<tr>
<td>Access Control</td>
<td><strong>Access Policy.</strong> ORock maintains a record of security privileges of individuals having access to Customer Data. <strong>Access Authorization</strong> ORock maintains and updates a record of personnel authorized to access ORock systems that contain Customer Data. ORock deactivates authentication credentials that have not been used for a period not to exceed six months. ORock identifies those personnel who may grant, alter or cancel authorized access to data and resources. ORock ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers, log-ins and authentication credentials.</td>
</tr>
<tr>
<td>Domain Practices</td>
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<tr>
<td><strong>Least Privilege</strong></td>
<td>Technical support personnel are only permitted to have access to Customer Data when needed. ORock restricts access to Customer Data to only those individuals who require such access to perform their job function. <strong>Integrity and Confidentiality</strong> ORock instructs ORock personnel to disable administrative sessions when leaving premises ORock controls or when computers are otherwise left unattended. ORock stores passwords in a way that makes them unintelligible while they are in force. <strong>Authentication</strong> ORock uses industry standard practices to identify and authenticate users who attempt to access information systems. Where authentication mechanisms are based on passwords, ORock requires that the passwords are renewed regularly. Where authentication mechanisms are based on passwords, ORock requires the password to be at least twelve characters long. ORock ensures that de-activated or expired identifiers are not granted to other individuals. ORock monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password. ORock maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed. ORock uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage. ORock may but is not required unless set forth in the Cloud Services, use customer data to enable additional authentication of Users that extends beyond current industry standard practices. <strong>Network Design</strong>. ORock has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.</td>
</tr>
<tr>
<td><strong>Incident Response Process</strong></td>
<td>ORock maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the party reporting the breach, and to whom the breach was reported, and the procedure for recovering data. For each security breach that is a Security Incident, notification by ORock shall be made without unreasonable delay and, in any event, within 5 business days. A “Security Incident” is defined as any unlawful access to any Customer Data stored on ORock’s equipment or in ORock’s facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data. ORock tracks, or enables Customers to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time. <strong>Service Monitoring</strong>. ORock security personnel verify logs at least every six months to propose remediation efforts if necessary.</td>
</tr>
<tr>
<td><strong>Information Security Incident Management</strong></td>
<td><strong>Business Continuity Management</strong> ORock maintains emergency and contingency plans for the facilities in which ORock information systems that process Customer Data are located. ORock’s redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original or last-replicated state from before the time it was lost or destroyed.</td>
</tr>
</tbody>
</table>

**Cloud Services Information Security Policy**
Cloud Services and the ORock Base Infrastructure follow a written data security policy (“Information Security Policy”) that has been Validated against NIST Special Publication 800-53.
Subject to non-disclosure obligations, ORock will make each Information Security Policy available for review by Customer, along with other information reasonably requested by Customer in writing regarding ORock security practices and policies, all subject to ORock’s policies and procedures, which include onsite review.

Customer is solely responsible for reviewing each Information Security Policy and making an independent determination as to whether it meets Customer’s requirements.

If the Standard Contractual Clauses apply, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

ORock Audits of Cloud Services
For each Cloud Service, ORock will conduct audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including Personal Data), as follows:

Where a standard or framework provides for audits, an audit of such control standard or framework will be initiated at least annually for the Cloud Services.

Each audit will be performed according to the standards and rules of the regulatory or accreditation body for applicable controls standard or frameworks.

Each audit will be performed by qualified, independent, third party security auditors at ORock’s selection and expense.

Each audit will occur not more than once in a 12-month period and will be subject to applicable Government security requirements.

Each audit will result in the generation of an audit report (“ORock Audit Report”), which will be ORock’s Confidential Information. The ORock Audit Report will clearly disclose any material findings by the auditor. ORock will promptly remediate material findings raised in any ORock Audit Report to the satisfaction of the auditor.

If Customer requests, ORock will provide Customer with access to each ORock Audit Report so that Customer can verify ORock’s compliance with the security obligations under the DPT. The ORock Audit Report will be subject to ORock’s policies and procedures, including strict non-disclosure and onsite review requirements.

If the Standard Contractual Clauses apply, then (1) Customer agrees to exercise its audit right by instructing ORock to execute the audit as described in this section of the DPT, and (2) if Customer desires to change this instruction, then Customer has the right to do so as set forth in the Standard Contractual Clauses, which shall be requested in writing.

If the Standard Contractual Clauses apply, then nothing in this section of the DPT varies or modifies the Standard Contractual Clauses or affects any supervisory authority’s or data subject’s rights under the Standard Contractual Clauses.

SCHEDULE C
FAR FLOWDOWNS

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SCHEDULE D SERVICE LEVEL AGREEMENT

This ORock Technologies, Inc. (“ORock”, “us” or “we”) Service Level Agreement (“SLA”) is a policy governing the use of ORock’s cloud products and other product offerings under the terms of the Agreement. This SLA applies separately to each account using ORock’s cloud products and other product offerings unless otherwise provided herein, this SLA is subject to the terms of the Agreement and capitalized terms will have the meaning specified therein. The terms of this SLA may be altered in accordance with the Agreement.

Service Commitment
ORock will use commercially reasonable efforts to make each of ORock cloud service available with a Monthly Uptime Percentage (as defined below), in each case during any monthly billing cycle (the “Service Commitment”). In the event ORock cloud services do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

Definitions
“Monthly Uptime Percentage” is calculated by dividing the difference between the total number of minutes in the monthly measurement period and any Unavailability (as defined below) by the total number of minutes in the measurement period, the product of which is then multiplied by 100 to achieve a percentage. Monthly Uptime Percentage is calculated for each ORock cloud service and is calculated over a time period of one (1) month. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SLA Exclusion (defined below).

For ORock Private Autonomous Infrastructure, ORock Elastic Cloud and ORock On-Premise to Cloud, when all your running instances have no external connectivity and when all your attached volumes perform zero read write IO with pending IO in the queue.

A failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents directed or provided or performed by you;

Planned outages, scheduled and announced maintenance or maintenance windows, or outages initiated by ORock at the request or direction of Customer for maintenance, activation of configurations, backups or other purposes that require the service to be temporarily taken offline;

Unavailability of management, auxiliary or administration services, including administration tools, reporting services, utilities, third party software components not within the sole control of ORock, or other services supporting core transaction processing;

Outages occurring as a result of any actions or omissions taken by ORock at the request or direction of you;

Outages resulting from your equipment, third party equipment or software components not within the sole control of ORock;

Events resulting from an interruption or shut down of the services due to circumstances reasonably believed by ORock to be a significant threat to the normal operation of the services, the operating infrastructure, the facility from which the services are provided, access to, or the integrity of your data;

Outages due to system administration, commands, or file transfers performed by Customer User or representatives;

Outages due to denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of God, acts of civil disobedience, acts of war, terrorism, hostility, acts against parties (including carriers and ORock’s other vendors), and other force majeure events;

Inability to access the services or outages caused by your conduct, including negligence or breach of your material obligations under the Agreement, or by other circumstances outside of ORock’s control;

Lack of availability or untimely response time of you to respond to incidents that require your participation for source identification and/or resolution, including meeting your responsibilities for any services;

Outages caused by failures or fluctuations in electrical, connectivity, internet network or telecommunications equipment or lines due to your conduct or any circumstances outside of ORock’s control.

A “Service Credit” is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

Service Commitments and Service Credits
Service Credits are calculated as a percentage of the total charges paid by you (excluding professional services or other one-time fees) for ORock Cloud Services, during the affected monthly billing cycle in which the Unavailability occurred in accordance with the schedule below.

<table>
<thead>
<tr>
<th>Service Commitment: Monthly Uptime Percentage – Single Node Instantiation - (99.9%)</th>
<th>Service Credit Percentage</th>
<th>Service Commitment: Monthly Uptime Percentage – Multi-Node Instantiation - (99.99%)</th>
<th>Service Credit Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 99.9% but equal to or greater than 99.0%</td>
<td>10%</td>
<td>Less than 99.99% but equal to or greater than 99.9%</td>
<td>10%</td>
</tr>
<tr>
<td>Less than 99.0%</td>
<td>20%</td>
<td>Less than 99.9%</td>
<td>20%</td>
</tr>
</tbody>
</table>

We will apply any Service Credits only against future ORock Cloud Services payments otherwise due from you. Service Credits will not entitle you to any refund or other payment from ORock. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Agreement, your sole and exclusive remedy for any unavailability, non-performance, or other failure by ORock to provide ORock Cloud Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

Service Credit Request and Payment Procedures
To receive a Service Credit, you must submit a written claim to the ORock NOC manager at nocoperations@orocktech.com. To be eligible, the Service Credit request must be received by us at the end of the billing cycle in which the incident occurred. The following information must be included in the written Service Credit request:

- The words “SLA Service Credit Request” in the subject line;
- The dates and times of each Unavailability incident that you are claiming;

The affected ORock cloud Service instance and Data Center Location; and
Your request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

SLA Exclusions
The service level commitment does not apply to any unavailability, suspension or termination of ORock Cloud Services performance issues: (i) that result from a suspension described in the Agreement; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems that do not directly emanate from ORock Cloud Services; (iii) that result from any actions or inactions of you or any third party within the sole control of ORock; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from failures of individual instances or volumes not attributable to Unavailability; (vi) that result from any maintenance or other outage as provided pursuant to the Agreement; or (vii) arising from our suspension and termination of your right to use ORock Cloud Services in accordance with the Agreement (collectively, the “SLA Exclusions”). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our sole discretion.
SCHEDULE E
SUPPORT AGREEMENT

Hours of Service Desk Support: Phone: 1-833-376-7625
                                        eMail: nocoperations@orocktech.com
                                      7 days a week                                        24 Hours a day, 365 days a year

<table>
<thead>
<tr>
<th>Priority-(Severity)</th>
<th>Target Response</th>
<th>Target Resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - (Critical)</td>
<td>30 mins</td>
<td>1 Hour</td>
</tr>
<tr>
<td>2 - (High)</td>
<td>60 mins</td>
<td>2 Hours</td>
</tr>
<tr>
<td>3 - (Medium)</td>
<td>4 Hours</td>
<td>24 Hours</td>
</tr>
<tr>
<td>4 - (Low)</td>
<td>72 Hours</td>
<td>7 Days</td>
</tr>
</tbody>
</table>

Priority (Severity) Description

1 - (Critical)
An incident which involves service not available or a serious malfunction of the service with impact on ORock’s direct delivery to single or multiple Customers
Total loss of service to all Users and no work-around available
Loss of functionality resulting in Customer Users/workgroups being unable to access the Services
Unavailability of one or more Services

2 - (High)
An incident which involves service not available with impact on ORock’s single or multiple Customers or a serious mal-function of the service with potential impact on ORock’s direct delivery to Customers
Loss of functionality which severely impedes all or some material Services
Customer’s Users/workgroups being unable to continue with normal business processing
Partial loss of availability of one or more Services

3 - (Medium)
An incident that involves degradation or risk to quality of service with impact on one or more Customers
Issue not impeding Customers’ Users/workgroups from being able to continue with normal business processing
Potential to cause more serious issue if not investigated and addressed

4 - (Low)
An issue for which the final resolution is outside the control of ORock or does not substantially affect the Services. ORock will consider resolving the issue in a future release.
General Service related questions and requests for information.

SCHEDULE F

PRIVACY POLICY

PLEASE READ THIS DOCUMENT CAREFULLY
Introduction
ORock Technologies Inc. respects your privacy and is committed to protecting it. This privacy policy applies to https://orocktech.com ("Website") and to all products and services offered by ORock (collectively, "ORock", "ORock Platform", "We", "Us" or "Our"). This Privacy Policy describes ORock’s policies and procedures on the collection, use and disclosure of your personal data when you use the ORock Platform. It also describes the choices available to you regarding the use of, your access to, and how to update and correct your personal data. We will not use or share your confidential information with anyone except as described in this Privacy Policy. This Privacy Policy does not apply to information we collect from other sources. This website is not intended for children and we do not knowingly collect data relating to children. Information which you do not designate as confidential may be publicly available and disclosed.

It is important that you read this Privacy Policy together with any other privacy notice or fair processing notice we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your data. Our website and related services are hereinafter collectively referred to as our "services". We respect your privacy and are committed to maintaining and using any information we collect through your use of our services responsibly.

ORock is data processor for the processing of personal data in relation to ORock accounts and in relation to the use of our website. This Privacy Policy only concerns the processing for which ORock is data processor.

Please read this Privacy Policy carefully prior to accessing or using our services. If you do not agree with our policies and practices, your choice is not to use our Website. By accessing or using this Website, you agree to this Privacy Policy.

If you have any questions, please contact us at: privacy@orocktech.com.

The Information We May Collect

Our primary purpose in collecting information from or about you is to provide you with a safe, smooth, efficient, and customized experience. Depending on the way you use our services, we collect information about you that we deem necessary for providing services and features that optimize, secure, and ease your user experience with ORock.

**Personal Information or Personal Data ("PII"):** ORock may collect and process information that could be directly or indirectly associated with you; information such as your full name, company name where applicable, user name and password, phone number, email address, billing or mailing address, credit/debit card information and other information that you share with ORock. You can choose not to provide us with certain information, but that may result in you being unable to use certain features of our services because such information may be required for you to register for an account; purchase products or services; participate in a contest, promotion, or survey; ask a question; or initiate other transactions on our website.

**Payment Information:** For the purposes of billing ORock accounts, we may request your credit card and certain contact information, such as a billing address. We retain credit card information internally for all payment processing related to our services. The payment information is necessary for you to use our services and failure to provide such information may result in you not being able to use our services.

**Third Party Payment Processors:** Payments processed via the ORock Platform by third party payment processors are subject to the terms of use and privacy policies of those payment gateways and are not accessible or controlled by ORock. For payments processed via third party payment processors, we may receive information related to your payment card type and last four digits, postal code, country of origin, and payment expiration date. For additional information, we recommend that you review the third-party payment processor’s Privacy Policy.

**Mobile Application:** ORock offers a mobile application and may, depending on your privacy settings, collect certain information about you and your devices when you access our services through your mobile or other Internet connected devices. ORock does not ask for or purposefully track any precise location-based information. We use mobile analytics software to allow us to better understand the functionality of our services on your mobile or other Internet connected devices, which may record data relating to usage, performance, and download and will be treated like Demographic and Usage Data (discussed below).

**Information from Third Party Platforms:** You may allow our services to interact with one or more third party social networks or platforms (such as Facebook), which will provide data about you to us ("Platform(s)”). The information you allow ORock to access varies by Platform, and it is affected by the privacy settings you and those that you are connected with establish while using such Platforms. Platforms are operated, controlled, and maintained by third parties that are not operated, controlled, or maintained by ORock. We recommend that you read the terms of use or service and privacy policies of those Platforms to understand how they collect and treat your data and what data they might share with us or other third parties.

**Demographic and Usage Data: Cookies and Similar Technologies**

ORock may collect information through the use of cookies, HTML5 local storage, and other similar technologies.

**Cookies**

"Cookies" are alphanumeric identifiers in the form of text files that are inserted and stored by your web browser on your hard drive. ORock may set and access cookies on your computer or wireless device to track and store preferential information about you. We may gather anonymous information about Users through cookie technology on an individual and aggregate level. Such information is used within ORock internally and is only shared with third party advertisers, if any, on an aggregated or non-personally identifiable basis.

You may opt out of receiving cookies from our website by following the instructions in your web browser. Note, however, that deleting cookies or directing your browser to refuse them may limit your ability to use certain portions of our website that require cookies to function. ORock gathers certain information automatically and stores it in log files. This information may include Internet protocol (IP) addresses, browser type, operating system, and other usage information about the use of our website, including a history of the pages you view.
Non-Personal Information: Web Beacons, Action Tags and Log Files

Web Beacons: Web Beacons, also known as pixel tags and clear GIFs, (“Web Beacons”), are electronic images that allow a website to access cookies and help track marketing campaigns and general usage patterns of visitors to those websites. Web Beacons can recognize certain types of information, such as cookie numbers, time and date of a page view and a description of the page where the Web Beacons are placed. No PII about you is shared with third parties through the use of Web Beacons on our website. However, through Web Beacons, we may collect general information that will not personally identify you, such as: Internet browser, operating system, IP address, date of visit, time of visit and path taken through the website. In addition, we may also use web beacons in HTML-based emails sent to users to track which emails are opened by recipients.

Action Tags: ORock uses action tags. An action tag is a small piece of code that is placed on a webpage or in an email in order to track the pages viewed or the messages opened, the date and time when someone visited our website, the website from which the visitor came, the type of browser used, and the domain name and address of the user's Internet Service Provider. Action tags allow us to better understand how Users and visitors use the ORock Platform or browse through our pages, so that we can improve access to and navigation through the site, add or modify pages, according to our user's patterns. Action tags cannot be removed or deleted by our users, because they are part of the programming of a webpage.

Log Files: Log file information is automatically reported by your browser each time you access a web page. When you use the ORock Platform, our servers automatically record certain information that your web browser sends out whenever you visit any website. These server logs may include information such as your web request, IP address, browser type, referring/exit pages, operating system, date/time stamp, the files viewed on our site (e.g., HTML pages, graphics, etc.) and URLs, number of clicks, domain names, landing pages, pages viewed, and other similar information.

Behavioral Targeting

ORock partners with a third party to either display advertising on our website or to manage our advertising on other sites. ORock’s third party partner may use cookies or similar technologies in order to provide you advertising based upon your browsing activities and interests. If you wish to opt out of interest-based advertising click here - Unsubscribe. Please note you will continue to receive generic ads.

Do Not Track Signals

ORock does not track or use Do Not Track signals.

Note: ORock may also collect other Non-Personal Information as visitors browse our website, such as the web traffic, what pages are visited, from where visitors come, and other demographic information, such as age, gender, and search habits. We may compile this Non-Personal Information to enable statistical analysis of our services that would be used internally or with external assistance to make improvements to our website and services.

How We Use the Information We Collect & Disclosure of your PII

All organizations need a legal reason to use your personal information. If they do not have one, they cannot use such information. There are legal grounds that enable data processing, and we will use your PII in accordance with applicable data protection legislation, this Privacy Policy and the General Data Protection Regulation (2016/679/EU) (“GDPR”). Below are the most relevant grounds you should be aware of with respect to ORock’s legal bases for using or disclosing your PII:

ORock may disclose any of your information, which in some cases includes PII, in the following situations:

With your consent: We may transmit your PII to a third party when you give us express permission to do so. For example, this may occur when we complete a transaction on your behalf or at your request.

To enter into or to fulfill a contract: We may use your PII to provide you with access to your account or other products you have signed up for.

For a legitimate interest: We may use your PII where it would help achieve ORock’s business objectives or to facilitate a benefit to you or someone else. Where we want to rely on legitimate interests as a legal basis, we will carry out a balancing test between our legitimate interests and your privacy rights.

With our authorized service providers: ORock may share your PII with our authorized service providers that perform certain services and process PII on our behalf. These services may include providing customer service and marketing assistance, performing business and sales analysis, supporting our website functionality, and supporting contests, sweepstakes, surveys and other features offered through our website. These service providers may have access to PII needed to perform their functions but are not permitted to share or use such information for any other purposes.

Payment providers and your bank: For the purpose of administrating payments within our services, we may disclose your PII to third party payment providers and your bank.

With our business partners: When you make purchases, reservations or engage in promotions offered through our website, we may share PII with the businesses with which we partner to offer you those products, services, promotions, contests and/or sweepstakes.

In connection with a substantial corporate transaction, such as the sale of our business; a divestiture, merger, consolidation, or asset sale; or in the event of bankruptcy. If another company acquires ORock, that company will take on all responsibility for the information we collect, including PII, and it will assume all rights and obligations with respect to that information. Should this happen, the acquiring company may implement its own policies with respect to your information.

If we are required to disclose information by law, ORock may be obligated to disclose a User’s personal information, if directed by a court of law or other governmental entity. Without limiting the foregoing, we reserve the right to disclose such information where we have a good faith basis to believe that such action is necessary to: (a) comply with applicable laws, regulations, court orders, government and law enforcement agencies’ requests; (b) protect and defend ORock’s or third party's rights and property, or safety of ORock, our users, our employees, or others; (c) prevent, detect, investigate and take measures against criminal activity, fraud and misuse or unauthorized use of our services and/or to enforce our Terms of Use or other agreements or policies; and/or (d) protect your personal safety or property or that of the public. In the event that your information is disclosed, we will comply with the law and make commercially reasonable efforts to notify you.
Data Retention

We will save your PII until six months after you erase your user account, or otherwise exercise your right to erase your PII, unless otherwise required by law.

Access to Your Information and other rights

You are at any time, and free of charge, entitled to receive a copy of the PII that we hold about you and information about the processing thereof. Please note that in order to be able to answer your request; ORock will need to be able to determine your identity.

If you believe that any PII we are holding is incorrect or incomplete, please send an email with your specific request to privacy@orocktech.com. We will work with you to make any corrections deemed necessary. We may not accommodate a request to change information if we believe the change would violate any law or legal requirement or cause the information to be incorrect.

You have the right to request that ORock restricts the processing of your PII under certain conditions, for example, if you contest the accuracy of the PII, the processing may be restricted for a period enabling ORock to verify the accuracy of the PII or if ORock no longer needs the PII for the purposes of the processing but you require the PII for the establishment, exercise or defense of legal claims.

You have the right to have your PII deleted without undue delay and ORock is obliged to delete your PII without undue delay if, for example the PII is no longer necessary in relation to the purpose for which it was collected or otherwise processed. Please note that ORock is not obliged to delete the PII if ORock can show that the processing is necessary, for example, for the establishment, exercise or defense of a legal claim.

If you provide your email address to ORock, you will always have the opportunity to opt out of receiving email newsletters and promotions through the unsubscribe link in the email communications or by logging into and changing the preferences for your user account. We may send you other types of transactional and relationship e-mail communications, such as service announcements, administrative notices, and surveys, without offering you the opportunity to opt out of receiving them. Please note that changing information in your account, or otherwise opting out of receipt of promotional email communications will only affect future activities or communications from us. If we have already provided your information to a third party (such as a credit card processing partner) before you changed your preferences or updated your information, you may have to change your preferences directly with that third party.

You have the right to object, on grounds relating to your particular situation, at any time to ORock's processing of your PII if the processing is based on, for example, legitimate interests. If you object to such processing, ORock will no longer be entitled to process your PII based on such legal basis, unless ORock can demonstrate compelling legitimate grounds for the processing which overrides your interests, rights and freedom or if it is conducted for the establishment, exercise or defense of a legal claim.

You have, under certain conditions, the right to receive the PII concerning you and which you have provided to ORock, in a structured, commonly used and machine-readable format and have the right to transmit such PII to another data controller without ORock trying to prevent this, where ORock’s processing of your PII is based a contract or consent and the processing is carried out by automated means. In such case you have the right to request that the PII shall be transmitted from ORock directly to another data controller, where technically feasible.

You also have the right to withdraw your consent, if applicable. If you withdraw your consent, please note that this does not affect the lawfulness of the processing based on your consent before its withdrawal and that ORock may, under certain circumstances, have another legal ground for the processing and therefore may be entitled to continue the processing.

If you would like to exercise your rights, you may contact us on the contact details provided at the bottom of this Privacy Policy.

If you are unhappy with our processing of your PII you may lodge a complaint with a competent supervisory authority, for example in the country of your habitual residence, place of work or of an alleged infringement of the General Data Protection or other applicable data privacy laws.

Our Policy Concerning Children

Our Website is not intended for children under 13 years of age. Our website and services are offered and available only to you if are 18 years or older, or if you are between 13 and 18 year old and have obtained the consent of a parent or legal guardian prior to accessing the website, registering an account, or using the services. If you do not meet this eligibility requirement, you may not use our website or services. ORock does not knowingly collect or store any personal information from or about children under the age of 13. If we learn we have collected or received personal information from a child under 13 without verification of parental consent, we will delete that information in conformity with the Children's Online Private Protection Rule ("COPPA"). If you believe that ORock might have any information from or about a child under the age of 13 may submit a request to privacy@orocktech.com and request that such information be removed.

Securing Your Information

ORock takes a range of security measures designed to protect your PII and keep it confidential (unless it is non-confidential by nature) and free from any unauthorized alteration. For example, only authorized employees are permitted to access personal information, and they may do so only for permitted business functions. In addition, we use encryption in the transmission of financial information between your system and ours, and we use firewalls to help prevent unauthorized persons from gaining access to your personal information.

Where we have given you (or where you have chosen) a password for access to certain parts of our website, you are responsible for keeping this password confidential. As the safety and security of your information also depends on the precautions you take, we ask you not to share your password with anyone.

Third Parties and Other Information Collectors
Except as otherwise expressly included in this Privacy Policy, this document only addresses the use and disclosure of information we collect from you. To the extent that you disclose your information to other parties through our website, different rules may apply to their use, collection, and disclosure of the personal information you disclose to them. Since we do not control the information use, collection, or disclosure policies of third parties, you are subject to their privacy policies.

Our website may include links to third party websites. Once you have used these links to leave our website, you should note that we do not have any control over third party websites. We are not responsible for the content of such websites or the protection and privacy of any information which you provide while visiting such sites. Third-party websites are not governed by this Privacy Policy. You should exercise caution and look at the privacy policies applicable to the websites in question.

Users Outside of the United States

The services are hosted in the United States and are governed by the laws of the United States. If you are using the services outside the United States, please be aware that your information will be transferred to, stored, and processed in the United States where ORock’s servers and databases are located. By using the Sites, you consent to the transfer of information to countries outside your country of residence.

Transfer of personal information to countries outside the EU/EEA

ORock is established in New York, USA. Your PII is therefore transferred outside the European Union ("EU") and European Economic Area ("EEA"). Such transfer is necessary for the performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Your PII is also transferred to and processed by third party payment providers. Such transfers are necessary for performance of the contract between you and ORock (article 49.1 (b) of the GDPR).

Some of the third parties identified above may also be located outside the EU/EEA, in which case we will take all necessary steps required under applicable law in order for such transfer of information across borders to be compliant with applicable law. In cases where there is no adequacy decision by the Commission, this may for example include the use of EU model clauses (under Article 46.2 of the GDPR) or ensuring that the recipient is certified under the US-EU Privacy Shield Framework (under Article 45 of the GDPR). You may receive a copy of the relevant safeguards by contacting ORock using the contact details set forth below in this Privacy Policy.

No Rights of Third Parties

This Privacy Policy does not create rights enforceable by third parties or require disclosure of any personal information relating to users of the website.

Changes to the Privacy Policy

We may review and update this Privacy Policy from time to time in our sole discretion and will notify you of such changes. It is our policy to post any changes we make to our Privacy Policy on this page with a notice that the Privacy Policy has been updated on the Website home page. If we make material changes to how we treat our users' personal information, we will notify you by email to the primary email address specified in your account and/or through a notice on the Website home page. The date the privacy policy was last revised is identified at the top of the page. You are responsible for ensuring we have an up-to-date active and deliverable email address for you, and for periodically visiting our Website and this privacy policy to check for any changes.

Your continued use of the services after receipt of notification of changes to this Privacy Policy is deemed to be acceptance of those changes.

Contact Us

Please note that we have appointed a Privacy Representative who is responsible for overseeing questions in relation to this Privacy Policy. If you have any questions about this Privacy Policy, including any requests to exercise your legal rights, please contact the Privacy Representative at privacy@orocktech.com. You may also write to C/O Privacy Representative, ORock Technologies, Inc; 11921 Freedom Drive, Suite 1180 Reston, Virginia 20190 or call 571-386-0201.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached *Palo Alto Networks, Inc.* (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Implementation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PALO ALTO NETWORKS

PALO ALTO NETWORKS LICENSE, WARRANTY AND SUPPORT TERMS

PALO ALTO NETWORKS MAINTENANCE AND SUPPORT SERVICES ARE NOT GOVERNED BY THIS EULA, AND ARE GOVERNED BY A SEPARATE GLOBAL SUPPORT SERVICES TERMS AND CONDITIONS (“EUSA”) DETAILED IN EXHIBIT A.

LICENSE GRANT AND RESTRICTIONS.
Software License Grant. Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a nonexclusive license to: (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is
Subscription Services Limited Right to Use. Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User’s internal business purposes.

License Restrictions. End User shall maintain the Products in strict confidence and shall not: (a) except in accordance with Palo Alto Networks license transfer procedure (https://www.paloaltonetworks.com/support/support-policies/secondary-market), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services or Software as a Service agreement), including, without limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.

Affiliates. If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that such each End User Affiliate complies with the terms and conditions herein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, “Affiliate” means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where “Control” means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

Ownership. The Software and Subscription Services are licensed, not sold. Palo Alto Networks retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

RESERVED.

WARRANTY, EXCLUSIONS AND DISCLAIMERS.

Warranty. Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks’ published specifications for three (3) months from the date of shipment. As End User’s sole and exclusive remedy a nd Palo Alto Networks’ and its suppliers’ liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User’s or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not.

Exclusions. The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks -authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks’ specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical, power, or humidity systems. 4.3

Replacement Products. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED “AS IS”. PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER’S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

RESERVED.

END USER DATA.

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally identifiable, sensitive, and/or confidential data and information (collectively, “End User Data”). End User represents and warrants that End User’s use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User’s sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks. End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

GENERAL.

Reserve.

Reserved.

Reserved.
Reserved.
Reserved.
Reserved.

U.S. Government End Users. This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are “commercial computer software” and “commercial computer software documentation,” respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Software and its documentation shall be as specified in this EULA.

Open Source Software. The Products may contain or be provided with components subject to the terms and conditions of open source software licenses (“Open Source Software”). A list of Open Source Software can be found at https://www.paloaltonetworks.com/company/third-party-software.html, for informational purposes only.

Reserved.
Authorization Codes, Grace Periods and Registration. Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment and sent to You via email. The service period will commence in accordance with the grace period policy at https://www.paloaltonetworks.com/support/support-policies/grace-period.html, for informational purposes only. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

WildFire Related Microsoft Licenses. End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

Reserved.
Exhibit 1 to Attachment A

GLOBAL CUSTOMER SUPPORT SERVICES TERMS AND CONDITIONS

SUPPORT PLANS AND SERVICES OFFERED

<table>
<thead>
<tr>
<th>Support Offerings</th>
<th>4 Hour Premium Support</th>
<th>Premium Support</th>
<th>Standard Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office Hours Availability</td>
<td>See <a href="https://support.paloaltonetworks.com">https://support.paloaltonetworks.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>After Hours Availability</td>
<td>Yes - 24x7x365</td>
<td>Yes - 24x7x365</td>
<td>No</td>
</tr>
<tr>
<td><strong>Hardware Support</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Advance Replacement Service: Next Business Day Ship</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Return and Repair</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Call Response Times**

| Severity 1 – Critical                                         | < 1 hour               | < 1 hour       | < 1 hour 7am – 6pm PST |
| Product is down, critically effects customer production environment. No workaround yet available. |                        |                |                  |
| Severity 2 – High                                             | 2 Business Hours        | 2 Business Hours | 2 Business Hours |
| Product is impaired, customer production up, but impacted. No workaround yet. |                        |                |                  |
| Severity 3 – Medium                                           | 4 Business Hours        | 4 Business Hours | 4 Business Hours |
| A Product function has failed, customer production not affected. Support is aware of the issue and a workaround is available. |                        |                |                  |
| Severity 4 -- Low                                             | 8 Business Hours        | 8 Business Hours | 8 Business Hours |
| Non-critical issue. Does not impact customer business. Feature, information, documentation, how-to and enhancement requests from the customer. |                        |                |                  |

**Contacting Support**

| Palo Alto Networks, Inc                                      | Toll Free US – 1.866.898.9087 |
| 4401 Great America Parkway                                   | Outside the US +1.408.738.7799 |
| Santa Clara, CA 95054                                        | Website: support.paloaltonetworks.com |

**DEFINITIONS**

“Business Hours” means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.

“Hardware” means the appliance and server agent products listed on Palo Alto Networks’ then-current published product price list.
“Major Releases” means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

“Minor Releases” means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

“Maintenance Releases” means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

“Palo Alto Networks Standard Support,” “Palo Alto Networks Premium Support,” and “Palo Alto Networks 4 Hour Premium Support” refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.

“Palo Alto Networks Support Plans” means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.

“Palo Alto Networks Support Web Site” means the web site currently located at https://support.paloaltonetworks.com, or any successor site thereto, as specified by Palo Alto Networks.

“Products” means, collectively, Hardware and Software.

“Software” means the software products listed on Palo Alto Networks’ then-current published product price list, including any software embedded in Hardware.

DESCRIPTION OF SUPPORT PLANS
Each Product under a Palo Alto Networks Support Plan must be registered by Customer in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Customer’s purchase of a Palo Alto Networks Support Plan, Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled “Support Plans and Services Offered” above, which are more fully described as follows:

a) Technical Support
   Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Customer. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above.

b) Secure Web Access
   Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.

Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

Palo Alto Networks reserves the right to modify the support plans offered. Please refer to the Palo Alto Networks Support Web Site for the most current support plan descriptions.

SUPPORT OPTIONS
Customer shall choose from three support plans: (i) Palo Alto Networks Standard Support, (ii) Palo Alto Networks Premium Support, or (iii) Palo Alto Networks 4 Hour Premium Support.

Based upon the Customer’s selection and payment of the applicable fees per the purchase, Palo Alto Networks shall have the following obligations:

a) Palo Alto Networks Standard Support
   Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.
   Make available all supported Maintenance Releases, Minor Releases and Major Releases. iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases. iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.
   Provide technical telephone support Monday through Friday, excluding Palo Alto Networks’ designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.
   Provide a return and repair service for Hardware defects.

   Customer may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled “Support Plans and Services Offered” above.

b) Palo Alto Networks Premium Support
   Includes all of the support services described under Palo Alto Networks Standard Support plus the following:
   After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.
   Provide a next business day ship advance replacement for Hardware defects.

   Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Customer shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Customer.

   Advance Replacement: Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Customer by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Customer.
   Upon receipt of a replacement Product, Customer shall return the defective Product to Palo Alto Networks in the replacement Product’s packaging (shipping
damage that occurs as a result of insufficient packaging is not covered under this Agreement), the airbill affixed to the exterior of the shipping carton and
the designated courier service contacted for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the date of
Customer’s receipt of the replacement Product, Customer will be charged current list price of the replacement Product.

4 Hour RMA Replacement: Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo
Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Customer to confirm the Hardware
problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Palo Alto Networks will use its commercially
reasonable efforts to have a replacement Product delivered to Customer within four hours of the time the Customer receives an RMA number. Customer
must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to
complete delivery because Customer does not have an authorized representative available, Palo Alto Networks reserves the right to charge Customer
for costs incurred in making a subsequent delivery.

6. CUSTOMER OBLIGATIONS
During the term of this Agreement, Customer shall:
Operate at the then-current Maintenance Release; and
Use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein.

LIMITATIONS
The following services are expressly excluded from the Palo Alto Network Support Plans:
Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification
of the Product by persons other than Palo Alto Networks -authorized personnel; (ii) accident, fault or negligence of Customer; (iii) user error or misuse of
the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure,
operating system software failure or any other damage and failure not caused by Palo Alto Networks.
Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Palo Alto
Networks.

RESERVED.
NO WARRANTY
Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND
CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO,
OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY
DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.
RESERVED.
RESERVED.
Attachment A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PERMUTA TECHNOLOGIES, INC.

PERMUTA TECHNOLOGIES, INC. END USER LICENSE AGREEMENT

General Terms.
Ordering. Ordering Activity must issue a purchase order for a Subscription to access Products. Ordering Activity may use Products as expressly permitted in the applicable Government Contract. Permuta reserves all other rights. Ordering Activity must acquire and assign the appropriate subscription licenses (SL) required for its use of each Product. Unless otherwise specified, each user that accesses Products must be assigned a User SL. Ordering Activity has no right to use Products after the SL term for that Product ends.

Fees and Payment Terms. The fees and payment terms applicable to the Products are set forth in the GSA Schedule Pricelist.

Product Term Updates. When Ordering Activity purchases a new subscription to Products, the then-current Terms will apply and will not change during Ordering Activity’s subscription for that Product.

Modifications. Notwithstanding any terms to the contrary, Ordering Activity acknowledges and agrees that Permuta may modify the features of the Products from time-to-time at Permuta’s sole discretion, so long as they do not result in a degradation of what the Ordering Activity has contracted for.

License Reassignment. Except as permitted in this paragraph, Ordering Activity may not reassign a Subscription on a short-term basis (i.e., within 90 days of the last assignment). Ordering Activity may reassign a Subscription on a short-term basis to cover a user’s absence. Reassignment of a Subscription for any other purpose must be permanent. When Ordering Activity reassigns a Subscription from one user to another, Ordering Activity must block access and remove any related software from the former user’s devices.

Multiplexing. Hardware or software that Ordering Activity uses to pool connections; reroute information; or reduce the number of devices or users that directly access or use the Products (sometimes referred to as “multiplexing” or “pooling”) does not reduce the number of licenses of any type (including Subscriptions) that Ordering Activity needs.

Permuta-Provided Data. Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity’s access to Products. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by an authorized Permuta representative. All rights not expressly granted to Ordering Activity, are reserved to Permuta.

Commercial Items. The Products are a “commercial items,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212. Ordering Activity acquires the Products with only the rights set forth in these Terms. Ordering Activity acknowledges and agrees that Permuta sells the Products as commercial items only and will engage as a subcontractor for the Products subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, “Subcontracts for Commercial Items,” plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

DefenseReady Hosted Services.
Eligibility. Only the U.S. DoD may purchase subscriptions for DefenseReady Hosted Services ("Hosted Services").

Security Policy. Permuta will use commercially reasonable efforts to operate Hosted Service as required by Ordering Activities seeking to secure and maintain an Authority to Operate from a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Permuta will employ the common NIST SP 800-53 Security Controls as required of an external IT service used by Ordering Activity to process, store, and transmit information types with a maximum Security Categorization of (confidentiality, integrity, availability) for the Security Control Area (SCA).

Location of Data Processing. Except as described elsewhere in these Terms, Ordering Activity Data that Permuta processes on Ordering Activity’s behalf will be transferred to, and stored in and processed in facilities located only in United States, duly authorized by a qualified U.S. Government entity, and maintained by Permuta or its affiliates or subcontractors. Ordering Activity appoints Permuta to perform any such transfer of Ordering Activity Data to any such facility and to store and process Ordering Activity Data in order to provide the Hosted Service.

Data Retention. Permuta will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind Down Period. After the Wind Down Period, Permuta will disable Ordering Activity’s account and delete all Ordering Activity Data without further notice to Ordering Activity. Permuta has no liability for the deletion of Ordering Activity Data in accordance with this Section 2.4.

DefenseReady / FederalReady Software
Ordering Activity’s intended use of Products may require certain Software Products to be installed. Ordering Activity must uninstall the Software when Ordering Activity’s right to use it ends.

The Use Rights in effect when Ordering Activity orders a Subscription for Software Products will apply to Ordering Activity’s use of the version of the Software Product that is current at the time. For future versions and new Software Products, the Use Rights in effect when those versions and Software Products are first released will apply if both parties have agreed to them in writing. Changes Permuta makes to the Use Rights for a particular version will not apply unless Ordering Activity chooses to have those changes apply.
Subscription licenses are not required for access by bona-fide external users. Bona-fide external users are users that are not an employee, contractor, or agent of the Ordering Activity or its Affiliates; effectively end Ordering Activities (i.e., Ordering Activities of the Ordering Activity) that access instances of the Software.

External users MAY NOT access instances of Software using the DefenseReady client application and graphical user interface.

**Ordering Activity Obligations**

**End Users**. Ordering Activity shall ensure it and its End Users comply with these Terms. Ordering Activity shall be responsible for the actions and omissions of its End Users and any other person or entity to which Ordering Activity allows access to the Products.

**Responsibility for Accounts**. Ordering Activity is responsible for maintaining the confidentiality of any Security Credentials (as defined below) associated with Ordering Activity’s account and use of the Hosted Service. Ordering Activity must promptly notify Permuta Ordering Activity support about any possible misuse of Ordering Activity’s accounts or authentication credentials, or any security incident related to the Hosted Service.

**Authority to Operate**. Ordering Activity must comply with all laws and regulations applicable to its use of Hosted Service, to include attaining a determination regarding the Trustworthiness of the Hosted Service by a DoD Authorizing Official in accordance with DODI 8510.01, Risk Management Framework for DoD Information Technology (IT) (RMF Policy). Ordering Activity is responsible for implementing and maintaining Security Controls identified in the Security Policy as Ordering Activity’s responsibility. Ordering Activity is responsible for responding to any request from a third party regarding Ordering Activity’s use of Hosted Service.

**Obligations Regarding Ordering Activity Data**. Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Permuta to provide the Hosted Service to Ordering Activity without violating the rights of any third party, or any applicable laws or otherwise obligating Permuta to Ordering Activity or to any third party. Permuta does not and will not assume any obligations with respect to Ordering Activity Data or to Ordering Activity’s use of the Hosted Service other than as expressly set forth in these Terms or as required by applicable law. Ordering Activity is solely responsible for determining whether the Hosted Service are appropriate for the storage and processing of the Ordering Activity Data. If Ordering Activity provides (directly or indirectly) Permuta with access to any personal information, Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing such personal information to Permuta.

**Acceptable Use Policy and Restrictions**. Neither Ordering Activity, nor those that access Products through Ordering Activity, may use Products: in a way prohibited by law, regulation, governmental order or decree; to violate the rights of others; to try to gain unauthorized access to or disrupt any service, device, data, account or network; to spam or distribute malware; in a way that could harm the Products or impair anyone else’s use of it; or in any application or situation where failure of the Product could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. Except as expressly authorized by these Terms, Ordering Activity may not: (a) modify, disclose, alter, translate or create derivative works of the Products (or any components thereof); (b) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Products (or any components thereof); (c) disassemble, decompile or reverse engineer the Products; (d) use the Products to store or transmit any viruses, software routines or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (e) copy, frame or mirror any part or content of the Products; (f) build a competitive product or service, or copy any features or functions of the Products; (g) interfere with or disrupt the integrity or performance of the Products; (h) attempt to gain unauthorized access to the Products or their related systems or networks; (i) disclose to any third party any performance information, benchmarking or analysis relating to the Products; (j) use the Products in violation of any laws, (k) allow the transfer, transmission, export or re-export of the Products or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (l) remove, alter or obscure any proprietary notices in or on the Products including copyright notices; (m) disclose or make available passwords, user IDs or other credentials and login information (collectively, “Security Credentials”) that Permuta has provided to Ordering Activity or the End Users or that are generated in connection with Ordering Activity’s or End Users’ use of the Product, other than to Ordering Activity or the End Users; (n) work around any technical limitations of the Products or download or modify any product updates or substitutes for the Products except as explicitly authorized; or (o) cause or permit any End User or any other third party to do any of the foregoing. Ordering Activity will use its best efforts to prevent unauthorized access to, and use of, the Security Credentials and the Products, and will immediately notify Permuta in writing of any unauthorized use of the Products that comes to Ordering Activity’s attention, including by End Users.

**Reserved**

Right to Verify Compliance. Ordering Activity must keep records relating to all use and distribution of Products by Ordering Activity and its Affiliates. **Subject to applicable Government security requirements**, Permuta has the right, at its expense, to verify compliance with these Terms. Ordering Activity must promptly provide any information reasonably requested by the independent auditors retained by Permuta in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Ordering Activity hosts, sublicenses, or distributes to third parties. Ordering Activity agrees to complete Permuta’s self-audit process, which Permuta may request as an alternative to a third-party audit.

**Verification Process**. Permuta will notify Ordering Activity at least 30 days in advance of its intent to verify Ordering Activity’s compliance with the license terms for the Products Ordering Activity and its Affiliates use. Permuta will engage an independent auditor, which will be subject to a confidentiality obligation and to applicable Government security requirements. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours in accordance with the applicable Ordering Activity’s security policies and in a manner that does not unreasonably interfere with Ordering Activity’s operations.

**Remedies for Non-compliance**. If verification or self-audit reveals any unlicensed use of Products, then Permuta will invoice Ordering Activity for the additional licenses. Notwithstanding the foregoing, nothing in this section prevents the Ordering Activity from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), as applicable. After an audit, Permuta will not subject Ordering Activity to another verification for at least one year. By exercising the rights and procedures described above, Permuta does not waive its rights to enforce these Terms or to protect its intellectual property by any other permissible means.

**Intellectual Property Rights**

**Grants**. Subject to these Terms and solely for Ordering Activity’s internal purposes, Permuta grants to Ordering Activity a limited, non-transferable, and non-exclusive right and license, to, and permit its End Users to use the Software Products in the quantities ordered during a valid Subscription Term and (b) use the Hosted Services during a valid Subscription Term. Limits on storage volume, data throughput, page view capacity, consumption and concurrent user volumes may apply.
License to Ordering Activity Data: To the extent necessary to provide the Hosted Services and support Ordering Activity's intended use of the Hosted Services, Ordering Activity hereby grants to Permuta the right to (a) collect, process, copy, transmit, display, format and otherwise handle and process any data associated with Ordering Activity Data, and (b) host and store the Ordering Activity Data on Permuta's servers or Permuta's agent's servers.

Ownership and Reservation of Rights. As between the parties and subject to the express grants set forth in these Terms, (a) Ordering Activity owns all right, title and interest in and to the Ordering Activity Data, and (b) Permuta owns all right, title and interest in and to the Hosted Services (and any and all modifications to or derivative works of the Hosted Services), the Usage Data (as defined below), the Feedback and any and all Intellectual Property Rights embodied in or related to the Products, the Usage Data and/or the Feedback. Permuta reserves all rights not expressly granted to Ordering Activity in these Terms, and except as expressly set forth in these Terms, no licenses are granted by Permuta to Ordering Activity under these Terms, whether by implication, estoppel or otherwise.

Reserved. Ordering Activity Support & Customer Support Program

Support Program Administration

Eligibility. Ordering Activity must have an active Subscription to receive Ordering Activity Support.

Term: The Term of the Customer Support Plan Coincides with the Coverage Period of the associated Software Maintenance

Customer Support Coordinator. Permuta will designate two contacts to serve as the primary and secondary account managers to manage Permuta’s responsibilities associated with the Customer Support Plan.

Enrollment Administrators. Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators (“Enrollment Administrator”) to manage Ordering Activity’s responsibilities associated with its Support Plan.

Approved Requesters. Ordering Activity shall designate approved requesters (“Approved Requesters”) in accordance with the terms of the selected Support Plan. Approved Requesters are presumed to have the authorization authority to request Support Tasks.

Modifications. Permuta may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to these Terms.

Support Plans

Included with each Subscription at no additional cost is automatic enrollment in the “Standard” Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan prior to commencement of the Subscription Term. The following Support Plans are available:

Standard – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of Products or 2) limited support budgets. and/or organizations that 3) are not significantly impacted in the event of a service disruption.

Silver – The Silver Plan is designed for organizations that 1) require periodic maintenance of a customer-specific solution minimally extending one of two out-of-the-box DefenseReady capabilities and/or organizations that 2) are critically impacted in the event of a service Agreement.

Gold - The Gold Plan is designed for organizations that 1) require periodic maintenance of one or more customer-specific solutions moderately extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one or more complex customer-specific capabilities produced by Permuta; 3) require access to cyber security support; and/or organizations that 4) are catastrophically impacted in the event of a service disruption.

Platinum – The Platinum Plan is designed for organizations that 1) require periodic maintenance of one or more customer-specific solutions extensively extending one or more of out-of-the-box DefenseReady capabilities; 2) require periodic maintenance of one or more complex customer-specific capabilities produced by Permuta; 3) require one or more managed projects in order to implement new capabilities or make major enhancements to existing capabilities; 4) require extensive access to cyber security support; and/or organizations that 5) are catastrophically impacted in the event of a service disruption.

OnBoard – The OnBoard Plan is designed for new customers intending to use Products operationally within a 12-month time.

Pilot – The Pilot Plan is designed for potential customers intending to conduct an operational pilot of Products for qualification, evaluation, and/or comparative purposes.

If Permuta provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

Support Task Request Process

Support Tasks. Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity’s Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permuta may provide tools, resources, and software to facilitate the Support Task request process.

Types. The types of Support Tasks available to the Ordering Activity under these Terms are:

Advisory Support - Advisory support is available for short-term advice and guidance from one of Permuta’s Subject Matter Experts (SME) for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operational issues.

Sustenance Support – Sustenance support includes sustenance planning services, off-site integration test environments, update rollup testing, and periodic over the phone support for applying updates and performing major upgrades.

Problem Resolution Support (PRS) - Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products. Problem resolution Support is limited to off-site troubleshooting assistance, problem identification, and solution recommendation. If Permuta determines a Product Fix is required to resolve a problem, Permuta will initiate a product fix in accordance with Permuta’s established Product Fix procedures at no cost to the Customer.

Rapid On-Site Support (ROSS) – Rapid on-site support is available to resolve Severity Level A (Critical) and 1 (Catastrophic) problems which cannot otherwise be resolved within 48 hours using other commercially reasonable means. Permuta’s ability to provide rapid onsite support is subject to Permuta’s resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Provided it is in accordance with FTR/JTR, as applicable, and Ordering Activity approves the travel expenses prior to travel, Permuta will reimburse Support Credits to account for travel time at a rate of one Support Credit for each required non-business hour of travel not otherwise accounted for in the support.

Configuration Support – Configuration support is available for Ordering Activities requiring minor configuration changes on a short-term basis.

Training Support – Training support is available to support curriculum development and to conduct training.

Cyber Security Support – Subject to availability of Permuta resources, cyber security support may be available to support Ordering Activity’s cyber security needs in relation to its intended use of Products.

Scheduled On-Site Support – Scheduled on-site Ordering Activity support is available for Ordering Activities subject to Permuta’s resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permuta may redeem
Support Credits to account for travel time at a rate of one half Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.

**Solution Development Support** – Solution development support is available for Ordering Activities requiring or engaged in a complex custom solution development effort following commercial best practices.

**On-Boarding Support** - On-boarding support is available for new implementations and integration services of a new Ordering Activity.

**Support Credits**

**General.** As part of the Ordering Activity’s Support Plan, Permuta will issue Support Credits redeemable for Support Tasks. Credits may only be redeemed for 1) Support Tasks following the Support Task request process set forth in section 7.3 or 2) Managed Ordering Activity Support Projects as set forth in section 7.5. Support Credits have no cash value, are non-transferrable and non-refundable. All Support Credits are valid for the term of the associated Subscription and expire immediately upon expiration of the Subscription Term or termination of Ordering Activity’s Support Plan.

**Roll-Over Support Credits.** Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the associated Subscription’s new term. Section 7.8 identifies the Roll-Over Support Credits limit for each available Support Plan. The reissue quantity will not exceed the limit of the expiring Support Plan or the Follow-On Support Plan associated with a new Subscription, whichever is lowest.

**Pre-determined Redemption Quantity.** In accordance with appropriate procedures, Permuta will automatically accept and process Support Task requests of a type HAVING a pre-determined redemption quantity as set forth below in Section 7.4.5.

**Redemption Quantity Approval and Work Orders.** A Ordering Activity Enrollment Administrator will be required to issue Permuta a written Authority to Proceed for Support Task Requests of a type NOT HAVING a pre-determined redemption quantity. The Authority to Proceed must specify an approved redemption quantity for each Support Task Request. Generally, preestablished Support Request Work Order process will be followed to accommodate applicable Support Task Requests. The Table below identifies commercially reasonable response time expectations that will serve as a the guidelines for both Permuta and the customer throughout the execution of the Support Task Work Order Process.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Limitations</th>
<th>Permuta’s Expected Response</th>
<th>Customer’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1: Catastrophic business impact</td>
<td>Work orders for Severity Level 1 Support must originate from Severity Level 1 Problem Resolution Support Request. Customers must be eligible for Severity Level 1 support. Work orders for Severity Level 1 Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support. Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority. Authorization may be provided over the telephone or via email without immediately requiring a signature.</td>
<td>Upon determination a Work order is required, Permuta may provide a best-guess level of effort over the phone to which an acceptable approval authority may provide an Authorization to Proceed. Once verbal Authorization to Proceed is provided, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible If requested, Permuta will endeavor to provide Rapid On-Site Support within 48 hours and no less than 72 hours. Permuta will work continuously to execute other support tasks.</td>
<td>Customer will work continuously to approve work order as soon as possible. Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks. If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support. Customer will work continuously to verify successful execution of support tasks.</td>
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<td></td>
<td>Work orders for Severity Level A Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.</td>
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<tr>
<td></td>
<td>Permuta will accept an Authority to Proceed from Authorized Requesters or a Customer Sr. Manager or change control authority.</td>
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<td></td>
<td>Authorization may be provided over the telephone or via email without immediately requiring a signature.</td>
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<tr>
<td></td>
<td>Upon determination a Work order is required, Permuta will work continuously to prepare and submit a work order for customer to approve electronically as soon as possible. If electronic approval is not viable, verbal authorization to proceed will be accepted. If requested, Permuta will endeavor to provide Rapid On-Site Support within 72 hours. Permuta will work continuously to execute other support tasks.</td>
<td></td>
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<tr>
<td></td>
<td>Customer will work continuously to approve work order as soon as possible.</td>
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<tr>
<td></td>
<td>Customer will work continuously to provide guidance, support, and access to resources as required during execution of support tasks.</td>
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<tr>
<td></td>
<td>If required, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support.</td>
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<tr>
<td></td>
<td>Customer will work continuously to verify successful execution of support tasks.</td>
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<tr>
<td>Severity Level B: Moderate business impact</td>
<td>Work orders for Severity Level B Support must originate from a Severity Level B Problem Resolution Support Request.</td>
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<tr>
<td></td>
<td>Work orders for Severity Level B Support Requests will be limited to the following types of tasks: Advisory Support, Sustainment Support, Rapid On-Site Support, Configuration Support, and Cyber Security Support.</td>
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<td>Upon determination a Work Order is required, Permuta will initiate a work order and request verification of the customers objective within 8 business hours. Upon customer’s verification of the business objective, within 8 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission. If requested, Permuta will endeavor to provide Rapid OnSite Support within 5 business days. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.</td>
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<tr>
<td></td>
<td>Customer will verify business objective within 8 business hours upon receiving the request for verification.</td>
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<tr>
<td></td>
<td>Customer will provide an authorization decision within 16 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to projected arrival of On-Site Support.</td>
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<tr>
<td></td>
<td>Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks.</td>
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<tr>
<td></td>
<td>Customer will provide verification of successful execution of work order tasks within 16 business hours of being requested.</td>
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<tr>
<td>Severity Level C: Minimum</td>
<td>Work orders for Severity Level C Support Requests will be limited to the following types of tasks:</td>
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<td></td>
<td>Upon determination a Work Order is required, Permuta will initiate a work order and</td>
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<tr>
<td></td>
<td>Customer's Expected Response</td>
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</tbody>
</table>
**Support Credit Redemption Rate.** Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

<table>
<thead>
<tr>
<th>Support Task Type</th>
<th>Redemption Rate Unit</th>
<th>Support Credit Redemption Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Sustainment Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Problem Resolution Support</td>
<td>Case/Incident</td>
<td>1</td>
</tr>
<tr>
<td>Rapid On-Site Support</td>
<td>Person Day</td>
<td>During business hours: 10l off hours, weekends &amp; holidaysl 15</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Training Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Cyber Security Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Scheduled On-Site Support</td>
<td>Person Day</td>
<td>During business hours; 6; off hours, weekends, &amp;</td>
</tr>
</tbody>
</table>

business impact or routine support


- request verification of the customers objective within 16 business hours. Upon customer’s verification of the business objective, within 16 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.

- request for verification. Customer will provide an authorization decision within 24 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to scheduled arrival of On-Site Support. Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.

Customer will request verification of the customers objective within 16 business hours. Upon customer’s verification of the business objective, within 16 business hours, Permuta will determine a level of effort and submit it to the customer for authorization to proceed OR inform the customer additional time is required and provide a new estimated date and time of submission. Permuta will work to complete tasks in accordance with the estimated completion dates identified in the approved work order.

Customer will provide an authorization decision within 24 business hours upon receiving a request for authorization to proceed. If requested, customers will take all preparation measures requested by Permuta prior to scheduled arrival of On-Site Support. Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.

Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.

Support Credit Redemption Rate. Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

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<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
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<td>Problem Resolution Support</td>
<td>Case/Incident</td>
<td>1</td>
</tr>
<tr>
<td>Rapid On-Site Support</td>
<td>Person Day</td>
<td>During business hours: 10l off hours, weekends &amp; holidaysl 15</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
<tr>
<td>Training Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
</tr>
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<td>Person Day</td>
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Support Credit Redemption Rate. Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

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<td>Hour</td>
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</tr>
<tr>
<td>Problem Resolution Support</td>
<td>Case/Incident</td>
<td>1</td>
</tr>
<tr>
<td>Rapid On-Site Support</td>
<td>Person Day</td>
<td>During business hours: 10l off hours, weekends &amp; holidaysl 15</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>Hour</td>
<td>See Discipline Rate</td>
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Customer will endeavor to provide timely guidance, support, and access to resources as required during execution of support tasks. Customer will provide verification of successful execution of work order tasks within 72 business hours of being requested.
Under certain circumstances, credit redemption rate will be based on Discipline Rate or other factors. Permuta assumes customer’s environment is configured in accordance with standard guidance or recommended best practices and the customer will make certain information available that is required for the problem resolution process. In the event the customer’s environment does not comply with standard guidance or best practices, information is not made available, or otherwise does not provide commercially reasonable assistance in the problem resolution process, credit redemption rate will be based on the actual effort required to resolve the problem in accordance with Discipline Rates. 1 Person Day is consists of 1 person up to and not exceeding 6 hours at a customer designated location.

7.4.1 **Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

7.5 **Managed Ordering Activity Support Projects**

7.5.1 **Managed Ordering Activity Support Project.** As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects (“Projects”). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables (“Deliverables”) to address requirements related to the Ordering Activity’s desired use of the Products.

7.5.2 **Statement of Work.** Permuta will perform Projects in accordance with Permuta’s commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work (“SOW”) documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

7.5.3 **Support Credit Redemption Plan.** The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

7.5.4 **Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

7.6 **Response Levels**

When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta’s expected response and Ordering Activity’s expected response as identified in the table below.
<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Expected Response</th>
<th>Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Submission via phone only</td>
<td>Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention</td>
<td>1st call response in 1 hour or less. Permuta’s resources at Ordering Activity site as soon as possible. Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority</td>
<td>Permuta’s resources at Ordering Activity site as soon as possible. Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority</td>
<td></td>
</tr>
<tr>
<td>A. Submission via phone only</td>
<td>Critical business impact: Significant loss or degradation of services Needs attention within 1 hour</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as required. Continuous effort on a 24x7 basis Notification of Permuta’s senior managers Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification</td>
<td>Permuta’s senior executives</td>
<td></td>
</tr>
<tr>
<td>B. Submission via phone or web</td>
<td>Moderate business impact: Moderate loss or degradation of services but work can reasonably continue in an impaired manner. Needs attention within 2 Business Hours</td>
<td>Initial response in 4 Business Hours or less Effort during Business Hours only Allocation of appropriate resources to sustain Business Hours continuous effort Access and response from change control authority within 4 Business Hours</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Submission via phone or web</td>
<td>Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours</td>
<td>Initial response in 8 Business Hours or less Effort during Business Hours only Allocation of appropriate resources to sustain Business Hours continuous effort Access and response from change control authority</td>
<td>Accurate contact information on case owner Responsive within 24 hours</td>
<td></td>
</tr>
</tbody>
</table>

7.7 **Support Plan Credits**
Permuta will issue Support Credits as they are earned, either monthly or annually. For purchases placed under these Terms, the Support Credits will be earned in accordance with the following table.
### Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan

<table>
<thead>
<tr>
<th>Product Type</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mission Owner 12 Month SL</td>
<td>36</td>
<td>120</td>
<td>240</td>
<td>480</td>
<td>2400</td>
<td>1800</td>
</tr>
<tr>
<td>User Subscriber License/ Basic User CAL</td>
<td>0.03</td>
<td>0.22</td>
<td>0.36</td>
<td>0.52</td>
<td>1.03</td>
<td>5.15</td>
</tr>
<tr>
<td>Member Subscriber License/ Essential</td>
<td>0.012</td>
<td>0.022</td>
<td>0.036</td>
<td>0.052</td>
<td>0.103</td>
<td>0.515</td>
</tr>
</tbody>
</table>

### Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan

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<th>Product Type</th>
<th>Standard</th>
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<tbody>
<tr>
<td>CAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Prod Instance (12 Months)</td>
<td>36</td>
<td>36</td>
<td>72</td>
<td>108</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Data Integration (12 Months)</td>
<td>12</td>
<td>12</td>
<td>18</td>
<td>24</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Ordering Activity Portal (12 Months)</td>
<td>36</td>
<td>72</td>
<td>144</td>
<td>216</td>
<td>360</td>
<td>240</td>
</tr>
</tbody>
</table>

### 7.8 Support Plan Terms, Conditions, and Limitations

<table>
<thead>
<tr>
<th>Term, Condition, or Limitation</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Subscription Term</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>12 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Eligible for Advisory Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Sustainment Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Problem Resolution</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Rapid On-Site Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
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<td>----------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>Eligible for Configuration Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Training Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Cyber Security Support</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Scheduled On-Site</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### 7.9 Additional Support Services Provisions

7.9.1 Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, de-compile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party.

7.9.2 Permuta may request that Microsoft deliver Problem Resolution Support on Permuta’s behalf to Ordering Activity subject to the terms and conditions set forth in these Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.

### Service Level Agreement

If Permuta does not achieve and maintain the service levels as described in Section 8.4 for the applicable Hosted Services, then Ordering Activity may be eligible for a credit towards its monthly service fees for the applicable Hosted Services (a “Service Credit”). Permuta will not modify the terms of the SLA during a Subscription Term.

### Claims

In order for Permuta to consider a claim that Permuta did not meet the SLA, Ordering Activity must submit the claim to Permuta (in the manner requested by Permuta) including all information necessary for Permuta to validate the claim, including but
not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Downtime; (iii) the number and location(s) of affected End Users (if applicable); and (iv) descriptions of Ordering Activity’s attempts to resolve the Incident at the time of occurrence.

Claims must be received by the end of the calendar month following the month in which the Incident occurred. For example, if the Incident occurred on February 15th, Permuta must receive the claim and all required information by March 31st. Claims not submitted in accordance with this Section 8.1 are waived.

Permuta will evaluate the information provided by Ordering Activity in respect of a SLA claim and make a good faith determination of whether a Service Credit is owed. Permuta will use commercially reasonable efforts to process claims during the subsequent month or within forty-five (45) days of receipt, whichever is later. Ordering Activity must be in compliance with the Agreement in order to be eligible for a Service Credit. If Permuta determines that a Service Credit is owed to Ordering Activity, Permuta (or Reseller) will apply the Service Credit to Ordering Activity’s applicable monthly services fees due for the immediately following month after such determination.

**Sole Remedy for Failure to Meet SLA**

Service Credits are Ordering Activity’s sole and exclusive remedy for any performance or availability issues for any Hosted Services. Ordering Activity may not set off any fees due under these Terms for any performance or availability issues with the Hosted Services. Service Credits apply only to fees paid for the particular Hosted Service for which the applicable SLA has not been met. The Service Credits awarded in any billing month for a particular Hosted Service will not, under any circumstance, exceed Ordering Activity’s monthly service fees for that Hosted Service, as applicable, in such billing month.

**Limitations**

This SLA and any applicable Service Levels do not apply to any performance or availability issues:

- Due to a Force Majeure Event affecting Permuta (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to our data centers, including at Ordering Activity’s site or between Ordering Activity’s site and the hosting facility);
- That result from the use of services, hardware, or software not provided by Permuta, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services;
- Caused by Ordering Activity’s use of the Hosted Services after Permuta advised Ordering Activity to modify its use of the Hosted Services, if Ordering Activity did not modify its use as advised;
- During or with respect to Previews or to purchases made using Permuta subscription credits;
- That result from Ordering Activity’s unauthorized action or lack of action when required, or from Ordering Activity’s employees, agents, contractors, or vendors, or anyone gaining access to Permuta’s network by means of Ordering Activity Security Credentials or equipment, or otherwise resulting from Ordering Activity’s failure to follow appropriate security practices;
- That result from Ordering Activity’s failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or Ordering Activity use of the Hosted Service in a manner inconsistent with the features and functionality of the Hosted Service (for example, attempts to perform operations that are not supported) or inconsistent with published guidance;
- That result from faulty input, instructions, or arguments (for example, requests to access files that do not exist);
- That result from Ordering Activity’s attempts to perform operations that exceed prescribed quotas or that resulted from Permuta’s throttling of suspected abusive behavior; or
- Due to Ordering Activity’s use of Hosted Service features that are outside of associated Ordering Activity support windows.

**Applicable Hosted Services**

The applicable hosted services and the corresponding SLA terms are identified below.

**DefenseReady, CHS Edition**

**Downtime:** Any period of time when End Users are unable to login to their instance of the Hosted Services.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

\[
\text{Service Minutes} - \text{Downtime} \times 100
\]

where Downtime is measured in service-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of services impacted by that Incident.

**Service Credit:**

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<tr>
<td>&lt; 99.9%</td>
<td>5%</td>
</tr>
<tr>
<td>&lt; 99%</td>
<td>10%</td>
</tr>
</tbody>
</table>

**DefenseReady for Mission Owner Members, CHS Edition**

**Downtime:** Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

\[
\text{User Minutes} - \text{Downtime} \times 100
\]

where User Minutes is measured in service-minutes; that is, for each month, User Minutes is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of services impacted by that Incident.
where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

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<tr>
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<td>50%</td>
</tr>
<tr>
<td>&lt; 85%</td>
<td>75%</td>
</tr>
<tr>
<td>&lt; 75%</td>
<td>100%</td>
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<td>50%</td>
</tr>
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<td>&lt; 85%</td>
<td>75%</td>
</tr>
<tr>
<td>&lt; 75%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**DefenseReady for Mission Owner Users, CHS Edition**

**Downtime:** Any period of time when End Users are unable to read or write any service data for which they have appropriate permission but this does not include non-availability of service add-on features.

**Monthly Uptime Percentage:** The Monthly Uptime Percentage is calculated using the following formula:

\[
\frac{\text{User Minutes} - \text{Downtime}}{\text{User Minutes}} \times 100
\]

where Downtime is measured in user-minutes; that is, for each month, Downtime is the sum of the length (in minutes) of each Incident that occurs during that month multiplied by the number of End Users impacted by that Incident.

**Representations, Warranties and Disclaimers.**

**General Representations and Warranties.** Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly.

**Additional Warranties.**

For a period of one year from the commencement of the applicable Ordering Activity Subscription Term (the “Warranty Period”) Permuta represents and warrants that it will use commercially reasonable efforts to cause the Hosted Services to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Hosted Services. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Ordering Activity paid for the non-performing Hosted Services (prorated for any period of usage by Ordering Activity) or (2) repair or replace the Hosted Services. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.

Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support. The remedies above are Ordering Activity’s sole remedies for breach of the warranties in this Section 9.2. The warranties in these Terms do not apply to problems caused by accident, abuse or use inconsistent with these Terms, including failure to meet minimum system requirements.

**Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9.1 and 9.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, HOSTED SERVICES AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE HOSTED SERVICES AND SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT THE HOSTED SERVICES OR SOFTWARE WILL BE FREE OF ERRORS.
Effect of Termination. Upon any termination or expiration of the Subscription: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will immediately pay to Permuta all amounts due and payable up to the effective date of termination of the Subscription; (c) notwithstanding any terms to the contrary in these Terms, Sections 1.2, 4, 5, 9.3, 10, 12.1, and 13 will survive any termination or expiration of the Subscription.

Data Retention. Permuta will retain Ordering Activity Data stored on the Hosted Service in a limited function account for ninety (90) days (the “Wind Down Period”) after expiration or termination of the applicable Subscription. Ordering Activity is responsible for extracting all of its Ordering Activity Data during the Wind Down Period. After the Wind Down Period, Permuta will disable Ordering Activity’s account and delete all Ordering Activity Data without further notice to Ordering Activity. Permuta has no liability for the deletion of Ordering Activity Data in accordance with this Section 12.2.

Other Provisions.

Reserved.

Reserved.

Reserved.

Reserved.

Subcontractors. Permuta may hire subcontractors to provide services (including Support Services) on its behalf. Any such subcontractors will be required to act consistently with these Terms and will only be permitted to obtain Ordering Activity Data to deliver the services Permuta is obligated to provide and will be prohibited from using Ordering Activity Data for any other purpose. Permuta shall remain responsible for the actions of its subcontractors.

Definitions.

“Affiliate” means, for Permuta, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Permuta; and for Ordering Activity, any entity that is an office, agency, department or other subdivision of that Ordering Activity controlled by or under common control with Ordering Activity. For this definition, “ownership” means owning more than 50% of applicable interests, and “control” means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

“Authority to Operate (ATO)” means the official management decision given by a senior organizational official to authorize operation of an information system and to explicitly accept the risk to organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, and the Nation based on the implementation of an agreed-upon set of security controls.

“Business Hours” means as 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends.

“Change of Control” means any of the following: (a) any transaction or series of transactions resulting in the change in beneficial ownership of the voting securities representing at least fifty percent (50%) of the total voting power of a party, excluding any initial public offering of its common stock, (b) a merger of a party with or into another party, whether or not the party is the surviving entity, or (c) the sale or other transfer of more than fifty percent (50%) of a party’s assets whether in a single transaction or series of transactions.

“Ordering Activity Data” means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.

“Ordering Activity Support” means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity with respect to the Products under these Terms.

“Downtime” is defined for each Product in Section 8. Downtime does not include Downtime scheduled by Permuta in advance. Downtime does not include unavailability of a Product due to limitations described in Section 8.3.

“End User” means any person Ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.

“Feedback” means any suggestions, comments or other feedback provided by Ordering Activity to Permuta or Reseller with respect to Permuta or the Products.


“Fixes” are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.

“Government Contract” means the binding agreement between Ordering Activity and Reseller under which Ordering Activity orders Products from Reseller and Reseller binds Ordering Activity to these Terms.

“Hosted Services” means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.

“Incident” in the context of the SLA, means (i) any single event, or (ii) any set of events, that result in Downtime.

“Intellectual Property Rights” means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

“Microsoft” means Microsoft Corporation.
“Permuta-Provided Data” means any data provided by Permuta to Ordering Activity under these Terms, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.

“Previews” means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.

“Receiving Party” means the party that receives Confidential Information from the Disclosing Party. “Reseller” means any reseller authorized by Permuta to resell the Products to Ordering Activity.

“Roll-Over Support Credits” means a limited quantity of expired support credits reissued in a Followon Support Plan in accordance with section 7.4.2.

“Sample Data” means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under these Terms.

“Security Categorization” means the characterization of information or an information system based on an assessment of the potential impact that a loss of confidentiality, integrity, or availability of such information or information system would have on organizational operations, organizational assets, individuals, other organizations, and the Nation.

“Security Control” means a safeguard or countermeasure prescribed for an information system or an organization designed to protect the confidentiality, integrity, and availability of its information and to meet a set of defined security requirements.

“Security Policy” means the collective policies and procedures of Hosted Service followed by Permuta to establish and maintain the Hosted Service’s Trustworthiness as required by Ordering Activity.

“SLA” means Service Level Agreement, which specifies the minimum service level of the Hosted Services.

“Software” means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.

“Subscription” means an enrollment by Ordering Activity for Products for a defined Subscription Term.

“Subscription Term” means the length of time that Ordering Activity has rights to access the Products. Subscriptions shall be twelve (12) months from the date of Ordering Activity’s purchase of the Products as stated in the applicable purchase order.

“Support Credits” are allotments for Ordering Activity Support that are earned either monthly or annually with an Ordering Activity Support Plan.

“Support Credit Redemption Plan” means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.

“Support Plan” means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.

“Support Task” means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.

“System Security Plan” means a formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.

“Trustworthiness” means the degree to which Hosted Service, against a full range of threats, can be expected to preserve the confidentiality, integrity, and availability of the Ordering Activity information it processes, stores or transmits.

“Use Rights” means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta herein.

EXHIBIT A

Microsoft Cloud Agreement

This Microsoft Cloud Agreement is incorporated into the Government Contract entered into between the Ordering Activity who is a Government entity (“Ordering Activity”) and the person or entity who has entered into a prime contract with the Government (“Contractor”) as an addendum and governs Ordering Activity’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “agreement”). It is effective on the date that the Contractor provisions the Ordering Activity’s Subscription. Key terms are defined in Section 10.

Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Ordering Activity nor any of its Affiliates is in material breach of this agreement.

Software. Upon acceptance of each order, Microsoft grants Ordering Activity a limited right to use the Software in the quantities ordered.

(i) Use Rights. The Use Rights in effect when Ordering Activity orders a Subscription License for Software will apply to Ordering Activity’s use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply if agreed to by all parties in writing. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Ordering Activity chooses to have those changes apply. (ii) Temporary licenses. Licenses available on a subscription basis are temporary.

Online Services. Ordering Activity may use the Online Services as provided in this agreement.

Online Services Terms. The Online Services Terms in effect when Ordering Activity orders a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on Consumption Offerings, as described in Section 2.a, below, the Online Services Terms current at the start of each billing period will apply to usage during that period if agreed to by all parties in writing.

Reserved.

End Users. Ordering Activity controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Ordering Activity will ensure End Users comply with the Acceptable Use Policy.

Ordering Activity Data. Ordering Activity is solely responsible for the content of all Ordering Activity Data. Ordering Activity will secure and maintain all rights in Ordering Activity Data necessary for Microsoft to provide the Online Services to Ordering Activity without violating the rights of any third party or otherwise obligating Microsoft to Ordering Activity or to any third party. Microsoft does not and will not assume any
obligations with respect to Ordering Activity Data or to Ordering Activity's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

Responsibility for Ordering Activity's accounts. Ordering Activity is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Ordering Activity's use of the Products. Ordering Activity must promptly notify Ordering Activity support about any possible misuse of Ordering Activity's accounts or authentication credentials, or any security incident related to the Products.

Reservation of rights. Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. Rights will be granted or implied by waiver or estoppel. Rights to access user Software on a device do not give Ordering Activity any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

Restrictions. Ordering Activity may use the Product only in accordance with this agreement. Ordering Activity may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Ordering Activity may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Ordering Activity’s use of the Products.

Except as expressly permitted in this agreement or Product documentation, Ordering Activity may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

Preview releases. Microsoft may make Previews available.

Available Subscription offers.

Pricing and payment. Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor in accordance with the GSA Pricelist. d. Renewal.

(i) Reserved. (ii) Reserved. (iii) Eligibility. Ordering Activity’s must qualify as Federal Agencies or State/Local Governments. Microsoft reserves the right to verify eligibility at any time and suspend the Product if the eligibility requirements are not met.

Taxes. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay, and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax. Microsoft shall state separately on invoices.
from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3 Term, termination.

Agreement term and termination. This agreement will remain in effect until the expiration or termination of the Government Contract, whichever is earliest.

Cancel a Subscription. The Government Contract will establish the terms and conditions, if any, upon which Ordering Activity may cancel a Subscription.

Security, privacy, and data protection.

Reseller Administrator Access and Ordering Activity Data. Ordering Activity acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Ordering Activity Data; (ii) Ordering Activity may request additional administrator privileges from its Contractor; (iii) Ordering Activity can, at its sole discretion and at any time during the Term, terminate its Contractor’s administrative privileges; (iii) the Contractor’s privacy practices with respect to Ordering Activity Data or any services provided by the Contractor are subject to the terms of the Government Contract and may differ from Microsoft’s privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Ordering Activity Data, including personal data. Ordering Activity consents to Microsoft providing the Contractor with Ordering Activity Data and information that Ordering Activity provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

Ordering Activity consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Ordering Activity may choose to provide personal information to Microsoft on behalf of third parties (including Ordering Activity’s contacts, resellers, distributors, administrators, and employees) as part of this agreement. Ordering Activity will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor.

As and to the extent required by law, Ordering Activity shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Ordering Activity shall obtain the users’ consent to the same.

Warranties.

Limited warranty. Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Ordering Activity is first licensed for that version. If it does not, and Ordering Activity notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Ordering Activity paid for the Software license or (2) repair or replace the Software.

Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Ordering Activity’s use. Ordering Activity’s remedies for breach of this warranty are in the SLA. The remedies above are Ordering Activity’s sole remedies for breach of warranty in this section.

Exclusions. The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Ordering Activity is permitted to redistribute.

Disclaimer. Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, noninfringement, merchantability and fitness for a particular purpose. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Defense of third party claims.

By Microsoft. Microsoft will defend Ordering Activity against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, (1) replace the Product or fix with a functional equivalent; or (2) terminate Ordering Activity’s license and refund any prepaid subscription license fees for Products for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Ordering Activity’s continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

Ordering Activity’s agreement. Ordering Activity agrees that use of Ordering Activity Data or non-Microsoft software Microsoft provides or otherwise makes available on Ordering Activity’s behalf will not infringe any third party’s patent, copyright or trademark or make unlawful use of any third party’s trade secret. In addition, Ordering Activity will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

Rights and remedies in case of possible infringement or misappropriation. If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Ordering Activity’s use of the Product or Fix, Microsoft will seek to obtain the right for Ordering Activity to keep using it or modify or replace it with a functional equivalent, in which case Ordering Activity must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Ordering Activity’s right to the Product or Fix and refund any amounts Ordering Activity has paid for those rights to Fixes and, for Products, any amount paid for a usage period after the termination date.

Other terms. Ordering Activity must notify Microsoft promptly in writing of a claim subject to this section. To the extent permitted by applicable law, give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Ordering Activity’s, the control of the defense and settlement is subject to 28 U.S.C. 516) and provide reasonable assistance in defending the claim. Microsoft will reimburse Ordering Activity for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Ordering Activity’s, Microsoft’s rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

Limitation of liability.

For each Product, each party’s maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the contract price.
For Ordering Activity's that are Federal Agencies, this Section shall not impair the Ordering Activity's right to recover for personal injury or death resulting fromLicensor's negligence, or fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

Support.
The Contractor will provide details on support services available for Products purchased under this agreement.

Miscellaneous.
Notices. Ordering Activity must send notices by mail, return receipt requested, to the address below.

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<tr>
<th>Notices should be sent to:</th>
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<tr>
<td>Microsoft Corporation</td>
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<tr>
<td>Volume Licensing Group</td>
<td>Legal and Corporate Affairs</td>
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<td>One Microsoft Way</td>
<td>Volume Licensing Group</td>
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<tr>
<td>Redmond, WA 98052</td>
<td>One Microsoft Way</td>
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<tr>
<td>USA</td>
<td>Redmond, WA 98052</td>
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<tr>
<td>Via Facsimile: (425) 936-7329</td>
<td>USA</td>
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<td>Via Facsimile: (425) 936-7329</td>
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</table>

Ordering Activity agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for Ordering Activity’s Subscription. Notices are effective on the date on the return receipt or, for email, when sent. Ordering Activity are responsible for ensuring that the email address for the account administrator(s) named for Ordering Activity’s Subscription is accurate and current.

Assignment. Any proposed assignment must be approved by the other party in writing in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Any prohibited assignment is void.

Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

No agency. This agreement does not create an agency, partnership, or joint venture.

No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

Use of contractors. Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

Microsoft as an independent contractor. The parties are independent contractors. Ordering Activity and Microsoft each may develop products independently without using the other’s confidential information.

Agreement not exclusive. Ordering Activity is free to enter into agreements to license, use or promote non-Microsoft products or services.

Entire agreement. This agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) The GSA Purchase Order, (2) this agreement, (3) the Product Terms, (4) the Use Rights, and (5) any other documents in this agreement.

Survival. All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

U.S. export jurisdiction. Products are subject to U.S. export jurisdiction. Ordering Activity must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

Force majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Contracting authority. If Ordering Activity are an individual accepting these terms on behalf of an entity, Ordering Activity represent that Ordering Activity have the legal authority to enter into this agreement on that entity’s behalf.

Applicable Law.

When the Ordering Activity is a State/Local Entity. The terms of this Agreement will be governed by and construed in accordance with the Federal laws of the United States.

Where the Ordering Activity is a Federal Agency, all disputes under this Agreement shall be governed by FAR 52.233-1, Disputes and the Agreement shall be governed under applicable US Federal law.

Additional Terms Applicable when the Ordering Activity

No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user
or authorized officer of Ordering Activity purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of whether or not such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements shall be executed in writing.

If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of Ordering Activity’s license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than the applicable law set forth above in Section 9.o; and/or (4) otherwise violates applicable law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Use Rights included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

**Definitions.**

Any reference in this agreement to “day” will be a calendar day.

“Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means, for Microsoft, any legal entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Microsoft; for Contractor, any entity that owns or controls, is owned or controlled by, or is under common ownership or control with, Contractor; and for each Ordering Activity identified on an Initial Order Form, any entity that (i) is a bureau, office, agency, department or other subdivision of that Ordering Activity (and located in Ordering Activity’s State, if Ordering Activity is a State/Local Entity) controlled by or under common control with Ordering Activity for whose use of Products Contractor is contractually responsible under its Government Contract in accordance with these Microsoft Cloud Agreement terms and conditions, and (ii) controls, is controlled by, or is under common control with, Ordering Activity.

For this definition, “ownership” means owning more than 50% of applicable interests, and “control” means the legal right to bind contractually and exercise decision power over administration, finances, and operations.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Government Community Cloud Services or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at https://www.microsoft.com/en-us/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government, industry and control standards.

“End User” means any person Ordering Activity permit to access Ordering Activity Data hosted in the Online Services or otherwise use the Online Services.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Ordering Activity to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the binding agreement between the Contractor and Ordering Activity under which Ordering Activity orders Products from the Contractor and the Contractor binds Ordering Activity to the terms of the this agreement.

“Licensing Site” means http://www.microsoft.com/licensing/contracts or a successor site.

“Instance” means an image of software that is created by executing the software’s setup or install procedure or by duplicating such an image.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at https://www.microsoft.com/en-us/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government, industry and control standards.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Online Services” means any of the Microsoft-hosted online services identified as such in the Product Terms and/or Online Services Terms and subscribed to by Ordering Activity under this agreement, including but not limited to those which are Government Community Cloud Services: Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, Microsoft Power BI Services, or Microsoft Intune Online Services. For clarity: Microsoft’s sub-contract with Contractor may limit the scope and variety of Microsoft Online Services available to Ordering Activity, for example based upon either a Microsoft License Program restriction and/or Ordering Activity’s unique regulatory or other requirement. Ordering Activity should not issue a purchase order to Contractor for an Online Service unless Ordering Activity is first satisfied, pursuant to Microsoft’s public statements on the Microsoft Trust Center Compliance Page, that its regulatory and other requirements will be met. In certain cases, Microsoft may require Contractor to provide Ordering Activity with an amendment to this Ordering Activity Agreement, in cases where an Online Service’s compliance with a regulation is predicated upon joint Ordering Activity responsibility, as set for in the Microsoft Trust Center Compliance Page.

“Online Services Terms” means the additional terms that apply to Ordering Activity’s use of Online Services provided herein.

“Preview” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain Ordering Activity feedback.

“Product” means all products sold to Ordering Activity by Contractor, as identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews. For clarity, not all Products shown in the Product Terms will be available to Ordering Activity under this Agreement. Contractor will inform Ordering Activity of Products made available to purchase under the Government Contract.
“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached herein.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Ordering Activity’s state and located within Ordering Activity’s state’ jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

“Subscription” means an enrollment for Online Services for a defined Term as established by Ordering Activity’s Reseller.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Online Services are published in the Online Services Terms. In addition, the Product Terms (a) contain product-specific references which may apply to certain Online Services and (b) may reference Online Services, and certain types of SKUs for them, that are not made available to Ordering Activity. The Use Rights for Software are published by Microsoft in the Product Terms.

EXHIBIT B TERMS FOR DEFENSEReady ON-PREMISE EDITION
DefenseReady On-Premise Edition is a Unified Solution with Microsoft Dynamics CRM software. Microsoft Corporation or one of its affiliates (collectively, “Microsoft”) has licensed the Microsoft Dynamics CRM software to Permuta Technologies, Inc. (“Permuta”). The terms of the Agreement apply only to DefenseReady On-Premise Editions licensed perpetually and includes the media on which Ordering Activity received it, if any. The terms also apply to any DefenseReady or Microsoft updates, supplements, and Internet-based services for Software covered under this Exhibit B, unless other terms accompany those items. If so, those terms apply.

OVERVIEW.
Software. The Software includes:

Server software.
Additional software that may only be used with the server software directly, or indirectly through other additional software.
License Model. The Software is licensed based on the number of operating system environments that Ordering Activity run; and the number of instances of server software that Ordering Activity run; and the number of users that access instances of server software.

License Terms for Use with Virtual Server and other Similar Technologies.
Instance. Ordering Activity create an “instance” of Software by executing the Software’s setup or install procedure. Ordering Activity also create an instance of Software by duplicating an existing instance. References to Software in this agreement include “instances” of the Software.
Run an Instance. Ordering Activity “run an instance” of Software by loading it into memory and executing one or more of its instructions. Once running, an instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

Operating System Environment. An “operating system environment” is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system instance or parts identified above.

There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following:

one physical operating system environment
one or more virtual operating system environments
**Server.** A server is a physical hardware system capable of running server Software. A hardware partition or blade is considered to be a separate physical hardware system. For the purposes of these terms, a server may be owned and managed by Ordering Activity (“Ordering Activity’s server”), or be fully physically dedicated to Ordering Activity under the day to day management and control of a third party entity (e.g. Outsourcing Company).

**Assigning a License.** To assign a license means simply to designate that license to one server or user.

**USE RIGHTS.**

**Assigning the License to the Server.**

Before Ordering Activity run any instance of the server software under a Software license, Ordering Activity must assign that license to one of Ordering Activity’s servers. That server is the licensed server for that particular license. Ordering Activity may assign other Software licenses to the same server, but Ordering Activity may not assign the same license to more than one server.

ii. Ordering Activity may reassign a Software license, but not within 90 days of the last assignment. Ordering Activity may reassign a Software license sooner if Ordering Activity retire the licensed server due to permanent hardware failure or replacement. If Ordering Activity reassign a license, the server to which Ordering Activity reassign the license becomes the new licensed server for that license.

**Running Instances of the Server Software.** Ordering Activity may run, at any one time, one instance of the server software in one physical or virtual operating system environment on the licensed server.

**Running Instances of the Supplemental Server Software.** Ordering Activity may run or otherwise use any number of instances of the Supplemental Server Software listed below in physical or virtual operating system environments on any number of devices. Ordering Activity may use those instances only with the server software. Use of any instance with the server software may be indirect, through other instances of the Supplemental Server Software, or direct.

- DefenseReady Data Services Server
- DefenseReady Recon Server
- DefenseReady WebDev Server
- DefenseReady Learning Management System (LMS) SCORM Engine and Player
- DefenseReady External User Self-Service Portal Server
- Microsoft Dynamics CRM 2016 for Microsoft Office Outlook
- Microsoft E-Mail Router and Rule Deployment Wizard for Microsoft Dynamics CRM 2016
- Microsoft Dynamics CRM Reporting Extensions for Microsoft Dynamics CRM 2016 Microsoft SharePoint Grid for Microsoft Dynamics CRM 2016
- Microsoft Dynamics CRM 2016 Report Authoring Extensions
- Microsoft Dynamics CRM 2016 Best Practices Analyzer
- Microsoft Dynamics CRM 2016 Multilingual User Interface (MUI)
- MarketingPilot Connector for Microsoft Dynamics CRM
- Microsoft Dynamics CTM Sales Workspace
- Microsoft Dynamics CRM for supported devices
- Creating and Storing Instances on Ordering Activity’s Servers or Storage Media. Ordering Activity have the additional rights below for each Software license Ordering Activity acquire.

Ordering Activity may create any number of instances of the server software and Supplemental Server Software.

Ordering Activity may store instances of the server software and Supplemental Server Software on any of Ordering Activity’s servers or storage media.

Ordering Activity may create and store instances of the server software and Supplemental Server Software solely to exercise Ordering Activity’s right to run instances of the server software under any of Ordering Activity’s Software licenses as described (e.g., Ordering Activity may not distribute instances to third parties).

**ADDITIONAL LICENSING REQUIREMENTS AND/OR USE RIGHTS.**

- Operating System Environment License
Ordering Activity must acquire and assign an Operating System Environment License (OSEL) to each Operating System Environment hosting one or more instances of the server software.

Client Access Licenses (CALs).
Ordering Activity must acquire and assign the appropriate CAL to each device or user that accesses Ordering Activity’s instances of the server software directly or indirectly. A hardware partition or blade is considered to be a separate device.
Ordering Activity do not need CALs for any of Ordering Activity’s servers licensed to run instances of the server software.
Ordering Activity do not need CALs for up to two devices or users to access Ordering Activity’s instances of the server software only to administer those instances.
Ordering Activity’s CALs permit access to Ordering Activity’s instances of earlier versions, but not later versions, of the server software.

Categories of User CALs. There are three categories of CALS: the Essential CAL, Basic Use Additive CAL and the Professional Use Additive CAL. Ordering Activity may not have a Professional Use Additive CAL without an underlying Basic Use Additive CAL, and a Basic Use Additive CAL without an underlying Essential CAL.

The DefenseReady Essential CAL, with the Microsoft Dynamics CRM Essential CAL, allows users only Essential use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.
The DefenseReady Basic Use Additive CAL, with the Microsoft Dynamics CRM Basic Use Additive CAL, allows users only Basic use access to the DefenseReady 2016 Operating System Environment and Microsoft Dynamics CRM Server 2016.
Each CAL permits one user, using any device, to access instances of the software on Ordering Activity’s licensed servers in Ordering Activity’s licensed DefenseReady operating system environment.

Pool connections, Reroute information, or Reduce the number of devices or users that directly access or use the software (sometimes referred to as “multiplexing” or “pooling”), does not reduce the number of licenses of any type that Ordering Activity need.

Multiplexing. Hardware or software Ordering Activity use to

No Separation of Server Software. Ordering Activity may not separate the server software for use in more than one operating system environment under a single license, unless expressly permitted. This applies even if the operating system environments are on the same physical hardware system.

Additional Functionality. Permuta or Microsoft may provide additional functionality for the Software. Other license terms and fees may apply if all parties agree to them in writing prior to additional terms and fees becoming effective.

BENCHMARK TESTING. Ordering Activity must obtain Permuta’s and Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of the software. However, this does not apply to the Microsoft .Net Framework (see below).

MICROSOFT .NET BENCHMARK TESTING. The software includes one or more components of the .NET Framework 3.0 (".NET Component"). Ordering Activity may conduct internal benchmark testing of those components. Ordering Activity may disclose the results of any benchmark test of those components. Notwithstanding any other agreement Ordering Activity may have with Microsoft, if Ordering Activity disclose such benchmark test results, Microsoft shall have the right to disclose the results of benchmark tests it conducts of Ordering Activity’s products that compete with the applicable .NET Component.

SCOPE OF LICENSE. Subject to Ordering Activity’s continuing obligation for compliance with the terms set forth herein, the underlying GSA Schedule Contract, Schedule Pricelist and applicable purchase order, Permuta hereby grants to Ordering Activity a limited, nonexclusive, non-transferable, non-assignable license to use the Software during the term of Ordering Activity’s license only as expressly authorized in this Terms. By using the Software, Ordering Activity acknowledge and agree that the Software is licensed, not sold, that all Software and accompanying documentation are proprietary to Permuta and/or Microsoft and are protected under copyright and other intellectual property laws and international treaties Ordering Activity further acknowledge and agree that, as between Ordering Activity and Permuta, Permuta owns and its third party licensors own and shall continue to own all right, title and interest to the Software and accompanying Documentation, including any associated intellectual property rights. Except for the limited license granted herein, these Terms do not grant Ordering Activity any ownership or other right or interest in the Software, whether by estoppel, implication or otherwise. Ordering Activity must comply with any technical limitations in the Software that only allow Ordering Activity to use it in certain ways. Ordering Activity may not

1. work around any technical limitations in the Software;
2. reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law expressly permits, despite this limitation;
3. make more copies of the Software than specified in this agreement or allowed by applicable law, despite this limitation;
4. publish the Software for others to copy;
rent, lease or lend the software; or use the Software for commercial software hosting services.

Rights to access the Software on any device do not give Ordering Activity any right to implement Permuta patents or other Permuta intellectual property in Software or devices that access that device.

SOFTWARE MAINTENANCE. Ordering Activity may receive upgrades to future Software versions by acquiring Maintenance for a fee in accordance with the GSA Pricelist. Please note, however, that the right to upgrade is limited to new versions of the Software during the Maintenance coverage period. Licenses must be enrolled in Maintenance when the license is originally acquired, and coverage must be renewed annually during the agreement’s term without lapse or the right to upgrade is voided. Users who are not enrolled in Maintenance who want to upgrade must purchase a new license. Maintenance shall be provided only to unmodified Software and commercially released updated versions of the Software. Ordering Activity are solely responsible for making or arranging for updates to interfaces for custom applications which Ordering Activity have installed or created. Software Maintenance allows a Ordering Activity access to product updates, including bug fixes, new quarterly releases with additional capabilities, as well as major product version updates for DefenseReady and Embedded Microsoft Dynamics CRM. Additional instances may be allowed if Maintenance is purchased. Additional software modules may also be made available to Ordering Activity through Ordering Activity’s purchase of Maintenance. Any such additional software shall also be subject to these Terms. Maintenance will be provided be Permuta provided that Ordering Activity’s environment and infrastructure is configured according to and in compliance with the guidance provided by Permuta.

Ordering Activity Support and Support Plans. Terms for Ordering Activity Support and Support Plans for software covered by this Exhibit B are identified in Exhibit C.

BACKUP COPY. Ordering Activity may make one backup copy of the Software media. Ordering Activity may use it only to create instances of the Software.

DOCUMENTATION AND USAGE. Any person that has valid access to Ordering Activity’s computer or internal network may copy and use the documentation for Ordering Activity’s internal, reference purposes. By using the Software, Ordering Activity acknowledge and agree that Permuta may use limited amounts of technical data and information (for example, but not limited to, information concerning Ordering Activity’s device, system, application software and peripherals) to facilitate the provision of Software updates, product support and other services (if any) attributable or related to the Software. Permuta may use this information as long as it is in a form that does not personally identify Ordering Activity in order to operate, improve, provide and develop other services, products and/or technologies, for research and development and for any other purpose expressly described to Ordering Activity as a part of Permuta’s products and services.

FEEDBACK. In the event that Ordering Activity provide any feedback, ideas, materials, suggestions, opinions, information or any other input to Permuta (“Feedback”), Ordering Activity acknowledge and agree that, while Permuta is under no obligation to consider or implement any such Feedback, Permuta and its successors and assigns receive an unconditional and unlimited right to use, reproduce, modify and disclose to others any such Feedback without any obligation to provide Ordering Activity with compensation or attribution. Further, Ordering Activity acknowledge and agree that any and all such Feedback is provided by Ordering Activity on a non-confidential basis and Ordering Activity waive and agree not to assert any rights (potential or vested) that Ordering Activity may have in the Feedback. Permuta acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

EXPORT RESTRICTIONS. The Software is subject to United States export laws and regulations. Ordering Activity must comply with all domestic and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, end users and end use.

Reserved.

LEGAL EFFECT. This agreement describes certain legal rights. Ordering Activity may have other rights under the laws of Ordering Activity’s state or country. This agreement does not change Ordering Activity’s rights under the laws of Ordering Activity’s state or country if the laws of Ordering Activity’s state or country do not permit it to do so. Reserved.

UNITED STATES GOVERNMENT USE RIGHTS. By using the Software, Ordering Activity agree that the Software is a “commercial item,” as that term is defined in 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 and that all U.S. Government end users acquire the Software with only those rights set forth therein.

NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. BY USING THE SOFTWARE, ORDERING ACTIVITY AGREE TO IMPLEMENT AND ASSUME FULL RESPONSIBILITY FOR SAVING ALL OF ORDERING ACTIVITY’S FILES ONTO MAGNETIC TAPE OR OTHER OFFLINE MASS STORAGE MEDIA FOR THE PURPOSE OF PREVENTING LOSS OF DATA IN THE EVENT OF EQUIPMENT OR SOFTWARE (INCLUDING THIRD PARTY SOFTWARE) FAILURE OR DESTRUCTION. ORDERING ACTIVITY FURTHER AGREE THAT ORDERING ACTIVITY ASSUME FULL RESPONSIBILITY FOR MAINTAINING ORDERING ACTIVITY’S OWN SECURITY POLICIES AND PROCEDURES FOR THE PROTECTION OF ORDERING ACTIVITY’S DATA AND SFOTWARE.

WARRANTIES

LIMITED WARRANTY. For a period of one year from the date Customer is first licensed for a version of the Software (the “Warranty Period”), Permuta represents and warrants that it will use commercially reasonable efforts to cause the Software to conform, in all substantial respects, to the Permuta’s then-current technical documentation for the Software. If it does not, and Customer notifies Permuta within the Warranty Period, then Permuta will, at its option, (1) return the price Customer paid for the Software License or (2) repair or replace the Software.

DISCLAIMERS OF WARRANTY. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 19, PART A, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT
TO THESE TERMS, THE SOFTWARE AND ANY THIRD-PARTY SOFTWARE, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE; OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY. THE SOFTWARE AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT THE SOFTWARE WILL BE FREE OF ERRORS.

Reserved.
Reserved.

EXHIBIT C- TERMS AND CONDITIONS OF DEFENSEREADY / FEDERALREADY ORDERING ACTIVITY SUPPORT for PERPETUALLY LICENSED SOFTWARE WITH ANNUAL SOFTWARE MAINTENANCE

Permata’s Ordering Activity Support Program ("Ordering Activity Support") is a cost effective, flexible program for Ordering Activities to plan, request, receive, and manage support for DefenseReady and FederalReady Products ("Products"). The following Terms and Conditions ("Terms") apply to Ordering Activity’s access to Ordering Activity Support for Perpetually Licensed Software covered under EXHIBIT B. Ordering Activity Support Program Administration

Eligibility: Ordering Activity must purchase Annual Software Maintenance ("SW Maintenance") for Products to receive Ordering Activity Support. Term: The term of the Ordering Activity Support plan coincides with the Coverage Period of the associated Software Maintenance. Account Manager: Permata will designate two contacts to serve as the primary and secondary account managers to manage Permata’s responsibilities associated with the Ordering Activity’s Support Plan. Enrollment Administrator: Ordering Activity shall designate two contacts to serve as the primary and secondary enrollment administrators ("Enrollment Administrator") to manage Ordering Activity’s responsibilities associated with its Support Plan. Approved Requesters: Ordering Activity shall designate approved requesters ("Approved Requesters") in accordance with the terms of the selected Support Plan. Approved Requesters are presumed to have the authorization authority to request Support Tasks. Modifications: Permata may make commercially reasonable changes to the Ordering Activity Support program from time to time, without amendment to the Terms.

Support Plans:

Included with the purchase of SW Maintenance at no additional cost is automatic enrollment in the "Standard" Ordering Activity Support Plan. Ordering Activity may select an alternative Support Plan with the purchase of SW Maintenance. The following Support Plans are available:

**Standard** – The Standard Plan is included with SW Maintenance at no additional cost. This Support Plan may be suitable for organizations with 1) mature deployments of the Products or 2) limited support budgets.

**Silver** – The Silver Plan is designed for small organizations intending to extend the value from its current use of the Products.

**Gold** - The Gold Plan is designed for mid-sized organizations intending to extend the value from its current use of the Products.

**Platinum** – The Platinum Plan is designed for large organizations intending to extend the value from its current use of the Products.

**OnBoard** – The OnBoard Plan is designed for new Ordering Activity’s intending to use Products operationally within a 12-month time.

**Pilot** – The Pilot Plan is designed for potential Ordering Activity’s intending to conduct an operational pilot of the Products for qualification, evaluation, and/or comparative purposes.

If Permata provides a Fix in connection with Ordering Activity Support, each Fix is licensed under the same terms as the Product to which it applies.

Support Task Request Process:

Support Tasks: Ordering Activity may only access Ordering Activity Support by requesting a Support Task through Ordering Activity’s Approved Requesters. The Support Task is administered by the Account Manager(s), in cooperation with the Enrollment Administrator(s) and Approved Requesters. At no additional cost, Permata may provide tools, resources, and software to facilitate the Support Task request process.

Types: The types of Support Tasks available to the Ordering Activity under the Terms are:

**Advisory Support** – Advisory support is available for short-term advice and guidance from Permata for problems not covered with problem resolution support as well as requests for consultative assistance for design, development, deployment and operation issues.

**Sustainment Support** – Sustainment support includes sustainment planning services, off-site integration test environments, update rollup testing, and periodic on-site support for applying updates, performing major upgrades, and Products infrastructure optimization.

**Problem Resolution Support (PRS)** – Problem resolution support is available for assistance with resolving problems with specific symptoms encountered while using the Products, where there is a reasonable expectation that the problem is caused by the Products.

**Rapid On-Site Support (ROSS)** – Rapid on-site support is available for urgent requirements for onsite support by Permata resources necessitating less than 48 hours’ notice. Permata’s ability to provide rapid onsite support is subject to Permata’s resource availability, and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permata will redeem Support Credits to account for travel time at a rate of one-half Support Credit for each required non-business hour of travel not otherwise accounted for in the support day.

**Configuration Support** – Configuration support is available for Ordering Activities requiring minor configuration changes on a short-term basis.

**Training Support** – Training support is available to support curriculum development and to conduct training.

**Cyber Security Support** – Subject to availability of Permata resources, cyber security support may be available to support Ordering Activity’s cyber security needs in relation to its intended use of the Products.

**Scheduled On-Site Support** – Scheduled on-site Ordering Activity support is available for Ordering Activities subject to Permata’s resource availability and the tasks performed will vary depending on the situation, environment, and business impact of the issue. Permata may redeem Support Credits to account for travel time at a rate of one-half Support Credit for each required nonbusiness hour of travel not otherwise accounted for in the support day.

**Solution Development Support** – Solution development support is available for Ordering Activities requiring or engaged in a complex custom solution development effort following commercial best practices.

**On-Boarding Support** – On-boarding support is available for new implementations and integration services of a new Ordering Activity.

**Support Credits**

**General.** As part of the Ordering Activity’s Support Plan, Permuta will issue Support Credits redeemable for Support Tasks. Credits may only be redeemed for 1) Support Tasks following the Support Task request process set forth in section 1.3 or 2) Managed Ordering Activity Support Projects in accordance with section 1.5. Support Credits have no cash value, are non-transferrable and nonrefundable. All Support Credits are valid for the term of the Support Plan and expire immediately upon expiration of the SW Maintenance Coverage Period or termination of Ordering Activity’s Support Plan.

**Roll-Over Support Credits.** Permuta will reissue a limited quantity of expired support credits (“Roll-Over Support Credits”) at the start of the Follow-On SW Maintenance’s Coverage Period. Section 7.8 identifies the Roll-Over Support Credits limit for each available Support Plan. The reissue quantity will not exceed the limit of the expiring Support Plan or the Follow-On Support Plan associated with a SW Maintenance renewal, whichever is lowest.

**Pre-determined Redemption Quantity.** In accordance with commercially acceptable procedures, Permuta will automatically accept and process valid Support Task requests of a type HAVING a predetermined redemption rate as set forth below in Section 7.4.4.

**Redemption Quantity Approval.** A Ordering Activity Enrollment Administrator will be required to issue Permuta a written Authority to Proceed for Support Task Requests of a type NOT HAVING a predetermined redemption rate. The Authority to Proceed must authorize a redemption quantity specified by Permuta for each Support Task Request.

**Support Credit Redemption Rate.** Support Credits will be redeemed by Ordering Activity at the following rates for the Support Tasks listed below:

<table>
<thead>
<tr>
<th>Support Task Type</th>
<th>Redemption Rate Unit (as reasonably determined by Permuta)</th>
<th>Support Credit Redemption Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Support</td>
<td>per Task</td>
<td>2</td>
</tr>
<tr>
<td>Sustainment Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Problem Resolution Support</td>
<td>per Case</td>
<td>1</td>
</tr>
<tr>
<td>Rapid On-Site Support</td>
<td>per Day</td>
<td>10</td>
</tr>
<tr>
<td>Configuration Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Training Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Cyber Security Support</td>
<td>by Task</td>
<td>To be mutually agreed</td>
</tr>
<tr>
<td>Scheduled On-Site Support</td>
<td>Day</td>
<td>6</td>
</tr>
</tbody>
</table>
Solution Development Support | by Task / by Lot | To be mutually agreed
---|---|---
On-Boarding Support | by Task / by Lot | To be mutually agreed

**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required to avoid disrupting or otherwise negatively impacting its intended use of the Products. Permuta may refuse to perform Support Tasks if Ordering Activity has insufficient Support Credits.

**Managed Ordering Activity Support Projects.**

**Managed Ordering Activity Support Project.** As part of an eligible Support Plan and when appropriate, Permuta may perform certain support services as Managed Ordering Activity Support Projects (“Projects”). Projects will be used to deliver to Ordering Activity mutually agreed to deliverables (“Deliverables”) addressing requirements related to the Ordering Activity’s desired use of the Products.

**Statement of Work.** Permuta will perform Projects in accordance with Permuta’s commercially reasonable standard patterns and practices for processes, documentation, communication, design, configuration, customization, code, test, and operational support. Permuta shall only perform Projects if the parties have executed, and subject to, a mutually agreed to statement of work (“SOW”) documenting the specific terms and conditions (including those relating to intellectual property rights) governing such Support Services and Deliverables. Ordering Activity and Permuta agree to each perform its respective obligations in each SOW.

**Support Credit Redemption Plan.** The terms of the Project SOW shall include a Support Credit Redemption Plan specifying a fixed quantity of Support Credits the Ordering Activity would be required to redeem and the redemption scheduled.

**Sufficient Credits.** The Ordering Activity is responsible for ensuring it maintains a sufficient Support Credit balance as required by the Support Credit Redemption Plan without disrupting or otherwise negatively impacting its intended use of the Products.

**Response Levels.** When submitting a Support Request, Ordering Activity is responsible for specifying the initial severity level in consultation with Permuta in accordance with the Ordering Activity situation. The Support Request severity level will determine Permuta’s expected response and Ordering Activity’s expected response as identified in the table below.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Situation</th>
<th>Permuta’s Expected Response</th>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Submission via phone only</td>
<td>Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as soon as possible Continuous effort on a 24x7 basis Rapid escalation within Permuta to product teams Notification of Permuta’s senior executives</td>
<td>Notification of Ordering Activity senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority</td>
</tr>
</tbody>
</table>
A. Submission via phone only

<table>
<thead>
<tr>
<th>Critical business impact:</th>
<th>Permuta’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant loss or degradation of services Needs attention within 1 hour</td>
<td>1st call response in 1 hour or less Permuta’s resources at Ordering Activity site as required Continuous effort on a 24x7 basis Notification of Permuta’s senior managers</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification</td>
</tr>
</tbody>
</table>

B. Submission via phone or web

<table>
<thead>
<tr>
<th>Moderate business impact:</th>
<th>Permuta’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderate loss or degradation of services but work can reasonably continue in an impaired manner</td>
<td>Initial response in 4 Business Hours or less Effort during Business Hours only</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allocation of appropriate resources to sustain Business Hours continuous effort</td>
</tr>
</tbody>
</table>

C. Submission via phone or web

<table>
<thead>
<tr>
<th>Minimum business impact:</th>
<th>Permuta’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours</td>
<td>Initial response in 8 Business Hours or less Effort during Business Hours only</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ordering Activity’s Expected Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accurate contact information on case owner Responsive within 24 hours</td>
</tr>
</tbody>
</table>

Permuta may downgrade the severity level if Ordering Activity is not able to provide adequate resources or responses to enable Permuta to continue with problem resolution efforts.

**Support Plan Credits.**

Permuta will issue Support Credits as they are earned, either monthly or annually. The Support Credits will be earned in accordance with the following table.

---

**Quantity of Support Credits earned per Unit of each Applicable Product Type by Support Plan**
<table>
<thead>
<tr>
<th>Product Type</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating System Environment (OSE) License</td>
<td>36</td>
<td>120</td>
<td>240</td>
<td>480</td>
<td>2400</td>
<td>1800</td>
</tr>
<tr>
<td>Basic &amp; Professional User CAL</td>
<td>0.12</td>
<td>0.24</td>
<td>0.36</td>
<td>0.48</td>
<td>0.96</td>
<td>4.8</td>
</tr>
<tr>
<td>Essential CAL</td>
<td>0.012</td>
<td>0.024</td>
<td>0.036</td>
<td>0.048</td>
<td>0.098</td>
<td>0.48</td>
</tr>
<tr>
<td>Additional Prod Instance</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
</tr>
</tbody>
</table>

**Support Plan Conditions and Limitations.**
Terms, conditions, and limitations will vary for each Support Plan. The following table identifies the applicable terms, conditions, and limitations for Support Plans available under the Terms.

<table>
<thead>
<tr>
<th>Term, Condition, or Limitation</th>
<th>Standard</th>
<th>Silver</th>
<th>Gold</th>
<th>Platinum</th>
<th>OnBoard</th>
<th>Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible for Advisory Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Sustainment Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Problem Resolution</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Rapid On-Site Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Configuration Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Training Support</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Cyber Security Support</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Scheduled On-Site Support</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
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</tr>
<tr>
<td>Eligible for Credit Redemption Plan</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for Solution Development Support</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Eligible for On-Boarding Support</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Available Response Level</td>
<td>C</td>
<td>A, B, C</td>
<td>1, A, B, C</td>
<td>1, A, B, C</td>
<td>A, B, C</td>
<td></td>
</tr>
<tr>
<td>Rollover Support Credits</td>
<td>N/A</td>
<td>25</td>
<td>50</td>
<td>100</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Allowed Number of Approved Requestors (Other than admins)</td>
<td>N/A</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Additional Support Services Provisions.

Ordering Activity may not, unless specifically authorized by Permuta in writing, i) rent, lease, lend or host any Deliverables (including any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta’s performance of Services) or Fixes; ii) reverse engineer, decompile or disassemble Fixes or Deliverables, except to the extent expressly permitted by applicable law; or iii) transfer licenses to, or sublicense, Fixes or Deliverables to any government entity or quasi-governmental entity or any other third party. Permuta may request that Microsoft deliver problem resolution support on Permuta’s behalf to Ordering Activity subject to the Terms. Permuta will coordinate and participate in the delivery of subcontracted Microsoft services. In order for Permuta to provide subcontracted Microsoft services, Ordering Activity will be required to provide consent to provide the required contact information to Microsoft.

General Terms.

**Fees and Payment Terms.** The fees and payment terms applicable to Ordering Activity Support are set forth in the GSA schedule contract, schedule pricelist and applicable purchase order.

**Ordering Activity Support Term Updates.** When Ordering Activity renews or purchases SW Maintenance, the then-current Terms, underlying GSA Schedule Contract, Schedule pricelist, and applicable purchase order will apply and will not change during Ordering Activity’s coverage period of the associated SW Maintenance purchase.

**Ownership and License.** Except as otherwise set forth in a Statement of Work (SOW) in accordance with section 1.5, this section governs the ownership and use rights of any computer code or other materials that may be provided under these Terms. Fixes. Except as otherwise provided herein, the underlying GSA schedule contract, schedule pricelist and applicable purchase order Ordering Activity’s right to use fixes is governed by the license agreement for the affected Product or, if the fix is not provided for a specific product, any other use terms provided by Permuta. All fixes provided are licensed to Ordering Activity. For the purposes of these Terms, “fixes” means any Product related bug fixes, workarounds, patches, beta fixes or beta builds other than sample code or materials. Permuta does not transfer ownership rights in Products and reserves all rights not expressly granted.

**Pre-existing Work.** All rights in any computer code or materials developed or otherwise obtained independently of the efforts of a Party under these Terms (“Pre-existing Work”) shall remain the sole property of the Party providing the Pre-existing Work. During the performance of Ordering Activity Support services, each Party grants to the other Party (and their contractors as necessary) a temporary, nonexclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other Party solely for the performance of such Services. Permuta grants Ordering Activity a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) Permuta’s Pre-existing Work in the form delivered to Ordering Activity for Ordering Activity’s internal business operations without any obligation of accounting or payment of royalties. Ordering Activity’s licenses to Permuta’s Pre-existing Work is conditioned upon Ordering Activity’s compliance with these Terms and the perpetual license applies solely to Permuta’s Pre-existing Work that is left with Ordering Activity at the conclusion of Permuta’s performance of services.
Materials. All rights in any materials developed by Permuta (other than software code) and provided to Ordering Activity in connection with the
Ordering Activity Support services ("Materials") shall be owned by
Permuta except to the extent such Materials constitute Ordering Activity's Pre-existing Work. We grant
Ordering Activity a non-exclusive, perpetual, fully-paid up license to use, reproduce and modify the Materials solely for Ordering Activity's internal business operations and without any obligation of accounting or payment of royalties. All rights not expressly granted, are reserved.

Reservation of Rights. All rights not expressly granted in this Section 2.3 are reserved.

Restrictions on Use. Ordering Activity may not (i) rent, lease, lend or host any computer code or materials that Permuta leaves with Ordering Activity at the conclusion of Permuta's performance of Services ("Deliverables") or fixes, except as otherwise provided herein; (ii) reverse engineer, de-compile or disassemble fixes or Deliverables, except to the extent expressly permitted by applicable law despite this limitation; or (iii) transfer licenses to, or sublicense fixes or Service Deliverables to any government entity or quasi-governmental entity, except as specifically authorized herein.

Export. Ordering Activity agree to comply with all applicable international and national laws that apply to the products, fixes and Service Deliverables, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

Permuta-Provided Data. Permuta may use or provide Permuta-Provided Data in connection with Ordering Activity's access to Ordering Activity Support. Ordering Activity acknowledges that Permuta-Provided Data has commercial value. All rights in Permuta-Provided Data shall be owned by Permuta unless explicitly stated otherwise in written form by Permuta. All rights not expressly granted to Ordering Activity, are reserved to Permuta.

Commercial Item. Ordering Activity Support is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "installation services, maintenance services, repair services, training services, and other services" for support of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Ordering Activity acquires Ordering Activity Support as commercial items and will engage as a subcontractor for Ordering Activity Support subject only to the required U.S. Government flowdown clauses listed at 48 CFR 52.244-6, "Subcontracts for Commercial Items", plus other terms necessary in meeting performance obligations under the specific Government Contract under which Ordering Activity purchases the Products.

Subcontractors. Permuta may hire subcontractors to provide Support Services on its behalf. Any such subcontractors will be required to act consistently with this Agreement and will only be permitted to obtain Ordering Activity Data to deliver the services Permuta is obligated to provide and will be prohibited from using Ordering Activity Data for any other purpose. Permuta shall maintain responsibility for the actions of its subcontractors.

Representations, Warranties and Disclaimers. General Representations and Warranties. Each party represents and warrants that (a) it is validly existing and in good standing under the laws of the place of its establishment or incorporation, (b) it has full corporate power and authority to execute, deliver and perform its obligations under these Terms, (c) the person signing these Terms on its behalf has been duly authorized and empowered to accept these Terms, and (d) these Terms are valid, binding and enforceable against it accordingly. Additional Warranties. For a period of one year from the commencement of the applicable Ordering Activity Support Plan Term (the "Warranty Period") Permuta represents and warrants that it will use commercially reasonable efforts to cause Ordering Activity Support Deliverables to conform, in all substantial respects, to the Permuta's then-current technical documentation for the Products. If it does not, and Ordering Activity notifies Permuta within the Warranty Period, then Permuta will take commercially reasonable measures to repair or replace the Ordering Activity Support Deliverables. Ordering Activity waives any breach of warranty claims not made during the Warranty Period.

Permuta warrants that all Ordering Activity Support will be performed with professional care and skill. If Permuta fails to do so and Ordering Activity notifies Permuta within 90 days of the date of performance, then Permuta will re-perform the Ordering Activity Support. Disclaimers of Warranty. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 4.1 and 4.2, PERMUTA DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THESE TERMS, PRODUCTS AND ANY THIRD-PARTY SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (A) IMPLIED WARRANTIES OF MERCHANTABILITY; (B) EXPRESS WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT PERMUTA KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); OR (C) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE, LOSS OF DATA, TIMELINESS OR SECURITY.

THE ORDERING ACTIVITY SUPPORT AND ALL ACCOMPANYING MATERIALS ARE PROVIDED BY PERMUTA AS-IS. PERMUTA DOES NOT GUARANTEE THAT CUSTOMER SUPPORT WILL BE PROVIDED FREE OF ERRORS.

Effect of Termination. Upon any termination or expiration of the Support Plan: (a) all rights and licenses granted to Ordering Activity under these Terms will immediately cease; (b) Ordering Activity will within thirty (30) days of receipt of invoice pay to Permuta all amounts due and payable to the effective date of termination of the Support Plan.Notwithstanding any terms to the contrary in these Terms, Sections 3 and 4 will survive any termination or expiration of the Support Plan. Definitions. “Software Maintenance” means the right to upgrade to future Software versions. Software maintenance is acquired by the Ordering Activity for a fee on an annual basis. The right to upgrade is limited to new versions of the associated Software during the Software Maintenance Coverage Period. “Business Hours” means as 9:00 AM to 5:30 PM Eastern Standard Time, excluding Federal holidays and weekends. “Coverage Period” means the 12 month period during which the Ordering Activity is eligible for the Software Maintenance benefits of Perpetually Licensed Software. “Ordering Activity Data” means all data, including all text, sound, video, or image files, and software, that are provided to Permuta by, or on behalf of, Ordering Activity through use of the Products.
“Ordering Activity Support” means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity these Terms.

“Ordering Activity Support” means the support and maintenance services provided by or on behalf of Permuta to Ordering Activity these Terms.

“Disclosing Party” means the party that discloses Confidential Information to the Receiving Party.

“End User” means any person Ordering Activity permits to access Ordering Activity Data hosted in the Products or otherwise uses the Products. Employees of Affiliates of Ordering Activity may be End Users.

“Fixes” are fixes, modifications or enhancements, or their derivatives for the Products, that Permuta either releases generally (such as service packs) or that Permuta provides to Ordering Activity to address a specific issue.


“Hosted Services” means the hosted services provided by Permuta, directly or indirectly, to Ordering Activity.

“Intellectual Property Rights” means all patent rights, copyrights, moral rights, trademark rights, trade secret rights and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

“Managed Ordering Activity Support Project” means a carefully planned, multi-phase effort contemplated and executed in performance of a Statement of Work (SOW).

“Microsoft” means Microsoft Corporation.

“Permuta-Provided Data” means any data provided by Permuta to Ordering Activity under this Agreement, including Sample Data. Permuta-Provided Data excludes Ordering Activity Data.

“Perpetually Licensed Software” means the version(s) of Software licensed by the Ordering Activity for which the Ordering Activity’s use rights do not expire. Unless Software Maintenance is acquired for a fee, Ordering Activity’s use rights are limited to the versions of software accessed at the time the perpetual licenses were purchased and during a valid Software Maintenance Coverage Period.

“Previews” means preview, trial, beta, or other pre-release version or feature of the Products offered by Permuta to obtain Ordering Activity feedback.

“Product(s)” means any or all product(s) sold to Ordering Activity by Permuta, such as all Software, Hosted Services and other web-based services, including Previews.

“Purchase Agreement” means the binding agreement between Ordering Activity and Reseller or Prime Contractor under which Ordering Activity orders Products and accepts the Terms.

“Receiving Party” means the party that receives Confidential Information from the Disclosing Party.

“Reseller” means any reseller authorized by Permuta to resell the Products and Software to Ordering Activity.

“Roll-Over Support Credits” means a limited quantity of expired support credits reissued in a Follow-on Support Plan in accordance with section 7.4.2.

“Sample Data” means data in, originating from, or derived from an information system consumable form that mimics or is representative of real-world operational data which may be used for testing, demonstrations or other purposes and that is made available to Ordering Activity under this Agreement.

“Security Policy” means the collective policies and procedures followed by Permuta to establish and maintain the Products’ Trustworthiness as required by Ordering Activity.

“Software” means any software provided by Permuta, directly or indirectly, to Ordering Activity. Software does not include Hosted Services but Hosted Services may include Software.

“Support Credits” are allotments for Ordering Activity Support that are earned either monthly or annually with a Ordering Activity Support Plan.

“Support Credit Redemption Plan” means a detailed plan for redeeming no less than 500 Support Credits in support of a specific Ordering Activity initiative or set of requirements related to the Ordering Activity’s desired use of Products.

“Support Plan” means one of the support plans listed in Section 7.2 in which Ordering Activity enrolls during a Subscription Term.

“Support Task” means a specific instance of Ordering Activity’s access to Permuta expertise or technical support in connection with a Ordering Activity Support Plan.

“Use Rights” means the rights of members, users, mission owners, and other End Users to use the Software as described by Permuta from time to time.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

**Scope.** This Rider and the attached Pexip, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

**Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from timeto time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Customer Licensing Agreement

DEFINITIONS

In this Contract expressions written with capital letters shall, unless the context otherwise requires, have the following meaning:

Customer: The Ordering Activity licensee under this Contract and GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document.
Contract: This Software license Contract.
Documentation: The documentation to the Software as specified.
Effective Date: The date of this Contract.
Order Confirmation: The order confirmation issued by Customer to the Pexip Certified Partner.
Parties: Pexip and the Customer jointly.
Party: Either of Pexip and the Customer.
Pexip: Pexip AS, a corporation incorporated in Norway with the enterprise no. 819 850 232.
Software: The licensed software as specified.

BACKGROUND

Pexip is a developer and supplier of advanced application software for telecommunications purposes. Pexip’s solutions are virtual software applications that can be deployed on industry standard server and virtualization platforms.

Pexip shall license to the Customer the Software according to the provisions of this Contract.
The Customer shall use the Software in its own business and for no other purposes solely in accordance with the terms of this Contract.

The Software and the accompanying Documentation is specified at any time on www.pexip.com.

**SCOPE OF DELIVERY**

**The software**

The Software shall have the characteristics and functionality determined by the specifications set out in Appendices and as may be modified by Pexip from time to time.

**Availability of the software**

The Software will be made available to the Customer from the date of this Contract.

The Software will be made available by Pexip to the Customer through downloading from a website. Downloading and installation of the Software in the Customer’s IT system shall be done by the Customer or its Pexip Certified Partner in accordance with the guidelines set out in the administrative guide.

**Documentation, assistance etc.**

Pexip shall give the Customer access to the Documentation required for permitted use of the Software.

Access to the Documentation will be provided simultaneously with the Software. The Documentation is intended to be compliant with the latest Software version available. The Customer waives any claims or other liability related to or derived from any inconsistency or defaults in the Documentation, and absent willful misconduct, regardless of the basis for such claims or liability.

**Support and troubleshooting**

Level one support shall be offered by an independent Pexip Certified Partner, who shall be trained to provide such support. The Pexip Certified Partner will be provided with appropriate support from Pexip as it determines in its sole discretion. Level one support and regular user support are not governed by this License Contract and shall be subject to a separate agreement between the Customer and the Pexip Certified Partner. The Customer shall have access to all new versions of the Software and Documentation released during the term of the Contract.
Pexip shall correct and release new versions of the Software in accordance with the Pexip’s release roadmap, as may be amended or modified by Pexip from time to time.

Additional services

Pexip or Pexip Certified Partner may upon Contract with the Customer, on a case by case basis, provide additional services on a consultancy basis, including e.g. installation, additional training and development of specific features. Such work is not governed by the License Contract and shall be subject to a separate agreement between the Customer and the Pexip Certified Partner.

SOFTWARE LICENSE

Pexip grants to the Customer for the term of this Contract a time-limited, non-exclusive, non-transferable license to download the Software and to use the Software in its own internal business operations in accordance with this Contract.

The License includes a right for the Customer to use the Software in tasks that are a natural component of the Customer’s business. The users of the Software shall be employees with the Customer or consultants engaged by the Customer. The Customer will assure that the employees or consultants are bound by the confidentiality provisions of Section 12 of this Contract. The Customer is not permitted without the prior written consent of Pexip to grant access to the Software to any person outside the Customer’s organization which consent may be withheld by Pexip in its sole discretion.

Customer is not entitled to use the Software after the termination of this Contract or for any reasons or objectives other than those expressly granted under the Contract.

The Customer shall not without the prior written consent of Pexip:

- modify, adapt, translate or otherwise alter the Software;
- tamper with, harm, reverse engineer, modify, decompile, disassemble or otherwise attempt to extract information from the Software;
- disclose, distribute, resell, lease, loan, sub-license, assign or allow any type of unauthorized third party use or access to the Software;
- patch, update or otherwise access the Software directly;
- make copies, other than reasonably required for backup or archiving purposes and in accordance with the provisions of this Contract, or sell or distribute such copies of the Software;
- disclose to any third party the results of any Software performance benchmarks or any specific detailed comparisons between the Software and any Customer or third-party product;
- use any functionality of the Software, or any output generated by such functionality to augment or
replace functionality in a third party software product or as an add-in to any third party software product; or
use the Software for any purpose that competes with the Software or to substantially duplicate its capabilities.

The Customer shall have the right to use any derivative works, such as new versions and customizations, provided by Pexip pursuant to any separate Contract in accordance with the license set out in this Section 6.

Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost.

**REPRESENTATIONS AND WARRANTIES**

**Representation**

Both Pexip and the Customer hereby warrant and represent that:

They are corporations or entities duly organized and validly existing under the laws of their respective jurisdictions and have all requisite power and authority to enter into this Contract. They have the requisite power to execute and deliver this Contract and to perform the actions contemplated or to be performed hereby. They will not wind up, sell any of its assets, increase its debt and/or amend its business in any way that can influence on its ability to fulfill its obligations pursuant to this Contract.

**Intellectual Property Rights**

Pexip holds the intellectual property rights to the Software required to grant the license contemplated in this Contract.

**Software**

Pexip warrants to the best of its knowledge that the Software during the term of the Contract will function substantially as described. Pexip disclaims all warranties, express or implied, including any warranty of fitness for a particular purpose or of merchantability. There are no representations or guarantees under this agreement, or in any other agreement or communication, concerning the software or its performance or the quality, accuracy or fitness of the software.

In no event shall Pexip be liable for indirect, special, incidental or consequential damages including (but not limited to) damages for loss of profit or goodwill regardless of (a) the negligence (either sole or concurrent) of Pexip and (b) whether Pexip has been informed of the possibility of such damages.
The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

The Customer’s sole remedy in case of breach of this Section 5.3 shall be correction of program error or redelivery by Pexip of the component that causes the breach of the warranty.

**BREACH OF CONTRACT**

**General**

Non-compliance of either Party's obligations on time under this Contract will constitute a breach of contract in accordance with the Contract Disputes Act.

Breaches of contract shall be remedied by correction of the program error or redelivery or substitution of the item to the Customer in connection with a breach by Pexip or and compensation in accordance with the terms of this Contract in connection with a breach by the Customer.
Material Breach

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Pexip shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

Defects and Deviations

Pexip shall without undue delay and free of charge remedy any defects and deviations that may occur in regards to the Software.

LIMITATION OF LIABILITY

Customer waives any and all liability for the function of the Software other than as set forth in Section 8 (Intellectual Property Rights). Pexip shall under no circumstances be liable for any loss incurred by the Customer due to failure of transmission, such as but not limited to, blank screens or unsatisfactory transmissions.

Except as expressly provided for in this Contract, neither Party shall be liable for the other party’s indirect loss or damage of any kind including without limitation any exemplary, punitive, consequential losses or loss of profit or goodwill.

In all events, the total aggregate liability of Pexip in respect of any claim by or loss incurred by the Customer due to Pexip’s breach of the Contract or any claims related or referring to the License or Intellectual Property, regardless of the basis or theory of such claim or loss, shall not exceed the fees paid for the Software pursuant to the Purchase Order(s) giving rise to the claim(s). The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

In the event a claim, demand, suit or action alleging infringement of the Intellectual Property Rights, is brought against Pexip from a third party or the Customer, or Pexip believes one may be brought against one of them, Pexip may at its sole discretion either:
at its own expense modify its technology or documentations or other elements that the
aforementioned relates to, to avoid the allegation infringement;
obtain for the Customer the rights required to continue to use the allegedly infringing part of the
System; or
if a claim of infringement cannot be addressed by (i) or (ii) in a commercially feasible manner, have
the right to suspend or terminate the Contract in whole or in part.
The Customer undertakes, in relation to a claim as set out above, to:

promptly and not later than twenty (20) days after receiving notice notify Pexip of any such
claim of which the Customer becomes aware;
allow Pexip to direct the defense or settlement or any other action taken;
give Pexip all such information and assistance as Pexip may reasonably require, and
not settle any such claim or suit related to such claims without Pexip’ consent.

Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right
to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28
U.S.C. §516

TERM AND TERMINATION

Term of the Contract

This Contract is binding between the Parties upon signature and shall remain binding for a period as
set forth in the Order Confirmation (the “Initial Term”). The Contract may be automatically extended
thereafter for additional twelve (12) month periods by exercising an option, or by both parties
executing a new purchase order in writing.

The Contract shall remain in full force and effect during the notice period.

Reserved

Effects of termination

In the event of termination or expiration of this Contract for whatever reason, the Customer’s right
to use the Software shall cease and Pexip shall not provide any notifications or updates related to
the Software. The Customer shall upon the expiration of this Contract immediately terminate the
use of the Software, and shall return the Documentation to Pexip or, at Pexip’s option, destroy the
Documentation and if requested, provide Pexip with an affidavit confirming destruction of the
Documentation.
The Customer shall immediately make any payments due to the Pexip Certified Partner.

Sections 8, 9, 13, 15, and 16 shall survive the termination of this Contract.

INVALID CLAUSES

If any provision of this Contract or part thereof should become invalid, illegal or unenforceable under any applicable law:

the validity, legality and enforceability of the remaining provisions of this Contract shall in no way be affected, and
the Customer and Pexip shall use their best efforts to achieve the purpose of the invalid provision by means of construing the remaining provisions in light of the main objectives of this Contract and the intention of the Parties.

FORCE MAJEURE

Excusable delays shall be governed by FAR 52.212-4(f)

CONFIDENTIALITY

The Parties agree that no confidential information regarding the other Party accessed through the negotiation and completion of the Contract shall be disclosed in whole or in part to any third party except professional advisors, banks, financial institutions or, to the extent required by applicable law, relevant stock exchange or government authorities.

The Parties shall furthermore keep all obtained or received written or oral information concerning the business and affairs of the other Party, including but not limited to sub-contractor Contracts, strictly confidential and protect it with the same degree of care as it protects its own confidential and proprietary information.

The Parties shall not without the other Party’s written consent:

disclose any such confidential information in whole or in part to any other entity or person, save its own personnel and representatives who have a need to know; or
use the information in any other relation than for the fulfilling of obligations under this Contract or as required under law, but never for the sole benefit of itself or of any third party.
The Parties undertake to take all necessary steps to ensure that any of its officers, employees, consultants and/or other personnel upholds the strict confidentiality obligation undertaken herein.

This confidentiality obligation shall not apply to information that the Party proves to have had in its possession prior to entering this Contract or that is publicly available information due to any other reasons than a breach of this Contract or any disloyal act of the Party.

Neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings.

Pexip recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

ASSIGNMENT
The Parties may not without prior written consent of the other Party transfer any rights and/or obligations under this Contract to third parties other than Affiliated Companies of the Parties. Such consent may be withheld in the sole and exclusive discretion of the Pexip.

In the event of any permitted transfer, such transfer shall not extinguish any liabilities of the transferor and the transferee shall be jointly and severally liable for the execution of the Contract.

**VARIATION OF THE CONTRACT**

No alteration, modification or addition to this Contract shall be valid or enforceable unless made in writing and signed by a duly authorized representative of each Party. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement.

**VENUE AND JURISDICTION**

The Contract is governed by and construed in accordance with the Federal laws of the United States.

The Parties shall seek to settle any dispute arising from this Contract in an amicable way.

**MISCELLANEOUS.**

16.1 Demonstration of Services. If the Customer registers for access to a free demonstration or proof of concept for Pexip services, this Contract will also govern that free trial. Upon registration, Pexip will make one or more Software and Services available to the Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which the Customer has registered to use the applicable Service or (b) the start date of any Purchased Services ordered by the Customer. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Contract by reference and are legally binding.

Any data the customer enters into the software, and any customizations made by or for the customer during the free trial period will be permanently lost unless the customer purchases a subscription to the same or upgraded services as those covered by the trial.

During the free trial, the software and services are provided “as-is” without any warranty. 16.2

Acquisition of Non-Pexip Products and Services. Pexip or third parties may from time to time make available to the Customer third-party products or services, including but not limited to
Non-Pexip Applications and implementation, customization and other consulting services. Any acquisition by the Customer of such non-Pexip products or services, and any exchange of data between the Customer and any non-Pexip provider, is solely between the Customer and the applicable non-Pexip provider. We do not warrant or support non-Pexip products or services, whether or not they are designated by Pexip as “certified” or otherwise, except as specified in an Order Form.

16.3 Export. The Customer shall not download or otherwise export or re-export any underlying software, technology or other information derived from or related to the Software or the Software License except in full compliance with all applicable laws and regulations. Without limiting the foregoing and notwithstanding Section 16 of this Contract, none of the underlying information or technology derived from or related to the Software or Software License shall be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which Norway, UK or the U.S. has embargoed goods or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s or State Department’s Table of Denial Orders.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

Scope. This Rider and the attached PC Matic, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are
hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on
behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
NOTICE TO ALL USERS Carefully read the following legal agreement ("Agreement"), which sets forth license terms for PC Matic software. If someone else uses a copy of PC Matic installed by you, he or she may do so only subject to all conditions, obligations and limits described in this Agreement.

LICENSE GRANT PC Matic, Inc hereby licenses you for unlimited use of PC Matic on your personal computer(s), such as desktop and laptop, or for multiple users on a single personal computer, but not both, and to make one copy in machine-readable form for backup purposes only. "You" means the authorized Ordering Activity placing an order under the GSA Schedule contract. "Use" means storing, loading, installing, executing or displaying PC Matic. Within any such copy, you must reproduce the copyright notices and any other proprietary legends that were on the original downloaded copy of PC Matic. No license, right or interest in any trademark, trade name or service mark of PC Matic, Inc or any third party is granted under this License. You may not modify PC Matic or disable any licensing or control features of PC Matic except as an intended part of PC Matic's programming features. This license is not transferable to another organization or individual. Any reproduction or redistribution of PC Matic not in accordance with the License Agreement is prohibited by law.

COPYRIGHT AND TITLE PC Matic is protected by United States copyright laws and international treaty provisions. PC Matic and its suppliers own and retain all right, title and interest in and to PC Matic, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein. You acknowledge that your possession, installation, or use of PC Matic does not transfer to you any title to the intellectual property in PC Matic, and that you will not acquire any rights to PC Matic except as expressly set forth in this Agreement. You agree that any copies of PC Matic and Documentation will contain the same proprietary notices that appear on and in PC Matic and Documentation.

RESTRICTIONS You may not rent, lease, loan or resell PC Matic. You may not permit third parties to benefit from the use or functionality of PC Matic via a timesharing, service bureau or other arrangement. You may not transfer any of the rights granted to you under this Agreement. You may not reverse engineer, decompile, or disassemble PC Matic, except to the extent that the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, PC Matic in whole or in part. You may not copy PC Matic or Documentation except as expressly permitted above. You may not remove any proprietary notices or labels on PC Matic.

TERMINATION This License is effective until terminated. You may terminate this License at any time by destroying PC Matic, and all copies thereof. If this license is terminated for any reason, you must destroy PC Matic and all copies thereof.

EXPORT CONTROLS You may not download or otherwise export or reexport the Software or any underlying information or technology except in full compliance with all laws of the United States and other applicable laws and regulations.

GOVERNING LAW This license will be governed by United States Federal law.
LIMITED WARRANTY PC Matic warrants that the foregoing PC Matic and the accompanying files will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with PC Matic and the accompanying files written materials accompanying it. Except as expressly set forth in the foregoing, PC Matic and the accompanying files are sold "as is" and without warranties as to performance of merchantability, fitness for a particular purpose, or any other warranties expressed or implied. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, or the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES In no event shall PC Matic, Inc or its suppliers be liable to you for any consequential, special, incidental or indirect damages of any kind arising out of the delivery, performance or use of, or inability to use, PC Matic, even if PC Matic, Inc have been advised of the possibility of such damages. The foregoing limitation of liability shall not apply to personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

SEVERABILITY In the event of invalidity of any provision of this license, the parties agree that such invalidity shall not affect the validity of the remaining portions of this license.

ENTIRE AGREEMENT This Agreement, together with the underlying GSA Schedule contract, Schedule pricelist and applicable purchase orders, is the entire agreement between you and PC Matic, Inc. which supersedes any prior agreement or understanding, whether written or oral, relating to the subject matter of this license.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Peraton, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
PERATON INC.

END USER LICENSE AGREEMENT

This End User License Agreement (EULA) is between Peraton Inc., a corporation incorporated under the laws of the State of Maryland, United States of America, by and through its offices at Herndon, Virginia (hereinafter referred to as “Peraton”) and the Ordering Activity under GSA Schedule contracts identified in the Order Form (hereinafter referred to as “Licensee”). Either or both may be referred to as “Party” or “Parties”. This EULA is effective as of the effective date located on the attached Order Form.

1. Definition

The definitions listed below pertain to this EULA.

A. **Affiliate:** Any entity the Licensee owns at least a fifty-one percent (51%) or through board of directors’ control if a not for profit entity. For Government Licensees, the "Affiliate" definition and provisions shall not apply.

B. **Confidential Information:** Information, which the Disclosing Party provides, either directly or indirectly, to the Receiving Party in connection with this EULA. Information includes the software, personal information, or information related to the business of the Disclosing Party. If information is:
   - Tangible Form - clearly marked at the time of disclosure as being confidential
   - Orally or Visually Form - designated at the time of disclosure as confidential
   - Other Form - is reasonably understood to be confidential information, whether or not marked

C. **Concurrent Users:** The total number of users simultaneously accessing the Software at any given time is limited to those for whom Licensee has paid a License Fee in accordance with the Order Form. If the Licensee has reached capacity of the Concurrent Users, there will not be any additional users able to access the Software until the Licensee has procured additional licenses from Peraton.

D. **Core:** A core is an individual processor within a CPU.

E. **Core Based-Server:** The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with the Order Form. An unlimited (until Core capacity is reached) number of authorized users may use the Software, provided the total number of Cores residing on all computers where the Software is installed does not exceed the permitted number of Cores identified on the Order Form. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward to the total number of Cores licensed.

F. **Documentation:** Technical documentation, release notes, and user manuals for the Baseline Version of the Software.

G. **Effective Date:** The date the Software Maintenance Agreement (SWMA) takes effect. The Effective Date is located in the Order Form.

H. **End User License Agreement:** An agreement between Peraton and Licensee to provide use of a license for a given period of performance.

I. **Error:** Material deviation of the Baseline Version of the Software from its technical documentation.

J. **License Fees:** Fees paid for Software Licenses. License Fees do not include Maintenance
or Services fees.

K. **License Term:** The term for License is unlimited. Whereas the Software Maintenance Agreement will identify a Maintenance Term for a Period of Performance.

L. **License Location:** The physical location where the Software is installed on equipment the Licensee owns, leases, or otherwise controls.

M. **Maintenance Fee:** Fee paid for Software Maintenance. Maintenance Fees do not include cost of the initial Peraton License or Support Services provided by Peraton.

N. **Maintenance Term:** Is identify as a Maintenance Term for a Period of Performance. The Maintenance Term is located in the Order Form.

O. **Named User:** The total number of users given a fixed license that is assigned to them in accordance with the Order Form. Each user accessing the Software’s functionality is one Named User of the Software, whether or not using Software components to access the Software’s functionality, and must be counted towards the number of authorized Named Users.

P. **Order Form:** A form specifying the Licensee Information, Business Contact (e.g., Program Manager, etc.), Primary Technical Contact, Alternate Technical Contact, and Software Details.

Q. **Release:** A software upgrade that adds new features and corrects Errors.

R. **Services:** Baseline Support Services.

S. **Software:** The Peraton Software products and any Third Party Software products listed in the Order Form.

T. **Software License:** A non-exclusive, non-transferable right to use the Software in a machine-readable form, together with the Documentation, solely for Licensee’s internal business.

U. **Software Maintenance Agreement:** An agreement between Peraton and Licensee to provide maintenance for a given period of performance.

V. **Subject Matter:** The Peraton Software and applicable Documentation.

W. **Third Party Software:** Any third-party Software listed on the Order Form that is produced by a party other than Peraton. Software may include the initial purchase of the license or subsequent maintenance fee.

X. **Upgrades:** New Versions and Release of the Software.

Y. **Version:** A major enhancement to the Software that adds substantial new features or otherwise significant changes.

2. **Commercial Items**

The software and documentation provided hereunder are “Commercial Items” as defined by Federal Acquisition Regulation (“FAR”) 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.

The FAR clauses stated in this section do not apply to Non-Government customers.

3. **Permitted Use**

Licensee may not permit any unauthorized third party to use or access the Software. Licensee may not use the Software in the operation of a service bureau, commercial time-sharing or in any other
resale capacity. For purposes of Concurrent Users and Core-Based Server, authorized users are not uniquely identified.

4. Proprietary Rights

This Agreement does not convey to Licensee title to or ownership of the Subject Matter or any results of the Services, but only a right of limited use in accordance with the License. The Subject Matter, all results of the Services, and all copies of any of them are proprietary to Peraton and title in each of them, including without limitation, all applicable rights to patents, copyrights, trademarks, confidential information and trade secrets, remains solely in Peraton, and are subject to the terms and conditions of the License. All Upgrades and any results of the Services provided by Peraton under this Agreement will become a part of the Software for the purposes of the License at the timethey are provided to Licensee and are hereby licensed to Licensee as part of the Software pursuant to the terms and conditions of the License.

5. Limited Warranties

Peraton warrants that the Subject Matter will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Subject Matter written materials accompanying it. Except as expressly set forth in the foregoing, Peraton furnishes the licensed Subject Matter, and Licensee agrees to accept same, on a strictly “as is” basis. Peraton warrants the Services will be performed in a competent manner consistent with industry standards reasonably applicable to the performance of such Services.

A. Software Warranty: Licensee acknowledges that it is solely responsible for the results obtained from use of the Software. Peraton further warrants that it has not introduced into the Software any feature designed to damage or erase the Software or data. The Software may contain license protection features that limit access to the Software to the use permitted under this EULA. Licensee shall not circumvent or render inoperative any such protection features. To be valid, a warranty claim must be in writing and submitted to Peraton. If Licensee believes that the Software has Defects, Licensee shall promptly notify Peraton in writing, describe with specificity any such Defect, and provide a listing of output and such other data as may be required by Peraton to reproduce the Defect. Licensee’s exclusive remedy and Peraton’s sole liability for Software performance under this software warranty will be:

- To use reasonable efforts to correct any such Defects and supply Licensee with a correction as soon as reasonably practicable
- If correction or replacement is not reasonably achievable by Peraton, to terminate Licensee’s License(s) for the affected Software and refund the License Fee paid upon Licensee’s certification that all copies of the Software have been returned or destroyed.

B. Warranty Exceptions and Exclusions: The express warranties set forth in this Limited Warranties Section do not apply to errors or malfunctions caused by (a) Licensee’s equipment, (b) software not licensed from or approved in writing by Peraton, (c) Misuse, (d) Licensee’s failure to use or implement corrections or updates, (e) use of the Software in combination with materials not provided, specified or approved in writing by Peraton, (f) improper installation by Licensee, Support Contractor, or a third party not authorized in writing by Peraton, or (g) any other cause not directly attributable to Peraton. Peraton does not warrant the functions contained in the Software will meet Licensee’s requirements or that the operation of the Software will be uninterrupted or error-free. These limited warranties shall be void if Licensee or any third party modifies or changes the Software in
any way beyond the scope of the configuration options contained in the Software. In order to receive and maintain these warranties, Licensee must:

- Use the Software in accordance with the Documentation
- Use the Software on the hardware and with the operating system for which it was designed
- Use only qualified personnel to operate the Software

Peraton will not be required to maintain compatibility between Peraton Software and any other software (other than Peraton-supported Third Party Software) except as otherwise agreed in writing.

c. **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTIES SECTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PERATON DOES NOT MAKE ANY EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, TERMS, CONDITIONS OR REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

6. **Infringement**

Peraton warrants the use of the licensed Subject Matter under this EULA shall not infringe upon, misappropriate or otherwise violate any property, ownership or proprietary rights of any other person or organization. Upon notice of an alleged infringement, or if, in Peraton’s opinion, such a claim is likely, Peraton shall have the right, at its option, to obtain the right to continue the distribution of products, substitute other products with similar operating capabilities, or modify the product so that it is no longer infringing. In the event that none of the above options are reasonably available in Peraton’s opinion, Licensee’s sole and exclusive remedy shall be to cease using and to return to Peraton all of the products, and to obtain from Peraton a refund of the fee paid by Licensee for such products. This section states Peraton’s entire liability for intellectual property infringement.

7. **Limitation of Liability**

Peraton shall have no liability to Licensee for any loss, claim, remedy, suit, action, indirect, incidental or consequential damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee, or property damage based on products liability, strict liability, concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed Subject Matter.

Peraton shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages, lost profits, or lost business opportunity arising out of or in connection with the license granted under this or any business activity of Licensee.

The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
8. **Grant of License**

Peraton grants to Licensee a non-exclusive, non-transferable, revocable, indivisible right to use the licensed Subject Matter specified in the Order Form in accordance with the terms and conditions of this EULA. Licensee shall use the licensed Subject Matter solely as installed in sites listed in the Order Form and for the permitted use for which Licensee has paid a License Fee. Licensee shall not, and shall not permit others to, decompile, disassemble, or otherwise reverse engineer the licensed Software. The right to revise, modify or enhance the licensed Software is expressly prohibited. All terms and conditions of this EULA are material terms of the license granted by this Agreement. The violation of any term or condition of this EULA will constitute grounds for termination of this Agreement by Peraton in accordance with the procedures set forth in the Contact Disputes Act.

9. **Production and Non-Production Environments**

   A. **Disaster Recovery and Archival Instance (Production Instances):** Licensee may make back-up copies of the Software as necessary for use in disaster recovery and archival purposes, provided keeping the copies in a secure location (e.g., location to be owned or controlled by Licensee or Licensee’s disaster recovery vendor). All archival and backup copies of the Software are subject to the provisions of this EULA. Licensee shall reproduce all titles, trademarks, copyright and restricted rights notices in such copies. The Licensee should not use the disaster recovery and archival copies of the Software for production purposes unless the primary copy of the Software is not being used for production purposes.

   B. **Non-Production Instances:** Non-Production Instances are considered Test, Development, and Training Instance. Unless otherwise listed in the Order Form, Licensee may use one Instance of the Software in a non-production environment solely for Licensee’s internal testing, development, and training purposes. Licensee’s installation and use of the Software for these purposes is limited to the same number of licensed users as permitted under the applicable Order Form and this EULA.

10. **Export**

The Software, including technical data relating thereto, is subject to applicable export control laws and regulations, including the U.S. International Traffic in Arms Regulations (ITAR) and the U.S. Export Administration Regulations (EAR). Licensee shall strictly comply with all applicable export laws and regulations and, in addition to other restrictions in this EULA, Licensee agrees that it will not export, re-export or import the Software, except in accordance with all applicable export laws and regulations and only if permitted under the License terms. Licensee warrants and represents that Licensee, including its Affiliates and Support Contractors, is not (a) affiliated with or a resident of any embargoed or terrorist-supporting country or (b) affiliated with anyone on the U.S. Commerce Department’s Table of Denial Orders or U.S. Treasury Department’s list of Specially Designated Nationals.

11. **Confidentiality**

The licensed Subject Matter, including the design and elements of the database tables, as well as any information that is marked confidential and those rights designated proprietary is confidential information, the disclosure of which would harm Peraton.

Confidential Information will be protected and held in confidence by the Receiving Party and will be used for the purposes of this EULA and related internal administrative purposes only. Disclosure of the Confidential Information will be restricted to the Receiving Party’s affiliates, employees,
contractors and business partners on a "need to know" basis, provided that they are bound by confidentiality obligations no less stringent than those in this EULA prior to any disclosure.

Confidential Information does not include information that:

- Is already known to Receiving Party at the time of disclosure
- Is or becomes publicly known through no wrongful act or failure of the Receiving Party
- Is independently developed by Receiving Party without benefit of Disclosing Party's Confidential Information
- Is received from a third party which is not under and does not thereby breach an obligation of confidentiality

Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials of similar kind, but in no event with less than a reasonable standard of care. A Receiving Party may disclose Confidential Information to the extent required by law, provided that the party required to disclose the Confidential Information provides the original Disclosing Party with notice as soon as reasonably practicable to allow the Disclosing Party an opportunity to respond to such request, and provided further that such disclosure does not relieve Receiving Party of its confidentiality obligations with respect to any other party. These confidentiality restrictions and obligations will remain in effect until the information ceases to be Confidential. If Licensee participates in the Peraton-sponsored group event, this Confidential Information Section shall apply to Confidential Information disclosed by any group participant, and Peraton may provide a copy of this Confidential Information Section to any Disclosing Party seeking to enforce its provisions. Peraton recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

Upon the request of Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all copies of the Confidential Information and any documents derived from the Confidential Information, or at the Disclosing Party's option, shall certify in writing that all copies of the Confidential Information and derivative documents have been destroyed. The Receiving Party may return any Confidential Information to the Disclosing Party at any time. This obligation to return or destroy materials or copies thereof does not extend to automatically generated computer back up or archival copies generated in the ordinary course of Receiving Party's information systems procedures, provided that Receiving Party shall make no further use of Confidential Information contained in those copies.

12. Services

The license fees do not include any maintenance, online help, training, implementation support or other support services. Licensee is required to procure at least one year of Software maintenance under a separate SWMA. The manner and periods in which, and the terms and conditions under which, such maintenance will be performed will be solely set forth in the SWMA and the Order Form incorporating the SWMA.

13. Compliance

Licensee shall keep adequate and proper records relating to its use and distribution of the licensed Software pursuant to this EULA. Peraton reserves the right to request that Licensee conduct an internal audit at any time but no more than annually. Following such an audit, Licensee shall deliver to Peraton a certified statement in writing signed by an authorized representative of Licensee, that
Licensee either

(a) has sufficient licenses to permit all usage disclosed by such audit or (b) verifying that it has ordered sufficient licenses to permit all usage disclosed by such audit. Failure to complete a requested audit may result in the termination of this EULA in accordance with the procedures set forth in the Contract Disputes Act.

14. Governing Law

This EULA shall be interpreted and construed, its performance and any dispute arising hereunder shall be governed, in all respects by the substantive and procedural Federal laws and judicial decisions of the United States.

15. General

This EULA may be modified or amended solely in writing by both Parties. The provisions of this EULA shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. Licensee may not assign or otherwise transfer this EULA or any of the rights granted therein without the prior written consent of Peraton. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver, and no waiver will be effective unless it is in writing and signed by the waiving party. Any provision of this EULA that imposes or contemplates continuing obligations on a party will survive termination of this EULA. This EULA is separate and distinct from any services associated with the Software delivered hereunder.

Payment under this EULA is due and payable within thirty (30) days of the invoice receipt date following the Effective Date of this Agreement. There shall be no right of offset to license fees due under this EULA.

16. Complete and Exclusive

EACH PARTY ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OUTLINES IN THIS EULA. THE PARTIES AGREE THIS EULA, INCLUDING THE GSA SCHEDULE CONTRACT, ORDER FORM AND ANY WRITTEN MODIFICATIONS MADE PURSUANT TO IT CONSTITUTES THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE TERMS OF THIS EULA BETWEEN THE PARTIES, AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS PROPOSALS, ORAL OR WRITTEN, UNDERSTANDINGS, REPRESENTATIONS, CONDITIONS, WARRANTIES, COVENANTS, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS EULA.

THE PARTIES FURTHER AGREE THIS EULA MAY NOT IN ANY WAY BE EXPLAINED OR SUPPLEMENTED BY A PRIOR OR EXISTING COURSE OF DEALING BETWEEN THE PARTIES, BY ANY USAGE OF TRADE OR CUSTOM, OR BY ANY PRIOR PERFORMANCE BETWEEN THE PARTIES PURSUANT TO THIS EULA OR OTHERWISE.

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END USE LICENSE AGREEMENT - ORDER FORM

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<tr>
<th>Licensee Information</th>
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<td>Name:</td>
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<tr>
<th>Business Contact</th>
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<td>Office &amp; Cell Phones:</td>
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<th>Primary Technical Contact*</th>
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<td>Name:</td>
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<td>Office &amp; Cell Phones:</td>
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<th>Alternate Technical Contact*</th>
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<tr>
<td>Name:</td>
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<td>Office &amp; Cell Phones:</td>
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<td>Email:</td>
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*The Primary and Alternate Technical Contacts must be knowledgeable in the current Release of the Software, including without limitation Client’s operating environment and use and error correction of the Software.
## Software Details

<table>
<thead>
<tr>
<th>Peraton Software Description</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Price</th>
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Total License Fee: $

## Additional Details

**Delivery:** Peraton shall deliver the licensed Subject Matter electronically within 30 days of the Effective Date of this Agreement.

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<th>Type of User (Concurrent, Core-Based Server or Named):</th>
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<th>EULA Effective Date:</th>
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<th>Notes (Optional):</th>
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The Parties have caused this EULA to be signed by their duly authorized representatives on the day and year last written below:

**Peraton**

PERATON INC.

By: ___________________________  By: __
Name: __________________________ Name: __
Title: __________________________ Title: __
Date: __________________________ Date: __
PERATON INC.

SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (SWMA) is between Peraton Inc., a corporation incorporated under the laws of the State of Maryland, United States of America, by and through its offices at Herndon, Virginia (hereinafter referred to as “Peraton”) and Ordering Activity under GSA Schedule contracts identified in the Order Form (hereinafter referred to as “Licensee”). Either or both may be referred to as “Party” or “Parties”. This SWMA is effective as of the effective date located on the attached Order Form.

Definitions

The definitions listed below pertain to both this SWMA.

A. Affiliate: Any entity the Licensee owns at least a fifty-one percent (51%) or through board of directors’ control if a not for profit entity. For Government Licensees, the "Affiliate" definition and provisions shall not apply.

B. Confidential Information: Information, which the Disclosing Party provides, either directly or indirectly, to the Receiving Party in connection with this SWMA. Information includes the software, personal information, or information related to the business of the Disclosing Party. Information is:

- Tangible Form - clearly marked at the time of disclosure as being confidential
- Orally or Visually Form - designated at the time of disclosure as confidential
- Other Form - is reasonably understood to be confidential information, whether or not marked

C. Concurrent Users: The total number of users simultaneously accessing the Software at any given time is limited to those for whom Licensee has paid a License Fee in accordance with the Order Form. If the Licensee has reached capacity of the Concurrent Users, there will not be any additional users able to access the Software until the Licensee has procured additional licenses from Peraton.

D. Core: A core is an individual processor within a CPU.

E. Core Based-Server: The number of Cores is limited to those for whom Licensee has paid a license fee in accordance with the Order Form. An unlimited (until Core capacity is reached) number of authorized users may use the Software, provided the total number of Cores residing on all computers where the Software is installed does not exceed the permitted number of Cores identified on the Order Form. When the Software is installed and distributed across multiple computers, all the Cores in each of these computers count toward to the total number of Cores licensed.

F. Documentation: Technical documentation, release notes, and user manuals for the Baseline Version of the Software.

G. Effective Date: The date the SWMA takes effect. The Effective Date is located in the Order Form.

H. End of Life: The point in time when Northrop will cease to create updates and patches for a particular piece of software.

I. End User License Agreement: An agreement between Peraton and Licensee to provide use of alicence for a given period of performance.
J. **Error**: Material deviation of the Baseline Version of the Software from its technical documentation.

K. **License Fees**: Fees paid for Software Licenses. License Fees do not include Maintenance or Services fees.

L. **License Term**: The term for License is unlimited. Whereas the Software Maintenance Agreement will identify a Maintenance Term for a Period of Performance.

M. **License Location**: The physical location where the Software is installed on equipment the Licensee owns, leases, or otherwise controls.

N. **Maintenance Fee**: Fee paid for Software Maintenance. Maintenance Fees do not include cost of the initial Peraton License or Support Services provided by Peraton.

O. **Maintenance Term**: Is identify as a Maintenance Term for a Period of Performance. The Maintenance Term is located in the Order Form.

P. **Named User**: The total number of users given a fixed license that is assigned to them in accordance with the Order Form. Each user accessing the Software's functionality is one Named User of the Software, whether or not using Software components to access the Software’s functionality, and must be counted towards the number of authorized Named Users.

Q. **Peraton Supported Third Party Software**: Third Party Software contained in Peraton’s Baseline Software or Upgrades.

R. **Order Form**: A form specifying the Licensee Information, Business Contact (e.g., Program Manager, etc.), Primary Technical Contact, Alternate Technical Contact, and Software Details.

S. **Release**: A software upgrade that adds new features and corrects Errors.

T. **Services**: Baseline Support Services.

U. **Software**: The Peraton Software products and any Third Party Software products listed in the Order Form.

V. **Software License**: A non-exclusive, non-transferable right to use the Software in a machine-readable form, together with the Documentation, solely for Licensee’s internal business.

W. **Software Maintenance Agreement**: An agreement between Peraton and Licensee to provide maintenance for a given period of performance.

X. **Subject Matter**: The Peraton Software and applicable Documentation.

Y. **Third Party Software**: Any third-party Software listed on the Order Form that is produced by a party other than Peraton. This software is not contained in the Baseline Software or Upgrades. Software may include the initial purchase of the license or subsequent maintenance fee.

Z. **Upgrades**: New Versions and Release of the Software.

AA. **Version**: A major enhancement to the Software that adds substantial new features or other significant changes.

**Commercial Items**

The software and documentation provided hereunder are “Commercial Items” as defined by Federal Acquisition Regulation (“FAR”) 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as defined in FAR 12.212. No other regulation or data rights clause applies to the delivery of this software and documentation to the Government. Accordingly, the terms and conditions of this License govern the Government's use and disclosure of the Software, and supersede any conflicting terms and conditions of any contract pursuant to which the software and documentation is delivered to the Government.
The FAR clauses stated in this section do not apply to Non-Government customers.

Permitted Use

Licensee may not permit any unauthorized third party to use or access the Software. Licensee may not use the Software in the operation of a service bureau, commercial time-sharing or in any other resale capacity. For purposes of Concurrent Users and Core-Based Server, authorized users are not uniquely identified.

Proprietary Rights

This Agreement does not convey to Licensee title to or ownership of the Subject Matter or any results of the Services, but only a right of limited use in accordance with the License. The Subject Matter, all results of the Services, and all copies of any of them are proprietary to Peraton and title in each of them, including without limitation, all applicable rights to patents, copyrights, trademarks, confidential information and trade secrets, remains solely in Peraton, and are subject to the terms and conditions of the License. All Upgrades and any results of the Services provided by Peraton under this Agreement will become a part of the Software for the purposes of the License at the time they are provided to Licensee and are hereby licensed to Licensee as part of the Software pursuant to the terms and conditions of the License.

Limited Warranties

Peraton warrants that the Subject Matter will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Subject Matter written materials accompanying it. Except as expressly set forth in the foregoing, Peraton furnishes the licensed Subject Matter, and Licensee agrees to accept same, on a strictly “as is” basis. Peraton warrants the Services will be performed in a competent manner consistent with industry standards reasonably applicable to the performance of such Services.

A. Software Warranty: Licensee acknowledges that it is solely responsible for the results obtained from use of the Software. Peraton further warrants that it has not introduced into the Software any feature designed to damage or erase the Software or data. The Software may contain license protection features that limit access to the Software to the use permitted under this SWMA. Licensee shall not circumvent or render inoperative any such protection features. To be valid, a warranty claim must be in writing and submitted to Peraton. If Licensee believes that the Software has Defects, Licensee shall promptly notify Peraton in writing, describe with specificity any such Defect, and provide a listing of output and such other data as may be required by Peraton to reproduce the Defect. Licensee’s exclusive remedy and Peraton’s sole liability for Software performance under this software warranty will be:

1) To use reasonable efforts to correct any such Defects and supply Licensee with a correction as soon as reasonably practicable.

2) If correction or replacement is not reasonably achievable by Peraton, to terminate Licensee’s License(s) for the affected Software and refund the License Fee paid upon Licensee’s certification that all copies of the Software
have been returned or destroyed.

B. **Warranty Exceptions and Exclusions:** The express warranties set forth in this Limited Warranties Section do not apply to errors or malfunctions caused by (a) Licensee’s equipment, (b) software not licensed from or approved in writing by Peraton, (c) Misuse, (d) Licensee’s failure to use or implement corrections or updates, (e) use of the Software in combination with materials not provided, specified or approved in writing by Peraton, (f) improper installation by Licensee, Support Contractor, or a third party not authorized in writing by Peraton, or (g) any other cause not directly attributable to Peraton. Peraton does not warrant the functions contained in the Software will meet Licensee’s requirements or that the operation of the Software will be uninterrupted or error-free. These limited warranties shall be void if Licensee or any third party modifies or changes the Software in any way beyond the scope of the configuration options contained in the Software. In order to receive and maintain these warranties, Licensee must:

1) Use the Software in accordance with the Documentation.

2) Use the Software on the hardware and with the operating system for which it was designed.

3) Use only qualified personnel to operate the Software.

Peraton will not be required to maintain compatibility between the Peraton Software and any other software (other than Peraton-supported Third Party Software) except as otherwise agreed in writing.

C. **Disclaimer of Warranties:** EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTIES SECTION AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, PERATON DOES NOT MAKE ANY EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, TERMS, CONDITIONS OR REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

**Infringement**

Peraton warrants the use of the licensed Subject Matter under this SWMA shall not infringe upon, misappropriate or otherwise violate any property, ownership or proprietary rights of any other person or organization. Upon notice of an alleged infringement, or if, in Peraton’s opinion, such a claim is likely, Peraton shall have the right, at its option, to obtain the right to continue the distribution of products, substitute other products with similar operating capabilities, or modify the product so that it is no longer infringing. In the event that none of the above options are reasonably available in Peraton’s opinion,

Licensee’s sole and exclusive remedy shall be to cease using and to return to Peraton all of the products, and to obtain from Peraton a refund of the fee paid by Licensee for such products. This section states Peraton’s entire liability for intellectual property infringement.

**Limitation of Liability**

A. Peraton shall have no liability to Licensee for any loss, claim, remedy, suit, action, indirect, incidental or consequential damages, and/or liability under any cause of action whatsoever whether in contract or tort including but not limited to action by agents or employees of Licensee, or property damage based on products liability, strict liability,
concerning any defects, bugs or deficiencies or lack thereof of any nature in the licensed Subject Matter.

B. Peraton shall not be liable to Licensee for special, indirect, incidental or consequential loss or damage including, without limitation, any punitive damages, lost profits, or lost business opportunity arising out of or in connection with the license granted under this or any business activity of Licensee. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

C. Reserved.

Maintenance Services

A. **Scope of Services:** This SWMA provides the terms and conditions on which Peraton will provide to Licensee. Peraton will provide the Services solely with respect to the unmodified, baseline Software as originally delivered by Peraton and as updated by Upgrades. Software maintenance is comprised of software patches and fixes (to correct latent defects in licensed software) and software updates or incremental software releases (to provide minor improvements to licensed software). In some instances, software maintenance will also include major upgrades or new versions of licensed software. New features or improvements are not customer specific but changes that improve the overall product.

B. **Baseline Support Services:** During the Maintenance Term, Peraton will provide the Baseline Support Services described below with respect to the unmodified, baseline Software as originally delivered by Peraton and as updated by Upgrades. Unless otherwise specified in the Order Form, Peraton will provide Baseline Support Services only with respect to the current Release plus two prior Releases of the Baseline Version of the Software.

### End of Life Dates

<table>
<thead>
<tr>
<th>&lt;Insert Product Name&gt;</th>
<th>Version Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Release</td>
<td></td>
</tr>
<tr>
<td>First Prior Release</td>
<td></td>
</tr>
<tr>
<td>Second Prior Release</td>
<td></td>
</tr>
</tbody>
</table>

Performance of the Baseline Support Services is expressly conditioned upon (i) reserved, and (ii) Licensee incorporating each Upgrade into the Software within one hundred eighty days after receiving the Upgrade from Peraton. The Baseline Support Services are as follows:

1) Peraton will correct any material deviation of the Baseline Version of the Software from its technical documentation (“Error”). If Licensee determines
during the Term the Baseline Version of the Software contains an Error, Licensee will inform Peraton in writing, in accordance with Peraton’s reporting procedures, describing the alleged Error in sufficient detail to allow Peraton to recreate it. Peraton will respond by email or telephone after receiving the request, and will assist Licensee with respect to the Error. Peraton will correct any Error in the Baseline Version of the Software by either (at
Peraton’s sole election) providing corrected program code to Licensee or by correcting the Error in the next subsequent Release or Version of the Baseline Version of the Software. If Peraton determines that a suspected Error is attributable to a cause other than a material deviation of the Baseline Version of the Software from its technical documentation, then Licensee will pay for Peraton’s work.

2) Peraton will provide support for the Baseline Version of the Software to Licensee’s Primary Contact and Alternate Contact listed in the order form during the Maintenance Term Period of Performance.

3) Peraton will provide, at no charge to Licensee, any Upgrades to the Software that Peraton develops.

4) Peraton may provide, at no charge to Licensee, upgrades to Third Party Software that are integrated within the baseline software.

5) Peraton will provide and update technical documentation, release notes, and user manuals for the Baseline Version of the Software, as available.

6) Peraton will inform Licensee of any free upgrades that are made available to any third party software products that Licensee obtained from Peraton. Licensee and Peraton will jointly determine whether implementation of any such upgrade is necessary. Peraton will provide Licensee with installation instructions for any upgrade that Licensee and Peraton mutually determine should be implemented. Licensee acknowledges that, the Baseline Support Services do not include any support of, upgrades to or other services relating to any third party products that Licensee obtained from Peraton.

C. Out-of-Scope Services: The following Out-of-Scope Services are expressly excluded from the scope of the Baseline Support Services provided under this SWMA. If Peraton provides any Out-of-Scope Services at the request of Licensee, Licensee will pay Peraton for the Out-of-Scope Services in accordance with the GSA Schedule Pricelist, if applicable. Out-of-Scope Services include, without limitation:

1) Identification and correction of problems other than Errors in the Baseline Version of the Software. This includes but is not limited to (a) installing, integrating or testing Upgrades; (b) performing support necessary due to changes in Licensee’s environment; (c) data communications problem solving; (d) developing, supporting or maintaining custom software or application programs (custom systems development, if any, will be governed by a separate agreement between Peraton and Licensee); (e) assisting with interface problems or any assistance with respect to third party software which is not part of the Baseline Version of the Software; (f) integrating Licensee specific functionality into Upgrades to the Baseline Version of the Software; (g) performing support or assisting with problems arising with or related to Licensee’s legacy systems;

2) On-site support including support for day-to-day operations and training Licensee personnel in the use of the Software;
3) Data entry and conversion including (a) providing assistance or guidance in
documenting conversion procedures; (b) performing media or data conversion or
conversion cleanup; (c) performing data entry of Licensee data, text or software;

4) Support or maintenance generally attributable to network, system or database
administration. This may include but not be limited to (a) performing backup or
restoration of Licensee data; (b) tuning databases as required by production loads;
(c) assisting with network and infrastructure related issues that negatively affect
response times and that do not appear until significant production activity occurs on
the system; (d) assisting with any problems arising with or related to Licensee’s
mainframe computer, underlying operating system or wide area network
communications system.

D. **Support Package:** The Baseline Support Services for all licensed Software will be
covered by the Maintenance Term Period of Performance in the Order Form as defined
below.

1) The Support Package includes all of the services set forth above in
Section B, and additionally:

2) Email, Live Chat, Web and/or Telephone Support. Peraton will provide Customer
technical email, live chat, web and/or telephone support for the Software during the
hours of 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding US Government holidays. Peraton’s
support technician shall only be obligated to respond to Customer’s two designated contacts, which
Customer may change from time to time by providing written notice to Peraton. Peraton shall use
commercially reasonable efforts to respond to the request for support within four business hours of
receiving the inquiry from Customer if received during the business hours noted above. If received out
of these hours, Peraton will respond to the request for support on the next business day.

E. **Maintenance Support Request:** Peraton maintains an incident tracking system to
steward receipt of Maintenance Support requests and resolution of problems related to
use of Software and to measure performance of Maintenance Support. Peraton will
acknowledge all Maintenance Support requests via email or call according to the
severity levels defined. Peraton will assign a tracking number and will provide such
information to Customer in Peraton’s acknowledgment. The Licensee (Technical and
Alternate POCs) will provide all information and assistance needed by Peraton to
recreate and resolve a problem. The Licensee will assign a severity level assessment to
each service request based on the severity level criteria described below. If Peraton
disagrees with the severity level assigned to a problem by the Licensee, the parties will
mutually reassess the problem in good faith to agree on what severity level to assign a
problem. Peraton will notify the Licensee when Peraton has completed resolution of a
Maintenance Support request.

1) **Severity Level 1.** A problem has been identified that makes the continued use of
one or more functions impossible (or severely restricted) on a critical system and
prevents the License from continued production or severely risks critical business
operations. Problem may cause loss of data, restrict data availability, or cause
significant financial impact to the Licensee.

2) Severity Level 2. A problem has been identified that severely affects or restricts major functionality. The problem is time sensitive and important to long-term productivity but is not causing an immediate work stoppage. No workaround is available and operation can continue in a restricted fashion.

3) Severity Level 3. (i) A minor problem that does not have major effect on business operations; or (ii) A major problem for which a Licensee acceptable workaround exists.

4) Severity Level 4. A minor condition or documentation error that has no significant effect on the Licensee’s operations or additional requests for new feature suggestions that are defined as new functionality in existing Software.

### Standard Level Maintenance Response Times & Resolution Efforts

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Response Time</th>
<th>Resolution Effort</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity Level 1</strong></td>
<td>Within four business hours of receipt of a service request on weekdays. Incident reports received during the weekends will be handled on Mondays.</td>
<td>Peraton to use best efforts (8 hours x 5 days a week) to verify, diagnose, replicate, and successfully fix the problem as quickly as possible. Incident reports received during the weekends will be handled on Mondays.</td>
</tr>
<tr>
<td><strong>Severity Level 2</strong></td>
<td>Within twenty-four hours of receipt of a service request of the day or time the service request is received, excluding weekends.</td>
<td>Peraton to use commercially reasonable efforts during Peraton’s Business Day to verify, diagnose, replicate, and fix the problem as quickly as possible.</td>
</tr>
<tr>
<td><strong>Severity Level 3</strong></td>
<td>Within two business days of receipt of a service request.</td>
<td>Peraton will use commercially reasonable efforts to verify, diagnose, replicate, and fix the problem within ninety days or within the next release of the Software, whichever comes later.</td>
</tr>
<tr>
<td><strong>Severity Level 4</strong></td>
<td>Within five business days of receipt of a service request.</td>
<td>Peraton will notify the Licensee regarding Peraton’s plans to correct a minor problem, to address requests for new features, or suggestions for upgraded Software.</td>
</tr>
</tbody>
</table>

### Maintenance Fees and Payment Terms

A. Licensee will pay the Baseline Annual Maintenance Price set forth in the Order Form in accordance with the GSA Schedule Pricelist. The Baseline Annual Maintenance Price for each Term is payable in full, and must be paid by Licensee at the time of purchase within thirty days of the invoice receipt date.

B. If Licensee discontinues maintenance and then later elects to reinstate maintenance, Peraton may elect to reinstate maintenance retroactive to the time that maintenance last ended or was discontinued, at 100% of the then current Baseline Annual Maintenance Fee.

C. Licensee will pay Peraton for any Out-of-Scope Services and any other services under this SWMA that are not within the scope of the Baseline Support Services. If Peraton’s
personnel travel to Licensee’s place of business to perform Services pursuant to this
SWMA, Licensee will pay Peraton for the travel time and other out-of-pocket expenses of
Peraton’s personnel in accordance with Federal Travel Regulation (FTR)/Joint Travel
Regulations (JTR), as applicable, Licensee shall only be liable for such travel expenses
as approved by Licensee and funded under the applicable ordering document.

Licensee Resources and Responsibilities

A. Licensee will provide Peraton with log files, as requested, and with sufficient support and test
time on Licensee’s computer system to allow Peraton to duplicate any suspected Error, confirm the Error is
in the Baseline Version of the Software, and determine that the Error has been corrected.

B. Licensee will provide Peraton with thirty days’ prior written notice of any modifications
made by Licensee to the Software. Any technical support or maintenance attributable to
such modifications will be deemed to be Out-of-Scope Services.

Term and Termination

A. The term of this SWMA will commence on the effective date the maintenance set forth
on the Order Form. The Maintenance Term Period of Performance is listed on the
Order Form.

B. When the End User is an instrumentality of the U.S., recourse against the United
States for any alleged breach of this Agreement must be brought as a dispute under the
contract Disputes Clause (Contract Disputes Act). During any dispute under the
Disputes Clause, Peraton shall proceed diligently with performance of this Agreement,
pending final resolution of any request for relief, claim, appeal, or action arising under
the Agreement, and comply with any decision of the Contracting Officer.

C. If Licensee discontinues and then resumes any Services, Licensee will pay Peraton, in
addition to the Maintenance Fee for the new Term commencing on the date the Services
are resumed, the entire Maintenance Fee for the period Licensee was not receiving
Services.

D. If the License is terminated, this SWMA will automatically terminate without demand or
notice on the effective date of the termination of the License.

E. Reserved.

General

A. For one year after delivery of an order, or after termination of an SOW, neither party
shall solicit for hire as an employee, consultant or otherwise any of the other party's
personnel who have had direct involvement with the Licenses or Services or proposal
for the Licenses or Services specified in the Order Form or SOW, without the other
party's express written consent. However, neither party will be precluded from hiring any
employee of the other party who responds to any public notice or advertisement of an
employment opportunity or who terminated his/her employment with the other party at
least six months previously, provided that the hiring party did not solicit the termination.
A party shall not be in breach of this Non-solicitation of Employees Section if those
responsible for the solicitation, hiring or retention of the other party's personnel were not
aware of these restrictions. However, personnel of either party working on a proposal or
order for any Licenses or Services under this Agreement shall be presumed to know of the restriction.

B. Dates or times by which Peraton is required to make performance under this SWMA will be postponed automatically to the extent that Peraton is prevented from meeting them by causes beyond its reasonable control in accordance with FAR 52.212-4(f).

Complete and Exclusive

EACH PARTY ACKNOWLEDGES IT HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OUTLINES IN THIS SWMA. THE PARTIES AGREE THIS SWMA, INCLUDING THE GSA SCHEDULE CONTRACT, ORDER FORM AND ANY WRITTEN MODIFICATIONS MADE PURSUANT TO IT Constitutes THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE TERMS OF THIS SWMA BETWEEN THE PARTIES, AND SUPERSEDE ALL PRIOR OR CONTEMPORANEOUS PROPOSALS, ORAL OR WRITTEN, UNDERSTANDINGS, REPRESENTATIONS, CONDITIONS, WARRANTIES, COVENANTS, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS SWMA.

THE PARTIES FURTHER AGREE THIS SWMA MAY NOT IN ANY WAY BE EXPLAINED OR SUPPLEMENTED BY A PRIOR OR EXISTING COURSE OF DEALING BETWEEN THE PARTIES, BY ANY USAGE OF TRADE OR CUSTOM, OR BY ANY PRIOR PERFORMANCE BETWEEN THE PARTIES PURSUANT TO THIS SWMA OR OTHERWISE.

[REMAINDER OF PAGE BLANK]
SOFTWARE MAINTENANCE AGREEMENT - ORDER FORM

<table>
<thead>
<tr>
<th>Licensee Information</th>
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<tbody>
<tr>
<td>Name:</td>
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<tr>
<td>Address:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Office &amp; Cell Phones:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Primary Technical Contact*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Office &amp; Cell Phones:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Alternate Technical Contact*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Office &amp; Cell Phones:</td>
</tr>
<tr>
<td>Email:</td>
</tr>
</tbody>
</table>

* The Primary and Alternate Technical Contacts must be knowledgeable in the current Release of the Software, including without limitation Licensee’s operating environment and use and error correction of the Software.
### Software Details

<table>
<thead>
<tr>
<th>Software Description</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peraton</td>
<td>$</td>
<td>$</td>
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<tr>
<td><strong>Peraton Subtotal</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3rd Party Software Description</td>
<td>Unit Price</td>
<td>Quantity</td>
<td>Price</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$</td>
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<tr>
<td><strong>3rd Party SW Subtotal</strong></td>
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<td></td>
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</tr>
<tr>
<td><strong>Total Maintenance Fee</strong></td>
<td>$</td>
<td></td>
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</tbody>
</table>

### Additional Details

<table>
<thead>
<tr>
<th>Delivery:</th>
<th>Peraton shall deliver the licensed Subject Matter electronically within thirty days of this Agreement’s Effective Date.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licensed Location:</td>
<td></td>
</tr>
<tr>
<td>Type of User (Concurrent, Core-Based Server or Named):</td>
<td></td>
</tr>
<tr>
<td>SWMA Effective Date:</td>
<td></td>
</tr>
<tr>
<td>Maintenance Term Period of Performance:</td>
<td></td>
</tr>
<tr>
<td>Notes (Optional):</td>
<td></td>
</tr>
</tbody>
</table>

The Parties have caused this Order Form to be signed by their duly authorized representatives on the day and year last written below:

**Peraton**

PERATON INC.

By: ____________________________

Name: __________________________

Title: __________________________

Date: __________________________

**Licensee**

By: ____________________________

Name: __________________________

Title: __________________________

Date: __________________________
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Pivot3, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics,
quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentation of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentation of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this
Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A – PIVOT3

END USER LICENSE AGREEMENT

PIVOT3

This License Agreement (the “Agreement”) is a legal agreement between you (“Ordering Activity” or “End User”) and Pivot3, Inc (“Pivot3”). This Agreement governs your use of the Pivot3 Software, the Pivot3 Management Application(s), and other related software distributed with this Agreement (the “Software”) and the accompanying end-user technical documentation and help files provided by Pivot3 with the Software (the “Documentation”). You must accept the terms of this Agreement before using such Software and Documentation.

If you do not agree to the terms of the Agreement, you are not granted any rights whatsoever in the Software or Documentation. If you are not willing to be bound by these terms and conditions, do not download or install the Software.

LICENSE.

License Grant. Subject to the terms and conditions of this Agreement, Pivot3 grants to End User a personal, limited, non-exclusive, non-transferable, non-sublicensable right and license to (a) reproduce (solely to download and install) and execute one (1) copy of the Software on a single server controlled by End User solely for End User’s internal business purposes and (b) make one (1) copy of the Software and Documentation solely for backup and/or archival purposes.

Restrictions. End User shall not, and shall not permit any third party to: (a) distribute, sell, lease, license, rent, loan, or otherwise transfer the Software or Documentation, with or without consideration; (b) access or use the Software or Documentation except as expressly permitted above; (c) make available the Software via a timesharing, service bureau, or other arrangement; (d) reverse engineer, decompile, or disassemble the Software or otherwise attempt to derive the source code thereof; (e) modify, or create or develop derivative works based upon, the Software or Documentation, in whole or in part; (f) reproduce the Software or Documentation, except as expressly permitted in Section 1.1(b) above; (g) incorporate the Software into, or combine the Software with, other software not licensed under this Agreement; (h) remove, alter, or obscure any proprietary notices or labels on the Software or Documentation; (i) use the Software or Documentation in violation of any law or regulation; or (j) use the Software or Documentation for purposes of competitive analysis of the Software or the development of a competing software product or service.

Third Party Software. Certain items of software included with the Software are licensed from third parties and subject to the terms and conditions provided by such third parties (“Third Party Software”). The Third Party Software is not subject to the terms and conditions of Sections 1.1 and 1.2. Instead, each item of Third Party Software is licensed under the terms of the license that accompanies such Third Party Software. Nothing in this document limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable license for the Third Party Software.

Additional Software and/or Services. Except as expressly provided herein, neither Pivot3 nor any of its licensors or suppliers is obligated to provide any maintenance or support services or updates to the Software. In the event that Pivot3 does provide End User with updates or upgrades to the Software, the terms and conditions of this Agreement shall apply to End User’s use of any such updates or upgrades.

PROPRIETARY RIGHTS. The Software is licensed, not sold. Pivot3 and its licensors retain exclusive ownership of all worldwide copyrights, trade secrets, patents, and all other intellectual property rights throughout the world and all applications and registrations therefore, in and to the Software and Documentation and any full or partial copies thereof, including any additions or modifications thereto. End User acknowledges that, except for the limited license rights expressly provided in this Agreement, no right, title, or interest to the intellectual property in the Software or Documentation is provided to End User, and that End User does not obtain any rights, express or implied, in the Software or Documentation. All rights in and to the Software not expressly granted to End User in this Agreement are expressly reserved to Pivot3 and its licensors. The Pivot3 trademark and other trademarks and logos are the trademarks of Pivot3, its affiliates, and their respective licensors. This Agreement does not permit End User to use any such trademarks.

RESERVED.

WARRANTY.

Performance Warranty. For a period of ninety (90) days after delivery of the Software to End User (the “Software Warranty Period”), Pivot3 warrants that the Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system supported by Pivot3), will operate substantially as described in the Documentation. Pivot3 does not warrant that End User’s use of the Software will be error-free or uninterrupted. Pivot3 will, at its own expense and as its sole obligation and End User’s exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Software reported to Pivot3 by End User in writing during the Software Warranty Period or, if Pivot3 determines that it is unable to correct the error, Pivot3 will refund to End User all Fees paid for such nonconforming Software, in which case this Agreement and End User’s right to use such Software will terminate.

Disclaimer. THE EXPRESS WARRANTIES IN SECTION 4.1 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE OR DOCUMENTATION, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1, THE SOFTWARE IS PROVIDED “AS-IS” AND WITH ALL FAULTS, AND THE ENTIRE RISK AS TO
SATISFACTORY QUALITY, RELIABILITY, AVAILABILITY, ACCURACY, AND EFFORT IS WITH END USER. END USER ACKNOWLEDGES AND AGREES THAT END USER HAS NOT RELIED ON ANY ORAL OR WRITTEN INFORMATION OR ADVICE, WHETHER GIVEN BY PIVOT3, ITS SUPPLIERS, LICENSORS, AGENTS, OR EMPLOYEES.

RESERVED.

CONFIDENTIAL INFORMATION. The Software and Documentation and the structure, organization, and source code of the Software, including but not limited to the shell scripts of the Software, are confidential and proprietary information (“Confidential Information”) of Pivot3 and/or its licensors. End User agrees to (a) safeguard such Confidential Information with the same degree of care that End User uses to safeguard its own confidential and proprietary information of a similar nature, but with no less than reasonable care; (b) not disclose or make available such Confidential Information to anyone except End User’s employees having a need to know for purposes related to this Agreement and only insofar as such persons are bound by nondisclosure agreements consistent with these non-disclosure terms; and (c) not use the Confidential Information except to exercise the license rights expressly granted in this Agreement.

TERM AND TERMINATION. This Agreement will remain in effect until terminated. End User may terminate this Agreement by removing the Software from End User’s computers, ceasing all use thereof, and destroying all copies of the Software and Documentation and certifying to Pivot3 that it has done so.

EXPORT CONTROLS. End User acknowledges and agrees that the Software and Documentation which is the subject of this Agreement may be controlled for export purposes. End User agrees to comply with all United States export laws and regulations including, but not limited to, the United States Export Administration Regulations, International Traffic in Arms Regulations, directives and regulations of the Office of Foreign Asset Control, treaties, Executive Orders, laws, statutes, amendments, and supplement thereto. End User assumes sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation.

U.S. GOVERNMENT END USERS. The Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

MISCELLANEOUS. This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase orders, is the complete and exclusive agreement between the parties relating to the Software and Documentation, and supersedes all prior or contemporaneous proposals, representations, understandings, or agreements relating thereto, whether oral or written. Software shall be deemed irrevocably accepted by End User upon installation. All waivers must be in writing and signed by both parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof. The headings in this Agreement do not affect its interpretation. This Agreement shall be interpreted without giving effect to any presumptions against the drafting party. Neither party may assign or transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of the other party. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Should you have any question about this Agreement, or if you desire to contact Pivot3, please contact us by mail at Pivot3, Inc, 221 West 6th St., Suite 750; Austin, TX 78701.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Procore Technologies, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract, and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PROCORE TECHNOLOGIES LICENSE, WARRANTY AND SUPPORT TERMS**
PROCORE Subscription TERMS

Background. Procore has developed certain construction project management Software (defined below), to which it provides access as part of its Services (defined below). Ordering Activity wishes to enter into this Agreement for a subscription to the Services identified on an Ordering Document. Procore desires to make those Services available to Ordering Activity subject to the terms of this Agreement.

Definitions. The capitalized terms listed below have the following meanings:

“Agreement” means, collectively, the terms of the Ordering Document, the underlying GSA Schedule Contract, the Schedule pricelist, and these terms. “Authorized User” means any individual who is authorized by virtue of such individual’s relationship to, or permissions from, Ordering Activity, to access and use the Services pursuant to Ordering Activity’s rights under this Agreement.

“Construction Volume” means the aggregate dollar value of the construction work performed, planned, or put in place by Ordering Activity for all Ordering Activity Projects during a given time period, most often a one-year period.

“Ordering Activity Content” means any content created by or on behalf of Ordering Activity or an Authorized User in connection with the Services and Ordering Activity Projects.

“Ordering Activity Data” means the data provided by Ordering Activity to Procore regarding Authorized Users, including personally identifiable information.

“Ordering Activity Project” means each distinct construction project constrained by a specific scope, budget, and schedule, as specified in a construction project agreement. The Project lifecycle phases for typical construction projects may include initiation, planning, design, demolition, construction, commissioning, and closeout.

“Ordering Document” means the order form document issued by Ordering Activity.

“Services” means Procore’s distinct services purchased by Ordering Activity as specified on the Ordering Document.

“Site” means app.procore.com and all associated Procore mobile applications.

“Software” means Procore’s software programs and any associated user interfaces and related technology that Procore provides to use the Services, and that Procore makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

“Subscription Fee” means the agreed-upon subscription fee for the Services as stated on the Ordering Document.

Limitations. Ordering Activity shall not, and shall not authorize or permit any Authorized User to (a) rent, loan, or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer software included as part of the Services; or (c) share identification or password codes with persons other than Authorized Users, or permit Ordering Activity’s account to be accessed by individuals who are not Authorized Users.

Procore represents and warrants that it has all necessary rights in the Ordering Activity Content to grant Procore the right to use, and Ordering Activity hereby grants Procore a non-exclusive, worldwide, royalty-free and fully paid license to use, the Ordering Activity Content as necessary for Procore to provide the Services. All rights in and to the Ordering Activity Content are reserved by Procore in this Agreement are reserved by Procore. Ordering Activity represents and warrants that any Ordering Activity Content hosted by Procore as part of the Services will not (a) infringe or violate the rights of any third party; (b) be deceptive, defamatory, obscene, or unlawful; or (c) contain any viruses, worms, or other malicious computer programming codes intended to

Documentation” means the online screen-share demonstration materials, marketing collateral, and other materials in written or electronic form provided to Ordering Activity by Procore in connection with Ordering Activity’s subscription to the Services.

“Enhancements” means the following: minor modifications, revisions, and corresponding Documentation with respect to the Services, including the addition of enhancements performed, whether paid for by Procore or any third party. Enhancements do not include the addition of New Features not originally included as part of the Services described on a particular Ordering Document.

“Maintenance Modifications” means bug fixes, patches, modifications, or revisions to the Services that correct errors therein; however Maintenance Modifications do not include New Features not originally included as part of the Services described on a particular Ordering Document.

“New Features” means those significant technological or service features and/or tools that Procore develops over time, which are offered to Ordering Activities as additional features for a fee and are distinct from included Enhancements and Maintenance Modifications.

“Ordering Document” means the order form document issued by Ordering Activity.

“Services” means Procore’s distinct services purchased by Ordering Activity as specified on the Ordering Document.

“Site” means app.procore.com and all associated Procore mobile applications.

“Software” means Procore’s software programs and any associated user interfaces and related technology that Procore provides to use the Services, and that Procore makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.

“Subscription Fee” means the agreed-upon subscription fee for the Services as stated on the Ordering Document.

Provision of Service/Responsibilities.

Subscription Rights and Access. Procore grants Ordering Activity the nonexclusive limited-time subscription and right to use the Services in accordance with this Agreement. Further, Procore agrees that Ordering Activity may access and use, and permit each Authorized User to access and use, the Services for its intended purpose, in accordance with the specifications set forth in any Documentation and subject to the terms of this Agreement and the limits on Construction Volume, Projects, and/or use restrictions specified on each ordering Document. Procore shall provide to Ordering Activity the necessary passwords, security protocols and policies, and network links or connections to allow Ordering Activity and its Authorized Users to access the Services. Procore shall provide the Ordering Activity and Authorized Users with (a) support for the Services as outlined in Exhibit A, and (b) access to Enhancements and Maintenance Modifications as they become available. Ordering Activity and its Authorized Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment, and Internet service necessary for the use of the Site and Services. All other rights not expressly granted in this agreement are reserved by Procore.

Site Updates. Procore may change, modify, upgrade, or discontinue any aspect or feature of the Site in whole or in part. Such changes, upgrades, modifications, additions, or deletions will be effective immediately upon notice thereof, which may be made by posting such changes to the Site. In the event Procore modifies or discontinues any content or feature of the Site which results in reduction of functionality or degradation of the Site, Procore shall provide comparable functionality.

Limitations. Ordering Activity shall not, and shall not authorize or permit any Authorized User to (a) rent, loan, or re-license rights to access and/or use the Services or Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile, or reverse engineer Software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users, or permit Ordering Activity’s account to be accessed by individuals who are not Authorized Users; (d) access, use, or permit a third party to access or use the Services or Software for purposes of competitive analysis, including the development, provision, or use of a competing software or service or for any other purpose that may be to Procore’s detriment or commercial disadvantage; or (e) use the Services in any way not expressly provided for in this Agreement. Ordering Activity shall be responsible for all activities that occur under Ordering Activity’s account and for all actions of Ordering Activity or its Authorized Users and both Ordering Activity and Authorized Users shall use the Services in accordance with this Agreement. Ordering Activity shall notify Procore of any unauthorized use of Ordering Activity’s passwords or account, or any other breach of security that is known or suspected by Ordering Activity. Ordering Activity and its Authorized Users shall abide by all applicable local, state, and national laws and regulations in connection with their use of the Services. Ordering Activity shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users that contain terms that impose no less restrictions in all material respects than those imposed on Ordering Activity herein, including, but not limited to, the provisions regarding the use of the Services and protection of Procore’s intellectual property.

Ordering Activity Content. Procore will process Ordering Activity Content as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Procore desires to make those Services available to Ordering Activity subject to the terms of this Agreement.
Limited Warranty. Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Procore represents warranties and liability.

Proprietary Rights.
Procore will retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Procore. Nothing in this Agreement grants Ordering Activity any Authorized User an express or implied right to use any Procore intellectual property except as set forth in section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procore in connection with use of the Services, will be the sole and exclusive property of Procore. Procore retains the royalty-free right to use any suggestions, ideas, feedback, or other recommendations provided by Ordering Activity or Authorized Users relating to the Services. Ordering Activity hereby grants Procore permission to allow the provider of that Non-Procore Application to access Ordering Activity's data and content as required for the interoperation of that Non-Procore Application with the Services. Procore is not responsible for any disclosure, modification, or deletion of any of Ordering Activity's data or content resulting from access by a Non-Procore Application. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be shared with third parties only as necessary to provide the Services. Procore will not be liable for any claim brought by an Authorized User arising from any action or omission by Procore, to the extent that such action or omission resulted from Ordering Activity's instructions.

Ordering Activity Data. Procore will process Ordering Activity Data as instructed by Ordering Activity in order to perform the Services. The Parties acknowledge and agree that the Ordering Activity is at all times the data controller and Procore is a data processor. Ordering Activity represents and warrants that Ordering Activity shall only provide to Procore the minimum amount of personally identifiable information for each Authorized User to enable the Authorized User to enjoy the benefit of this Agreement. Ordering Activity represents and warrants that Ordering Activity is entitled to transfer relevant Ordering Activity Data to Procore so that Procore may lawfully use, process, and transfer the Ordering Activity Data in accordance with this Agreement on Ordering Activity’s behalf and Ordering Activity shall ensure the same; Ordering Activity shall ensure that the relevant third parties, including data subjects, have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation. Ordering Activity acknowledges that Procore is reliant on Ordering Activity for direction as to the extent to which Procore is entitled to use and process the Ordering Activity Data. Procore shall process the Ordering Activity Data only in accordance with the terms of this Agreement and any written instructions given by Ordering Activity. Ordering Activity acknowledges that the Ordering Activity Data may be transferred or stored in the United States of America in order to carry out the Services and Procore’s other obligations under this Agreement. Ordering Activity acknowledges and agrees that the Ordering Activity Data may be shared with third parties only as necessary to provide the Services. Procore will not be liable for any claim brought by an Authorized User arising from any action or omission by Procore, to the extent that such action or omission resulted from Ordering Activity's instructions.

Ordering Activity represents, acknowledges and agrees that any use of the Services by Ordering Activity or Authorized Users contrary to or in violation of the representations and warranties of Ordering Activity in this section constitutes unauthorized and improper use of the Services. Ordering Activity shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Ordering Activity Content. The Parties acknowledge that Procore does not and cannot review all Ordering Activity Content and will not be responsible for such content.

7.3 Reserved.

Proprietary Rights.
Procore will retain all worldwide rights in the intellectual property in and on the Site, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Procore. Nothing in this Agreement grants Ordering Activity any Authorized User an express or implied right to use any Procore intellectual property except as set forth in section 3.1 above. All proprietary rights in the Services, including the Software as well as any aggregate usage statistics, traffic patterns, and other non-personally identifiable data collected by Procore in connection with use of the Services, will be the sole and exclusive property of Procore. Procore retains the royalty-free right to use any suggestions, ideas, feedback, or other recommendations provided by Ordering Activity or Authorized Users relating to the Services. Ordering Activity hereby grants Procore the right to contact Ordering Activity and Authorized Users in connection with their use of the Services unless otherwise stated on the Ordering Document.

Warranties and Liability.
Limited Warranty. Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Procore represents and warrants that (1) the Services will perform in accordance with the Documentation under normal circumstances, and (2) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry Standards. Provided that Ordering Activity notifies Procore of any breach of the foregoing warranty during the Term, Procore shall, as Ordering Activity’s sole and exclusive remedy, provide the support services set forth in Exhibit A to this Agreement. The Services may contain links to sites on the Internet that are owned and operated by third parties. Ordering Activity acknowledges and agrees that Procore is not responsible for the availability of, or the content located on or through, any such external site.

Disclaimer. Except as specifically provided in this Agreement, Procore disclaims all other warranties and conditions, express or implied. Procore expressly disclaims any implied warranties, including the warranties of merchantability, fitness for a particular purpose, title and non-infringement. Procore does not warrant that the operation of the Services will be uninterrupted or error-free.
PROCORE SERVICES AGREEMENT

EXHIBIT A
SUPPORT AND MAINTENANCE

Service-Level Agreement.
Procore has a service-level objective for the Services of 99.9% availability, 24 hours a day, 7 days a week, 365 days a year. Downtime does not include (i) problems caused by factors outside of Procore's reasonable control, and (ii) unavailability of the Services during scheduled maintenance. Scheduled maintenance is communicated to users through “in app” notifications, with a minimum of a 24 hour notice of the scheduled maintenance.

During the Term of this Agreement, the Services will be operational and available to Ordering Activity at least 99.9% of the time in any calendar month (the “Procore SLA”). If Procore does not meet the Procore SLA, and if Ordering Activity meets its obligations under this Procore SLA, Ordering Activity will be eligible to receive the Service Credits described below. This Procore SLA states Ordering Activity’s sole and exclusive remedy for any failure by Procore to provide the Service.

Definitions. The following definitions shall apply to the Procore SLA.

“Downtime” means the inability to utilize the Services in the normal course of business due to a failure within the Service and not resulting from (i) factors outside of Procore’s reasonable control, (ii) Ordering Activity’s systems or equipment, or (iii) third party products, services or equipment not supplied by Procore.

“Downtime Period” means a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.

“Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.

“Scheduled Downtime” means those times where Procore notifies Ordering Activity of periods of Downtime at least twenty-four hours prior to the commencement of such Downtime. There will be no more than six hours of Scheduled Downtime per calendar month. Scheduled Downtime is not considered Downtime for purposes of this Procore SLA, and will not be counted towards any Downtime Periods.

Monthly Uptime Percentage | Days of Service
--- | ---
< 99.9% - ≥ 99.0% | 3
< 99.0% - ≥ 95.0% | 7
< 95.0% | 15

Service Credits. Service Credit shall be applied against the Service cost. If service is discontinued for any reason, the Service Credit shall be in the form of a rebate at the end of service. Service Credit shall be computed by dividing the number of Days of Service credited by the number 365 and multiplied by the Annual Service GSA Fee set forth in the applicable Ordering Document. In order to receive any of the Service Credits described above, Ordering Activity must notify Procore, within thirty days from the end of the month during which Ordering Activity becomes eligible to receive a Service Credit.

Failure to comply with this requirement will forfeit Ordering Activity’s right to receive a Service Credit.

Maximum Service Credit. The aggregate maximum number of Service Credits to be issued to Ordering Activity for any and all Downtime Periods that occur in a month shall not exceed fifteen days of Service Credit.

Support.

During the Term, Ordering Activity and Authorized Users will have access to technical support via telephone, online chat, email, or self-paced online tutorials. Support hours will be 5:00 a.m. to 10:00 p.m. Pacific Time (“PT”) Monday through Friday, and 10:00 a.m. to 6:00 p.m. PT Saturday and Sunday, excluding holidays. Support does not include training sessions on the features and functionality of the Services (implementation) or training in computer skills considered prerequisite to an individual’s ability to use personal computers, the Internet/World Wide Web, and online software.

Upon Procore’s receipt of a support request, Procore will use commercially reasonable efforts to answer questions and provide standard error corrections to known problems. In the event of any problems or errors involving the Services that Procore cannot immediately resolve, Procore will begin working on a resolution to the problem and will work diligently and in a commercially reasonable manner on the problem until it is resolved.

Data Backup and Return.

During the Term, Procore shall make commercially reasonable efforts to protect the security of Ordering Activity’s data, and shall complete daily data backups of Ordering Activity’s data to an archive format that will be kept physically separate from the Procore database and web server hardware. The Services do not replace the need for Ordering Activity to maintain regular data backups or redundant data archives.

Procore contracts with a third-party data center provider to provide essential technology services such as network connectivity to the Internet for the servers running the Services. Personnel access to the data center used by Procore for these Services is restricted, and all entrances and common areas are monitored 24x7 via closed-circuit cameras. Public access to the data center is forbidden. Fire-suppression systems are located in the data center, and power systems in the data center are designed to run uninterrupted even in the event of a total power outage. All servers are supplied with Uninterruptible Power Supply (“UPS”) power sources that will continue to run if utility power fails. The UPS power subsystem is fully redundant, with instantaneous fail over in case the primary UPS fails. In the event of an extended power outage, onsite diesel generators can run indefinitely. Generators are regularly tested to ensure functionality in the event of an emergency.

All Ordering Activity Content is the property of the Ordering Activity. Upon restriction, suspension or termination of an Ordering Activity account, Procore will allow Ordering Activity, at no additional cost, to export all of Ordering Activity Content as well any additional data that may be readily exported from the Services to a standard electronic file format. At Procore’s sole discretion, an Ordering Activity’s area within the Services may be kept active as long as the Ordering Activity is provided with “read-only” access. Ordering Activity shall accept this access as a full substitute for a complete file export of Ordering Activity’s project data.

Maintenance.

4.1 Unplanned Outages. If a system failure should occur that creates an outage of the Services, Procore will utilize all reasonable means to end the outage as soon as possible. Outages due to the Internet, hosting providers, and/or Ordering Activity or Authorized User systems are outside Procore’s control and, in such event, Procore will assist the Ordering Activity or Authorized User in the diagnosis but may not be able to resolve the problem.

4.2 Preventative Maintenance. From time to time, Procore or its hosting providers will perform preventative maintenance, such as updating servers and routers with security patches, and software upgrades. Procore will provide notice prior to any interruption in the Services and will keep any resulting downtime reasonable. Procore will use all reasonable efforts to perform such maintenance at hours convenient for the Ordering Activity and Authorized Users.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Proofpoint, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

   **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14; but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**PROOFPOINT, INC.**

**PROOFPOINT, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

The following terms apply to each GSA Customer (“Customer”) license of Proofpoint Products from Vinitech Inc., (“Reseller”) under the GSA Schedule Contract, “License”:

“Proofpoint Products” means the appliance, service, or software listed in the GSA Schedule Price List by Vinitech Inc., on June 15, 2014, and licensed by Customer from Vinitech pursuant to a GSA Customer Purchase Order (“Order”).
“Documentation” means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer’s purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

“Mailbox” means a separate account on Customer’s e-mail server for sending or receiving messages or data within Customer’s e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer’s email server for the receipt of messages or data within Customer’s e-mail system or network. For Proofpoint Product Social Archive and/or Governance, “Mailbox” hereunder shall be deleted and replaced with “Named User”.

License. Customer is granted a limited term, non-sublicensable, non-transferable, and nonexclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer’s internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer’s right to access or use Proofpoint Products is limited to those parameters set forth in the applicable GSA Customer Purchase Order (“Order”) provided to Proofpoint including, but not limited to the maximum number of Mailboxes (“Licensed Mailbox Count”) (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

License Restrictions. Customer will not and will not allow any third party to:
- copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;
- reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;
- remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;
- sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products; export any Proofpoint Products in violation of U.S. laws and regulations;
- attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;
- access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;
- use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer’s organization without Proofpoint’s prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person’s image, identity, and likeness) or privacy; (c) violation of any federal law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, antidiscrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or Documentation or any portion thereof; or upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

Customer Responsibilities. Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer’s data, or where Customer’s use of the Proofpoint Products are in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to resist to use the Secure Share. For the purposes of Proofpoint’s compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer’s direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.

If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.
Support and Service Levels. For Customer who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint’s standard support terms which are currently described on Exhibit A.

Reporting. Customer is under no obligation to increase the number of Mailboxes its uses for subscription based Proofpoint Products based on Mailbox count. However, Customer understands and agrees that if Customer adds Mailboxes to the Licensed Mailbox Count for such Proofpoint Products that exceed 10 percent of the Licensed Mailbox Count, it will execute a new or modified Order for the additional mailboxes.

Customer shall also audit its Mailbox count on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Licensed Mailbox Count then Customer will execute a new or modified Order for the additional mailboxes.

Warranty Disclaimer. PROOFPOINT DISCLAIMS (AND PROOFPOINT IS ALSO REQUIRED UNDER ITS CONTRACTS WITH ITS SUPPLIERS AND LICENSORS TO STATE THAT SUCH SUPPLIERS AND LICENSORS ALSO DISCLAIM) ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THAT THE ACCURACY OF THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER’S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF MANAGEMENT OF ANY DOCUMENT, OR THAT NO DOCUMENT WILL BE LOST. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

Disclaimer of Liability. All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint’s negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

Proofpoint Contract Rights. Customer agrees that Proofpoint is a party to this Agreement with all rights to enforce such provisions to this Agreement, including but not limited to the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

Law. This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

Force Majeure. Pursuant to FAR 52.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party’s reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

Open Source Software: Proofpoint Appliance/Software for Customer On-Site Deployment. Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:

“Open Source Software” means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information, (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer’s name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

Proofpoint Product - Email Archive. Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the GSA Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

Termination. When the end user is an instrumentality of the U.S., recourse against the United
Exhibit A

SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS

Overview: The support services described herein are provided by Proofpoint to each GSA Customer (“Customer”) pursuant to the terms and conditions of the applicable license agreement (“Agreement”) between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

Bronze Support services consist of the following:

Error Corrections. Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

Software and Documentation Updates. Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, “Updates”). Updates do not include products or options that are designated by Proofpoint as new products or options which are subject to the execution of a new or modified Order. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on the customer support portal.

Support Requests and Named Support Contacts. Technical support is available during the technical support hours for the primary support center specified in the applicable Order. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint’s web-based call submission and tracking system (“CTS”) at any time. Support requests submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer’s operating environment and operation of the Proofpoint Products (collectively, “Named Support Contacts”). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer’s cases on CTS at any time.

Platinum Support. In addition to the Bronze support services defined above, Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint, 24 hours per day x7 days per week, 365 days per year; (24x4x365) and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support hours specified in Section 1.3 above.

Support Contacts (for a total of six) and (ii) Proofpoint will assign a designated Technical Account Manager to Customer’s account.

Global Time Zone Add On. Any Customer that has purchased support at the Platinum level or higher, may purchase the Global Time Zone Add On. Customer may submit a new Order to receive six additional Named Support Contacts (for a total of twelve) and Proofpoint shall provide assistance for errors of any priority, as reasonably determined by Proofpoint, 24x7, 365 and (ii) a dedicated phone line.

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Named Support Contact Training. In order to receive support in accordance with the foregoing, within ninety days of the Effective Date, all Named Support Contacts must take and pass exam(s), as applicable and available, to become an "Accredited Engineer" (http://www.training.proofpoint.com/accredited-engineer/) for each Proofpoint Product licensed by Customer. If any Named Support Contact fails to pass the exam, Proofpoint may reasonably request that such Named Support Contact be replaced by Customer. Failure to pass the applicable exam(s) may result in limited access to CTS.

Priority Levels of Errors and Responses
In the performance of Support services, Proofpoint will apply the following priority ratings.

Priority I Errors.
A "Priority I Error" means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint’s efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop a suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

2.2 Priority II Errors.
A "Priority II Error" means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.3 Priority III Errors. Description: A "Priority III Error" means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.4 Priority IV Errors.
A "Priority IV Error" means a Software program error which prevents some function or process from substantially meeting the Documentation, but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction in the next Software update.

3 Customer’s Cooperation.
Proofpoint’s obligation to provide Support services is conditioned upon the following: (i) Customer’s reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer’s provision to Proofpoint of sufficient information and resources to correct the problem, including, subject to Government security requirements, remote access as further discussed in these policies, (iii) Customer’s prompt installation of all Software maintenance releases, bug fixes and/or work-arounds supplied by Proofpoint, and (iv) Customer’s procurement, installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint’s response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services, for purposes relating to providing Support to Customer and subject to Government security requirements, Proofpoint may obtain information regarding Customer’s e-mail communications. Customer agrees that Proofpoint may use any statistical data generated relating to Customer’s e-mail subject to Government security requirements. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

Reproducing Problems; Remote Access.
Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. For a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint’s obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer’s computer system(s) and network subject to Government security requirements. Any such remote access by Proofpoint shall be subject to Proofpoint’s compliance with Customer’s security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer’s failure to provide the foregoing remote access shall extend the response time periods set forth in Section 2 accordingly. Proofpoint will notify Customer of any additional work required by the GSA Customer’s failure to provide access and will afford the GSA Customer an opportunity to execute a new or modified Order. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

Support Services Conditions.
Support Issues Not Attributable to Proofpoint. Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer’s negligence, hardware malfunction, or third party software. Proofpoint may offer Support services for problems caused by any of the above pursuant to the execution of a new or modified Order. Exclusions from Support services.
The following items are excluded from Support services:
(a) In-depth training. If a Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint’s training or consulting departments.
(b) Assistance in the customization of an application. Support services do not include providing assistance in developing, debugging, testing or any other application or customization.
(c) Information and assistance on third party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.
(d) Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer’s environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided pursuant to the execution of a new or modified Order.
(e) Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes. If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed Order and a SOW, if required by the Contracting Officer.

Description of Appliance Support Services.

Services.
For as long as the Appliance purchased by Customer is under Proofpoint’s Appliance warranty Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site subject to Government security requirements, depending on Customer’s location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

Customer Obligations.
Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer’s Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating an Appliance. It is Customer’s responsibility to back up the data on Customer’s system, and to provide adequate security for Customer’s system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer’s computer or network systems. Subject to Government security requirements, Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer’s facilities necessary for Proofpoint to fulfill its obligations.

Exclusions.
Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Prosoft Systems ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination of rights are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.); The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency. The rules promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**At the Department of Justice, only the GSA customer performs (without the knowledge or consent of the GSA customer) to an in certain cases legislation. Develop any leading activity may not: work around any technical limitations in the Software Product; reverse engineer, decompile or disassemble the Software Product, except and only to the extent that applicable law expressly permits, despite this limitation; remove, minimize, block or modify any notices of Prosoft or its Affiliates or suppliers in the Software Product; use the Software Product in any way that is against the law; share, publish or lend the Software Product, or provide the Software Product as a stand-alone hosted as solution for others to use, or transfer the Software Product or this Agreement to any third party; or License Types: ATTACHMENT A - PROSOFT SYSTEMS 1 PROSOFT SYSTEMS INTERNATIONAL SOFTWARE LICENSE 1.01 SCOPE OF LICENSE. The Software Product is licensed, not sold. This Agreement only gives Ordering Activity some rights to use the Software Product. Prosoft reserves all other rights. Unless applicable law gives Ordering Activity more rights despite this limitation, Ordering Activity may use the Software Product only as expressly permitted in this Agreement. In doing so, Ordering Activity must comply with any technical limitations in the Software Product. Prosoft reserves all other rights. Unless applicable law gives Ordering Activity more rights despite this limitation, Ordering Activity may not: work around any technical limitations in the Software Product; reverse engineer, decompile or disassemble the Software Product, except and only to the extent that applicable law expressly permits, despite this limitation; remove, minimize, block or modify any notices of Prosoft or its Affiliates or suppliers in the Software Product; use the Software Product in any way that is against the law; share, publish or lend the Software Product, or provide the Software Product as a stand-alone hosted as solution for others to use, or transfer
The scope and term of Ordering Activity’s license is limited to the exact license type listed in the Ordering Activity’s license certificate, order form, or other documentation provided upon purchase of Software Product.

**CRM Licensing Requirements**
Access to Microsoft Dynamics CRM Organization(s) via a Software Product does not remove or substitute baseline Microsoft Dynamics CRM licensing requirements.

Reserved.

2 RESERVED

3 SUPPORT SERVICES
3.01 Prosoft may, in its sole discretion, provide Ordering Activity with support services related to the Software Product ("Support Services"), as set forth in the applicable ordering document. Any supplemental software code provided as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Agreement. With respect to technical information Ordering Activity provides to Prosoft as part of the Support Services, Prosoft may use such information for its business purposes, including for product support and development. Prosoft will not utilize such technical information in a form that identifies Ordering Activity. Prosoft will not utilize such information in a manner that discloses Ordering Activity’s confidential information to any third party.

4 UPGRADES
4.01 Software Products labeled as upgrades will be available to Ordering Activity upon the purchase of Prosoft annual software maintenance offering as set forth in the applicable ordering document. A Software Product labeled as an upgrade replaces and/or supplements the product that formed the basis for Ordering Activity’s eligibility for the upgrade. Any such upgrade shall be considered part of the Software Product subject to the then-current terms and conditions of this Agreement.

5 RESERVED

6 INTELLECTUAL PROPERTY
6.01 Software Products and other deliverables are protected by copyright and other intellectual property rights laws and international treaties. Prosoft (1) does not transfer any ownership rights in any Software Products and (2) reserves all rights not expressly granted to Ordering Activity under this Agreement.

7 WARRANTY & REMEDIES
7.01 Prosoft warrants that the Software Product will perform substantially as described in the applicable Software Product documentation for ninety (90) days from the date it is delivered to Ordering Activity. If it does not and Ordering Activity notifies Prosoft within the warranty term, then Prosoft will, at its option and sole discretion, (1) repair or replace the Software Product or (2) return the price Ordering Activity paid for the Software Product license, and Ordering Activity must uninstall and destroy all copies of the Software Product in its possession.

7.02 The remedies above are Ordering Activity’s remedies for breach of the warranties in this section. Ordering Activity waives any breach of warranty claims not made during the warranty period.

7.03 Exclusions. The warranties in this Agreement do not apply to problems caused by accident, abuse or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, evaluation, pre-release or beta products, or to components of Software Product that Ordering Activity is permitted to redistribute.

7.04 Disclaimer. Except for the limited warranties above, Prosoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

7.05 Ordering Activity represents and warrants that it has the legal right and power to enter into this Agreement and that it will not use the Software Product in a way or for any purpose that infringes or misappropriates any third party’s intellectual property or personal rights.
1. **Scope.** This Rider and the attached *Pulse Secure* ("Manufacturer") product specific license terms establish the terms and conditions enabling *EC America* ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under *EC America*’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and *EC America* agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PULSE SECURE LICENSE, WARRANTY AND SUPPORT TERMS

PULSE SECURE SOFTWARE END USER LICENSE AGREEMENT

LAST REVISED: NOVEMBER 17, 2015

PLEASE CAREFULLY READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE. BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.
IF YOU ACQUIRED THE SOFTWARE (EITHER STAND-ALONE OR AS PART OF PULSE SECURE HARDWARE) AND YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, THEN DO NOT INSTALL OR USE THE SOFTWARE AND CONTACT PULSE SECURE WITHIN 30 DAYS OF THE PURCHASE REGARDING THESE TERMS OR A REFUND.

IF YOU AND PULSE SECURE HAVE SIGNED A SEPARATE WRITTEN AGREEMENT COVERING YOUR RIGHTS AND DUTIES WITH RESPECT TO THE SOFTWARE, THEN THAT WRITTEN AGREEMENT TAKES PRECEDENCE OVER ANY CONFLICTING TERMS OF THIS AGREEMENT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTERPRISE’S END USERS, IT IS YOUR RESPONSIBILITY TO COMMUNICATE THE INFORMATION IN THIS AGREEMENT TO THE ENTERPRISE END USERS AND ENSURE COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN.

BY EXECUTING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU UNDERSTAND THIS AGREEMENT AND ACCEPT ALL OF ITS TERMS. IF YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THE TERMS OF THIS AGREEMENT.

This Agreement governs Your rights and duties with respect to the Software. Capitalized terms used in this Agreement are defined in Section 28 (Definitions).

1. License Grant.
   a. When You purchase or rightfully receive a license to a Software product, Pulse Secure grants You a revocable, non-exclusive, non-transferrable right to install and use that Software for the term stated in Your Proof of Entitlement.

   b. Subject to the terms and conditions set forth herein, as long as Your use of the Software does not exceed the scope of the License Metric and quantity of License Metric Units that You purchased, You may install and use the Software on any device that supports it (and You may move the Software from one device to another). Notwithstanding the foregoing, the operating system software (and any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, may ONLY be installed and used on another Pulse Secure Platform that You have purchased or leased from Pulse Secure or an Approved Source for Your own use and not for resale.

2. Licensing Model(s)
   Software offered by Pulse Secure employs trust-based or programmatic license enforcement. Where applicable, it is Your responsibility to both monitor Your usage level, and purchase sufficient License Metric Units to meet Your Software usage.

3. License Name
   Each Software product is identified by a unique name. This name, when combined with a Version number corresponds to a specific base set of product features and functionality identified for that Version of the Software in the Documentation.

4. Term of License
   a. Subscription/Term-based License. If Your license is a Subscription or a Term-based license, then the term of the Subscription shall be twelve (12) months from the Start Date, unless Your Proof of Entitlement states otherwise. You may, however, renew or reinstate Your Subscription or renew Your Term-based license, subject to the terms of the applicable SDD. Renewals and/or reinstatements are subject to the terms of Pulse Secure Policies at the time of the renewal and/or reinstatement.

   b. Special Purpose License. If Your license is a Special Purpose License (see Section 6, below), then its term shall be as stated in Your Proof of Entitlement. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your Special Purpose License shall be thirty (30) days from date that You first received the Software, whether via download or otherwise.

   c. Perpetual License. If You have a valid Proof of Entitlement that clearly states that Your license is “Perpetual,” then, except as stated below, Your license is perpetual, subject only to termination for nonpayment of license fees or other breach of this Agreement. An otherwise perpetual license to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates nonetheless terminates if and when You sell or otherwise transfer the Pulse Secure Platform on which You use it, or when Your lease to that Pulse Secure Platform terminates.

5. License Metrics
   License Metrics include the following:
   a. Managed Users - the number of individuals to which You and Your authorized users grant access for one or more services furnished, managed, or provisioned by any instance of the Software. A Managed User who accesses such services through multiple devices is nonetheless counted as a single Managed User.

   b. Concurrent Sessions – the number of devices to which You and Your authorized users grant access for one or more services concurrently furnished, managed, or provisioned by any instance of the Software.

   c. Other Forms of License. Other License Metrics may be defined for specific Software products.

6. Special Purpose Licenses
   Special Purpose Licenses are limited, short-term licenses that may not be used for any production or commercial application or similar use.

   a. Demonstration Use/NFR-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Demonstration Use", "Not for Resale" or with words of like meaning, AND if You are a Pulse Secure-authorized distributor or
reseller, then for the license term (see Section 4, above) You may use the Software, but only to demonstrate features and performance of the Software to prospective buyers, and only while You remain a Pulse Secure-authorized distributor or reseller. The Software provided under this license may not be resold. Maintenance Services must be purchased along with the Demonstration Use/NFR license.

b. Research and Development Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Research and Development Use", "Lab Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal research and development.

c. Evaluation Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Evaluation Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

d. Beta Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Beta Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of a Beta Version of the Software.

e. Education Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Educational Use", "Training Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software solely as a training tool in a Pulse Secure-authorized class that You conduct in the use of that Software. You may so use the Software only while You are operating under a valid agreement with Pulse Secure. You may not, however, allow anyone to access the Software other than the instructor and the students duly enrolled in the class, and You may not allow students to copy or download or remove any copy of Software or to use the Software other than for conduct of coursework.

7. Maintenance Services; Updates.

a. General. Subject to the Pulse Secure Policies, Pulse Secure may make available Maintenance Services. All Maintenance Services are subject to the terms and conditions of this Agreement and the applicable SDD.

b. Subscriptions. If Your Software is licensed under a Subscription, the applicable Maintenance Services for that Software shall be included in the Subscription for the term of the Subscription, as indicated in Your Proof of Entitlement and applicable SSD. If Your license is not a Subscription License, then Maintenance Services are available only if You order them separately and purchase them at an additional fee.

c. Updates. Updates are available to You only as a part of Maintenance Services. By downloading or taking delivery of any Update, Your rights with respect to the Update are subject to the following: (1) the terms of the latest revision of this Agreement posted at the time of Your receipt of the Update; (2) the then-current applicable SDD; (3) any then-current Pulse Secure Policies; and (4) Your Proof of Entitlement for the Software. Your rights to use the Update are also subject to Your ceasing all use of the replaced Software (or, as the case may be, the replaced portion of the Software in the case where an Update is provided in the form of a patch).

8. License Restrictions, Limitations and Prohibitions

This Section 8 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Special Purpose Licenses, Subscriptions, Perpetual or otherwise:

a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.

b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.

c. No Sublicensing or Assignment. You may not sublicense, transfer or assign, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement. Any attempted sublicense, transfer or assignment shall be void.

d. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization (collectively, a "Restructure") where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.

e. You are the Sole Licensee. No rights or licenses in the Software or any Maintenance Services shall arise under this Agreement in favor of anyone other than You.

f. Separately Licensable Software. The software image that contains Software product that You license from Pulse Secure or its Approved Sources might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license under a separate order and at an additional fee. Specific features and functionality are included in Your license to the Software product You licensed only if published Pulse Secure Documentation for that Version of the Software identifies those features and functionality as being included.

g. Restrictions on charging a fee for access or use. You shall not allow any authorized user of the Software or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software.

h. Other Use Restrictions and Prohibitions. You shall not, directly or indirectly:

Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver. If the law requires Pulse Secure to provide interface information to You to adapt the Software, Pulse Secure, at its option, may either (A) provide the information to You subject to Your acceptance of non-disclosure and use limitation terms that Pulse Secure reasonably requires, or (B) perform that adaptation itself at a reasonable charge for services;

Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Pulse Secure;

Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image You have received even if any such library, file, module or other component is separately licensable, or use any such modules, files or other components...
separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);

Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to Pulse Secure for compliance with all provisions of this Agreement;

Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files notices, disclaimers, marks and labels included in the Software as delivered by Pulse Secure; or

Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity.

9. License and Maintenance Contract fees; Taxes.

a. Fees. Unless otherwise specified in, Your Proof of Entitlement or a separate written agreement between You and Pulse Secure; License fees, Subscription fees and Maintenance services contracts are due and payable in advance upon Your placement of an order.

b. Taxes. All prices and fees payable in respect of any license to Software (including any Subscription) or any Maintenance Services contract entered into with Pulse Secure are exclusive of tax. You shall be responsible for paying taxes arising from the licensing or delivery of Software (including any Subscription) or purchase of Maintenance Services. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Pulse Secure prior to invoicing, and You shall promptly notify Pulse Secure if Your exemption is revoked or modified. All payments that You make shall be net of any applicable withholding tax. You will provide reasonable assistance to Pulse Secure in connection with such withholding taxes by promptly providing Pulse Secure with valid tax receipts and other required documentation showing Your payment of any withholding taxes; completing appropriate applications that could reduce the amount of withholding tax to be paid; applying for reduced tax rates; and notifying and assisting Pulse Secure in any audit or tax proceeding related to transactions hereunder. Your obligations under this Section 9.b shall survive termination or expiration of this Agreement. Pulse Secure shall state separately on its invoices taxes excluded from the prices and fees, and You agree either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

10. Termination.

a. Effect of Termination or Expiration. If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to Pulse Secure all copies of the Software and related documentation in Your possession or control.

b. Survival. The provisions of Sections 8, 9.b, 10.c, 10.d and 11-28 shall survive termination or expiration of this Agreement.

11. Recordkeeping and Audit.

a. Your Duty to Monitor Use. You agree to monitor Your use of all Software and generate accurate, complete and auditable records of the levels of that use.

b. Reports of Excess Use; Purchase of Additional License Metric Units. If at any time Your maximum level of use of the Software exceeds the number of License Metric Units You have purchased, then on or before ten (10) days after the last day of the calendar quarter in which Your level of use first exceeded that limit, You shall (i) notify Pulse Secure in writing of Your maximum level of use and (ii) order and purchase sufficient License Metric Units (in increments of the applicable minimum allowable number of License Metric Units) to meet or exceed the maximum level of use of the Software during such calendar quarter. Your Proof of Entitlement or separate written agreement with Pulse Secure may require You to report on Your usage more often. Failure either to timely report such excess use or to timely purchase and pay for the required additional License Metric Units in accordance with this subsection 11.b shall be a material breach of this Agreement.

c. Pulse Secure's Right to Audit. In order to enable Pulse Secure to verify Your compliance with this Agreement, You shall, throughout the term of the license and for three (3) years thereafter, provide to Pulse Secure and its professional advisors access to such facilities, personnel, records and reports, for their inspection and copying, as reasonably necessary to validate compliance with this Agreement but no more than once every 12 months. Pulse Secure and its professional advisors shall comply with all Your security requirements. This includes:

i) all Software monitoring records generated and maintained under this Section 11, and

ii) all other written or electronic data and reports that You generate or receive relevant to a determination of whether You have complied with this Agreement.

d. If any inspection under subsection 11.c discloses that You used the Software in excess of applicable License Metric Units and failed to timely comply with subsection 11.b, then on notice of the inspection results, Pulse Secure shall immediately:

i) invoice You and You shall purchase and pay for sufficient additional License Metric Units (in increments of the applicable minimum allowable License Metric Units) to meet or exceed Your maximum level of use of the Software; and that may have been required for Your use which at any time exceeded Your purchased License Metric Units;

ii) invoice You and You shall purchase and pay for contracts for Maintenance Services sufficient to cover Your new total number of License Metric Units;

The remedy stated in this Section 11.d is in addition to any other remedy Pulse Secure may otherwise have.

12. Confidentiality. The parties agree that aspects of the Software and associated documentation are the confidential property of Pulse Secure. As such, You shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which, at a minimum includes restricting access to the Software to Your employees and contractors having a need to use the Software for Your internal business purposes.


Pulse Secure treats Your information in accordance with its Privacy Policy found at http://www.pulsesecure.net/legal/privacy-policy.
Pulse Secure and Pulse Secure's licensors, respectively, retain exclusive ownership of all right, title, and interest in and to all intellectual property in the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.

15. Limited Warranties.
a. Software Limited Warranty
   (1) SOFTWARE LICENSED UNDER A SPECIAL PURPOSE LICENSE ARE FURNISHED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

   (2) For any other license of Software under this Agreement, Pulse Secure warrants for Your sole benefit that for a period of ninety (90) days from the Start Date (the "Software Warranty Period"), the Software shall substantially conform to the Documentation. You may not make a software warranty claim after the lapse of the Software Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF PULSE SECURE FOR BREACH OF ANY WARRANTY REGARDING SOFTWARE UNDER THIS SECTION 15 SHALL BE THE REPLACEMENT OF THE DEFECTIVE SOFTWARE.

b. Restrictions: No warranty will apply if the Software (i) has been altered, except by Pulse Secure; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation and instructions supplied by Pulse Secure; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed pursuant to a Special Purpose License. In addition, Software is not designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product, and Pulse Secure disclaims any express or implied warranty of fitness for such uses. You are solely responsible for backing up its programs and data to protect against loss or corruption. PULSE SECURE WARRANTY OBLIGATIONS DO NOT INCLUDE INSTALLATION, REINSTALLATION OR MAINTENANCE SERVICES OF ANY KIND.

c. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 15, TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. PULSE SECURE DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

16. Limitation of Damages. To the extent permitted by law:

a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF PULSE SECURE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS TO YOU FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE: (i) PRICE PAID TO PULSE SECURE FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE CURRENT SUBSCRIPTION, OR FOR THE CURRENT CONTRACT FOR MAINTENANCE SERVICES, WHICHEVER GAVE RISE TO THE CLAIM.

b. IN NO EVENT SHALL ANY BREACH BY PULSE SECURE IN CONNECTION WITH ANY REPRESENTATIONS, WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE OR WITH ANY DUTIES RELATING TO FURNISHING YOU WITH MAINTENANCE SERVICES EXCUSE YOUR UNAUTHORIZED USE OF SOFTWARE OR IMPAIR PULSE SECURE’S RIGHT TO TERMINATE ANY LICENSE BASED ON YOUR BREACH OF THIS AGREEMENT.

c. NEITHER PULSE SECURE NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR RELATING TO THE PULSE SECURE PLATFORM, SOFTWARE, USE OF THE SOFTWARE OR TO ANY MAINTENANCE SERVICES.

d. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

e. TO THE EXTENT PERMITTED BY LAW, PULSE SECURE DISCLAIMS ANY AND ALL LIABILITIES OR OBLIGATIONS WHATSOEVER RELATED TO THE PULSE SECURE PLATFORM, SOFTWARE OR ITS LICENSING TO OR USE BY ANYONE OTHER THAN YOU.

f. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM PULSE SECURE’S NEGLIGENCE; (2) FRAUD; OR (3) ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

g. Pulse Secure has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability stated above. Those disclaimers and limitations reflect an allocation of risk between Pulse Secure and You, and they form an essential basis of the bargain between Pulse Secure and You.

17. Compliance with Laws; Export Requirements.
You shall comply with all applicable laws and regulations in connection with the movement and use of the Software and any Maintenance Services. You acknowledge and agree that the Software as well as related technical data and assistance that may be furnished in the course of the Maintenance Services, including any Service(s) or Technology(s) that may be incorporated into the Software, is subject to export laws and regulations. You represent and warrant that You have not been designated, are not designated, and will not be designated by the U.S. government as a “specially designated national or terrorist”. You will comply with all applicable laws and regulations, including, without limitation, the U.S. Export Administration Regulations and any other country’s export laws and regulations.
Services may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that the Software was not furnished to You as a result of an export or re-export in violation of US or other applicable laws or regulations, that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country, and that You are not using any Software or technology furnished hereunder in connection with any Maintenance Services to further activities in support of the development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify Pulse Secure if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to Pulse Secure of an ultimate destination of the Software, You shall not export, either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government as required. You understand and agree that Pulse Secure may without liability or breach impose certain restrictions and conditions on Maintenance Services in order to protect against violation of export control laws.

The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and the Proof of Entitlement.

19. Third Party Software
Any licensor of Pulse Secure whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were Pulse Secure. Certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s). This Software is licensed subject to open source software licenses. For information, click here http://www.pulsesecure.net/techpubs/licensing/attribution or contact opensource@pulsesecure.net.

This Agreement (including all documents incorporated herein) and the terms of any contract for Maintenance Services with Pulse Secure shall be governed by the Federal laws of the United States (without reference to its conflicts of laws principles). The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply.

21. Force Majeure
Except for Your duty to make payment for, Software licenses or contracts for Maintenance Services, and except for Your unauthorized installation or use of Software, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises ("Force Majeure"), provided that the party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. Either party shall be entitled to terminate this Agreement if the Force Majeure event continues for a period of one month.

22. Applicability of This Agreement.
a. Separate Signed Agreements. If You and an authorized representative of Pulse Secure have signed a valid separate written agreement governing Your use of any or all Software licensed from Pulse Secure, then with respect to that Software that signed agreement will take precedence over any inconsistent terms of this Agreement.
b. Transition Rules. If You have licensed any Software from Pulse Secure under a different End User License Agreement, then this Agreement shall apply to that Software if and when, following posting of this Agreement at http://www.pulsesecure.net/support You either purchase additional License Metric Units for the Software, renew the license at the end of the license term or reinstate the license after the license expires.

23. Complete Agreement; Modifications.
Except as otherwise provided in subsection 22.a, this Agreement together with the Applicable SDD, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software and Maintenance Services. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in subsection 22.a, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remainder of this Agreement. This Agreement and associated documentation have been written in the English language, and the parties agree that the English version will govern.

25. Notification.
Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in a writing, if to Pulse Secure by mail to 2700 Zanker Road, Suite 200, San Jose, CA 95134 USA, Attn: Legal Department, provided that the notice identifies You by name, address and email address; or, if to You, by email to Your contact email address (or by mail addressed to Your street address that is associated with Your user account for registration with Pulse Secure. If You have no such user account, then notification shall be deemed given to You by emailing or mailing notice to any office or contact email address for the Approved Source from which You acquired Your license.

26. Waiver.
The failure of Pulse Secure to require Your performance of any provision of this Agreement shall not affect Pulse Secure’s full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.

27. Translations.
Several translations of this Agreement may appear at http://www.pulsesecure.net/support. To the extent of any inconsistency between the English version of this Agreement and any non-English version the English version shall govern.

The following definitions apply to capitalized terms used this Agreement:

- "Agreement" means this End User License Agreement ("EULA").
- "Approved Source" is Pulse Secure, or a distributor or reseller authorized by Pulse Secure to distribute Software and Maintenance Services in the territory in which You are located.
- "Beta" is a version of the Software that (i) is still in its testing phase and has not yet been released commercially and (ii) Company agrees to provide feedback regarding use of and improvements to the Software.
- "License Metric" is a parameter for the access or use of the Software, as described in Section 5.
- "License Metric Unit" is a unit of measurement for the number of seats for the License Metric that You purchased for access or use of the Software.
- "Maintenance Services" for Software means the set of software maintenance services described in the Applicable SDD.
- "NFR" means "Not for Resale" and is limited to demonstration use by a Reseller.
- "Proof of Entitlement" is a Pulse Secure order confirmation or other Pulse Secure-issued written or electronic confirmation of Pulse Secure's grant to You of a license. The Proof of Entitlement must identify You, the Software licensed, any applicable License Metric and, if applicable, the License Metric Units. The Proof of Entitlement must also indicate whether the license is a Subscription, the term of the license and, if it is a Special Purpose License, the kind of Special Purpose License. If Your license is to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, proof of Your purchase of the Pulse Secure Platform on which the operating system software runs shall serve as Your Proof of Entitlement but only as long as You own or lease the Pulse Secure Platform.
- "Pulse Secure" means Pulse Secure, LLC.
- "Pulse Secure Platform" means any hardware router, switch or other network hardware, equipment or devices marketed and sold by Pulse Secure.
- "Pulse Secure Policies" are Pulse Secure's then-current policies and procedures, which may be found at http://www.pulsesecure.net/support
- "Release" is a particular object code image of a software product that is identified by a Release denomination starting with "x.y" followed by additional image identifying string.
- "SDD" means the Service Description Document detailing Maintenance Services for the specific Software, which may be found at http://www.pulsesecure.net/support
- "Software" means the software product identified in Your Proof of Entitlement, and includes 1) machine-readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated Documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription or contract for Maintenance Services.
- "Special Purpose License" means any of the licenses described in Section 6 of the Agreement.
- "Start Date" means the date of acceptance of this Agreement through use of the Software or otherwise.
- "Subscription" means a license to Software for a finite, fixed term of use.
- "Update" means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that Pulse Secure makes generally available free of incremental charge to customers purchasing a Subscription or contract for Maintenance Services.
- "Version" means one or more Releases of a particular software product with a common "x.y" denomination in the first two places of the Release identifier.
- "You" means the legal entity, or other business, governmental or not-for-profit organization (but excluding any parent, subsidiary or other affiliate of any of the foregoing) that (A) is the original end user purchaser of a license to the Software from an Approved Source, (B) accepts the terms of this Agreement, and/or (C) is identified as "Customer" or "End User" in the applicable Proof of Entitlement, if any.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Puppet Labs ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination of service provided by the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

PUPPET LABS LICENSE, WARRANTY AND SUPPORT TERMS

This Software License Agreement ("Agreement") is between Puppet Labs, Inc., a Delaware corporation, ("Puppet Labs") and the Ordering Activity, as defined by GSA Order ADM4800.2H and as revised from time to time ("Customer"). This Agreement includes the terms and conditions of the GSA Schedule Contract, the Order, and the terms and conditions below. It constitutes the complete agreement between the parties regarding the license, support and maintenance of Puppet Enterprise™ software (the "Software"), and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning that same subject matter. Any modifications to this Agreement must be in writing signed by a duly authorized representative of both parties. SHOULD A CONFLICT EXIST BETWEEN THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THE SCHEDULE CONTRACT, THE SCHEDULE CONTRACT SHALL PREVAIL.
TERMS AND CONDITIONS

ORDERS. “Order” means an order placed by an Ordering Activity under the GSA Schedule Contract.

LICENSE. Subject to Customer’s compliance with this Agreement, Puppet Labs grants to Customer a worldwide, limited, non-transferable, revocable license to use the Software for the purpose of managing IT infrastructure (whether on premises or in the cloud). Customer may reproduce the Software and use multiple copies concurrently, subject to the pricing terms of Section 0.

SOURCE CODE. The source code for the Software is available through www.puppetlabs.com.

THIRD PARTY SOFTWARE. The Software includes components that included under open source licenses from third parties (the “Third Party Software”). The components are listed at http://www.puppetlabs.com/puppet-enterprise-components-licenses/.

RESTRICTIONS. The Software is licensed, not sold. Customer may not use the Software other than for Customer’s internal business purposes, and not for the purposes of any third party nor for any timesharing, rental, Internet, or application service provider, commercial hosting services, or service bureau basis. Other than as granted in Section 0, Puppet Labs and its licensors retain all right, title and interest in and to the Software, including all intellectual property rights, registered or unregistered, and wherever in the world those rights may exist (collectively, the “Puppet Labs Rights”). The Puppet Labs Rights include graphics, user and visual interfaces, design, structure, selection, coordination, expression, “look and feel”, arrangement, trademark, logo and other distinctive brand features of the Software (collectively, the “Puppet Labs Marks”). This Agreement does not permit Customer to distribute any product or service using the Puppet Labs Marks, including in connection with any Open Source Components. Puppet Labs shall retain title to all copies of the Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement. All rights are expressly reserved by Puppet Labs.

FEES AND LICENSE. In connection with any license, Customer will pay a fee for a license subscription and for support and maintenance (per Section 0) based on the number of “Nodes” managed by the Software. A “Node” is a single network-connected device such as a server, desktop, or laptop (virtual machines that have a unique IP address are a separate Node from the physical machine on which they reside).

SUPPORT; CHANGES. Support and Maintenance. In connection with any Paid License, Puppet Labs will provide Customer the support and maintenance services (“Support Services”) listed on Exhibit A, at either the “Standard” or the “Premium” level, as indicated in the Order. There is no support or maintenance available in connection with a Free License. If Support Services are terminated for any reason, any later reinstatement is at Puppet Labs’ sole option, including without limitation that Puppet Labs offers generally for the Software and its Modules and Customer Changes. Puppet Labs makes available certain modules (“Modules”) that may be used in connection with the Software, either bundled with the Software (including in an update or upgrade later provided) or through its web site forge.puppetlabs.com (“Puppet Forge”). Any Modules bundled with the Software are licensed under this Agreement, and any Modules obtained through the Puppet Forge are subject to their accompanying license. Except for Modules that are bundled with the Software or otherwise indicated by Puppet Labs on the Puppet Forge, Puppet Labs is not liable to support any Module, nor are such Modules covered by the warranty and indemnity terms of this Agreement. Furthermore, to the extent permitted by law, Puppet Labs is not responsible to support, and is not liable under this Agreement in any way (including warranty and indemnity) for, any changes made by Customer to the Software.

WARRANTY; DISCLAIMER

General Warranties. Puppet Labs represents and warrants that it has sufficient ownership or authority to grant to Customer the license stated in Section 0. Each party represents and warrants that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (b) it has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery and performance of this Agreement.

Product Warranty. Puppet Labs warrants to the Customer that the Software will perform in all material respects as specified in its accompanying documentation under normal use for a period of thirty (30) calendar days from initial receipt or access. Customer’s exclusive remedy for a breach of this warranty is to return the allegedly defective Software to Puppet Labs, at its option, will replace it or refund any fee paid for the Software. This warranty applies to Third Party Software only to the extent its failure to operate causes the Software to fail to conform to this warranty. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 0, PUPPET LABS DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE SOFTWARE, INCLUDING THE WARRANTIES OF NONINFRINGEMENT, TITLE, AND THOSE THAT MAY ARISE FROM ANY COURSE OF DEALING OR PERFORMANCE. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT’S RIGHTS TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 52.212-8—PREREQUISITES, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 52.215-72—PRICE REDUCTIONS, CLAUSE 52.212-4(I)—PREREQUISITES, CLAUSE 52.212-4(I)—PREREQUISITES) APPLY REGARDLESS OF THE FORM OF CLAIM (CONTRACT, TORT OR OTHERWISE) AND EVEN IF THIS SECTION 0 IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH EVENT, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 52.212-8—PREREQUISITES, CLAUSE 52.212-4(H)—PATENT INDEMNIFICATION, AND GSAR 52.215-72—PRICE REDUCTIONS). EXPORT CONTROL. As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the appropriate license or other authorization required by such laws; and (d) understands that countries including the United States may restrict the import, use, or
export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions.

GOVERNMENT USERS. The Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

GENERAL. The laws of the United States govern this Agreement Customer and Puppet Labs may only amend or modify this Agreement, or waive any right under this Agreement, in a writing that is signed by both parties and that expressly references this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement. As used in this Agreement, "includes" (or "including") means without limitation.
These Support Services Terms describe the Support Services which current, compliant subscribers of Support Services are entitled to receive pursuant to the Software License Agreement between Puppet Labs and Customer ("Master Agreement"). These Support Services Terms form an integral part of, and are incorporated by reference into, the Master Agreement. Capitalized terms used in these Support Services Terms without definition have the meaning defined in the Master Agreement.

1. Definitions.

"Error" means a malfunction in the Software that can be duplicated by Puppet Labs that materially degrades the use or performance of the Customer's business system the Software manages ("Business System").

"Fix" means the repair or replacement of object code versions of the Software to remedy an Error.

"Priority 1 Error" means an Error that renders the Software inoperative or materially degraded with respect to the Business System, such that: (i) the Business System's production system is severely impacted or completely shut down, or (ii) the Business System's system operations or mission-critical applications are down. "Priority 2 Error" means an Error that degrades Software performance with respect to the Business System.

"Priority 3 Error" means an Error that affects Customer's use of the Software, but does not materially degrade Software performance with respect to the Business System.

"Technical Contact" means a Customer employee technically familiar and competent with Customer's systems (including the Business System), infrastructure and use of the Software, who: (i) has "read, write and execute" access to the necessary files, English language communication skills and relevant technical knowledge; and (ii) is the designated Customer contact to receive Support Services, and to resolve Customer technical issues related to the Software. The permitted number of Technical Contacts is based on the level of Support Services purchased by Customer, and is set forth in the table below. The first two (2) Technical Contacts are set forth in the applicable Order Form, and may be changed by Customer upon five (5) business days prior written notice to Puppet Labs.

"Update" means subsequent releases of the Software that are generally made available by Puppet Labs to those of its customers using the Software as part of Support Services at no additional charge, other than media and handling charges. Updates may include updated code to accommodate changes in applicable industry standards. Updates shall not include any releases, enhancements, functionality or products which Puppet Labs licenses separately or provides at a fee separate from the Support Services fee. Updates are delivered only on an as if and when available basis.

2. Support Services Coverage. Subject to these Support Services Terms, including the table set forth below, and the other terms of the Master Agreement (including, without limitation, Customer's payment of the applicable Support Services fees to Puppet Labs), Puppet Labs will provide Customer with the Support Services described herein for the applicable Software, exclusive of any integration issues between the Software and applicable Third Party Software. Customer shall designate the permitted number of Technical Contacts who are responsible for resolving user issues, and only such Technical Contacts may contact Puppet Labs for the provision of Support Services. Support Services do not include anything not set forth in these Support Services Terms, and specifically excludes support of any hardware or any software other than the Software, including without limitation, any integration with Third Party Software. The Support Services telephone numbers, email address and Puppet Labs Support Portal are located at http://puppetlabs.com/services/customer-support.

3. Software Maintenance. Puppet Labs will periodically, and in its sole discretion, provide Customer with Fixes to Errors and Updates to Software.

4. Customer Obligations. Customer and its Technical Contacts shall: (i) make reasonable efforts to resolve Customer issues or identify issues as relating to the Software prior to contacting Puppet Labs for Support Services; and (ii) provide Puppet Labs with sufficient information and resources to address the Error, and access to the personnel, hardware, and any additional software as reasonably necessary to enable Puppet Labs to reproduce, analyze and address the Error.

5. Exclusions. Puppet Labs is not obligated to provide Support Services when: (i) the Software has been changed, modified or damaged; (ii) the issue is caused by Customer's negligence, misuse of software or hardware, hardware malfunction or other causes other than the Software; (iii) the issue is caused by hardware, third party software or infrastructure; or (iv) the version of the Software is not a currently supported version, as determined by Puppet Labs' announced policies regarding the support of such versions.

6. Free Public Training. For Premium Support Services customers, during each yearly term of Premium Support Services, Puppet Labs offers up to four (4) placements per Support Services term in public classes offered by Puppet Labs at no additional cost to Customer. These free classes are only offered to current Premium Support Services customers, (ii) must be given directly by Puppet Labs (and not a Puppet Labs training partner), (iii) must be taken during the current Support Services term, and (iv) expire at the end of the current Support Services term and Customer is not entitled to any compensation if the classes are not used. The four (4) class sessions may be taken by up to four individuals, but in no event will Customer receive more than four (4) individual free class sessions per Support Services term (e.g. one individual may take four class sessions or four individuals may each take one class session).

<table>
<thead>
<tr>
<th>Support Services</th>
<th>Standard</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hours of Coverage</strong></td>
<td><strong>Business Hours</strong></td>
<td>24 x 7 x 365 for Priority 1 issues.</td>
</tr>
<tr>
<td>(6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays)</td>
<td><strong>All other issues: 6AM – 6PM, Pacific Standard Time, Monday through Friday, excluding federal US holidays.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Email Support</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Puppet Labs Support Portal</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Feature</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td><strong>Phone Support</strong></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Support Channel</strong></td>
<td>Email support, access to Puppet Labs Support Portal</td>
<td>Email support, phone support, access to Puppet Labs</td>
</tr>
<tr>
<td><strong>Number of Cases or Incidents/month</strong></td>
<td>5</td>
<td>Unlimited</td>
</tr>
<tr>
<td><strong>Technical Contacts</strong></td>
<td>Up to 4</td>
<td>Unlimited</td>
</tr>
<tr>
<td><strong>Feature Request Priority</strong></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Updates to the Software</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Free Public Training</strong></td>
<td>None</td>
<td>For up to 4 Engineers</td>
</tr>
</tbody>
</table>

### Response Guidelines

<table>
<thead>
<tr>
<th>Priority 1 Error</th>
<th>1 Business Hour</th>
<th>1 Clock Hour (Initial Contact must be via Phone)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority 2 Error</td>
<td>4 Business Hours</td>
<td>4 Business Hours</td>
</tr>
<tr>
<td>Priority 3 Error</td>
<td>12 Business Hours</td>
<td>12 Business Hours</td>
</tr>
</tbody>
</table>
Grant of License

License Grant. Subject to the terms and conditions of this Agreement, the restrictions set forth in the terms of any Applicable Order, and the payment of all applicable license fees, Licensee is hereby granted a perpetual (but subject to termination as provided in Section 6 below), limited, royalty-free, non-exclusive, non-transferable (except as expressly permitted under Section 9.2) license to the Software: (i) to Use, and to permit Authorized Affiliates to Use, the Software solely for their respective internal business operations; and (ii) to reproduce and use, and to permit Authorized Affiliates to reproduce and use, the Documentation in conformity with the Use of the Software. Licensee shall not allow access to the Software (whether through the distribution of copies of Client software or otherwise) by more than the number of customer access licenses specified in the terms of the Applicable Order or Use (or permit the Use of) the Software for any purpose other than for the type of customer access license specified in the terms of the Applicable Order.

Extranet Server. Without limiting any of the terms of Section 1.1, if Licensee purchases a license to the “QlikView® Extranet Server” Software, Licensee may permit Authorized Third Parties to View the output of the QlikView® Extranet Server, on a remote basis, solely for the purpose of Viewing: (i) information developed by or for Licensee; or (ii) information generated by Licensee on behalf of the Authorized Third Party based on information supplied to Licensee by such Authorized Third Party. Authorized Third Parties shall not be permitted to create, upload, or modify any of the information which they are permitted to View and shall not be granted any rights or licenses in or to the Software in connection therewith.

QlikView® Server. Without limiting any of the terms of Section 1.1, if Licensee purchases a license to the “QlikView® Server” Software, Licensee may only install QlikView® Server in the geographic territory identified in the terms of the Applicable Order.

Authorized Third Parties; Authorized Affiliates.

In connection with the Use of the Software by any Authorized Third Party or Authorized Affiliate pursuant to Section 1.1 which are approved in advance in writing by QlikTech, Licensee hereby agrees to: (i) make each such Authorized Third Party and Authorized Affiliate aware of the terms of this Agreement and the Documentation, including, without limitation, the use limitations contained in Sections 1.1.1, 1.1.2 and 1.3; and (ii) monitor and ensure each such Authorized Third Party’s and/or Authorized Affiliate’s compliance with the terms contained in this Agreement and the Documentation. Any claim for breach by QlikTech of this Agreement based on Use by an Authorized Third Party and/or Authorized Affiliate shall be brought solely by Licensee.

License Restrictions. Except as otherwise expressly permitted in this Agreement (including but not limited to Sections 1.1 and 1.2 above) and except as otherwise permitted by law, Licensee will not, directly or through others including, without limitation, Users: (i) use, copy, maintain, distribute, sell, transfer, market, sublicense, dispose of or rent the QlikTech Materials (except for transfers of the QlikTech Materials to any third party in connection with an assignment by Licensee as expressly permitted under Section 9.2); (ii) reverse assemble, reverse compile, decompile, disassemble or reverse engineer (except to the extent any such restriction is expressly prohibited by applicable law) or attempt to derive the source code for any of the QlikTech Materials or Third Party Materials; (iii) modify, adapt, create derivative works, translate or port any of the QlikTech Materials or combine or merge any part of the QlikTech Materials with or into any other software or documentation; (iv) offer, use, sublicense or otherwise commercially exploit any of the QlikTech Materials as a revenue-generating product or service to any third party, including without limitation for third party training, nor may it use the Software to provide hosting service bureau, commercial time-sharing, rental, or software as a service (SaaS).
services to third parties who are not Users for the purposes of providing those persons or entities with use of the Software; (v) permit the use of the Software or Documentation by third parties, except that Licensee may permit Licensee’s Authorized Contractors to Use the Software for Licensee’s internal business operations only as described in Section 1.1 above, subject to the limitations on the number and types of customer access licenses specified in the terms of the Applicable Order, so long as Licensee ensures that its Authorized Contractors are bound by appropriate restrictions on nondisclosure of QlikTech’s Confidential Information and will Use the Software only in accordance with the Documentation and the terms of this Agreement; (vi) use any Third Party Materials independent of or separated from the QlikTech Materials or (vii) reproduce the Software or Documentation without QlikTech’s copyright and trademark notices.

Without limiting any of the foregoing, if a serial number, password, license key or other security device is provided to Licensee for use with the Software, Licensee shall not, and will not permit any of its Authorized Affiliates, Authorized Third Parties and/or Authorized Contractors to, share or transfer such security device with or to any other User of the Software or any other third party.

Third Party Materials. The QlikTech Materials may contain or may be distributed or bundled with certain third party software, data, or other materials (collectively, “Third Party Materials”). A list of the Third Party Materials, is included in Appendix A of this Agreement.

1.5. Data Security. If any QlikTech Materials are accessible through the internet or other networked environment, Licensee shall maintain adequate technical and procedural access controls and system security requirements and devices, in connection with the QlikTech Materials, necessary for confidentiality, authorization, authentication and virus detection and eradication.

1.6. Retention of Rights. The Software is licensed, not sold. QlikTech and its Affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the QlikTech Materials, and all of QlikTech’s and its Affiliates’, or their respective suppliers’ or licensors’, patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets and QlikTech Confidential Information. Licensee -does not acquire any right, title or interest in or to the QlikTech Materials, except as expressly set forth herein, and all such rights are hereby reserved. Licensee will not register, nor attempt to register, any patent or copyright which, in whole or in part, incorporates any QlikTech technology or Intellectual Property Right. In the event that Licensee makes suggestions, improvements or modifications to QlikTech regarding new features, functionality or performance that QlikTech adopts for the QlikTech Materials, such new features, functionality or performance shall be deemed to be automatically assigned and fully paid under this Agreement to, and shall become the sole and exclusive property of QlikTech.

Services

Maintenance Services. Licensee may purchase Maintenance Services specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

Implementation Services. Licensee may purchase Implementation Services specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

Training. Licensee may purchase Training specified in the terms of the Applicable Order for Software licensed in accordance with this Agreement for the fees set forth in the terms of the Applicable Order.

Fees and Payment Terms

In consideration of QlikTech’s provision of Maintenance Services, Implementation Services or Training, Licensee agrees to pay to the applicable partner, the Maintenance Fees set forth in the terms of the Applicable Order, which payments shall be non-refundable, except as otherwise expressly provided in this Agreement, non-creditable and not subject to any right of offset or suspension.
Limited Warranty and Disclaimers

**Limited Performance Warranty.** Licensee receives a warranty for a period of one hundred twenty (120) days following the Delivery Date (the "Warranty Period"), the initial Version of the Software provided to Licensee hereunder (excluding any subsequent Updates thereto) will perform substantially in accordance with the specifications in the applicable Documentation in effect when such Software is first delivered to Licensee, provided that the Software is operated in accordance with the Documentation. Licensee is deemed to accept the Software on the Delivery Date.

**Exceptions.** Licensee will have no warranty claim made pursuant to Section 4.1 for alleged any defect or problem with the Software, to the extent that the alleged defect or problem: (i) arises out of any use of the Software by Licensee or its Authorized Affiliates not in accordance with the Documentation; (ii) arises out of any modification or alteration of the Software by anyone other than QlikTech or its authorized contractors; or (iii) arises out of the use of the Software in combination with any other software or equipment not specified in the Documentation as supported by QlikTech. If, notwithstanding the foregoing exceptions, QlikTech chooses in its discretion to correct such a defect or problem with the Software, or otherwise provides Software support not covered by the terms and conditions contained in this Section, such defect resolution or Software support shall be provided only following Licensee’s written request and Licensee’s approval of all charges, and Licensee shall be invoiced for such support at the rates set forth in the Applicable Order.

**Disclaimers.** Licensee agrees that neither the QlikTech Materials nor QlikTech Services nor the QlikTech Software are warranted to: (i) meet the Licensee’s or its Authorized Affiliates’ requirements; (ii) operate in combination with other hardware or software, except as expressly specified in the Documentation; (iii) operate without interruption or error; or (iv) will fully resolve any particular request for Maintenance of the Software or that such resolution will meet Licensee’s or its Authorized Affiliates’ requirements or expectations. THE LIMITED WARRANTIES STATED IN SECTION 4.1 SET FORTH THE ONLY REPRESENTATIONS AND WARRANTIES CONCERNING THE QLIKTECH MATERIALS AND THE SERVICES. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 4.1 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE QLIKTECH MATERIALS AND SERVICES AND THIRD PARTY MATERIALS ARE PROVIDED "AS IS", AND QLIKTECH AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, PERFORMANCE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIKTECH HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE QLIKTECH MATERIALS, INCLUDING, WITHOUT LIMITATION, THEIR FEATURES OR FUNCTIONALITY, THE SERVICES OR ANY THIRD PARTY MATERIALS IN ANY COMMUNICATION WITH LICENSEE ARE FOR INFORMATION PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY, REPRESENTATION OR CONDITION.

**Limitation of Liability**

**Limitations of Liability.**

Except for claims relating to death or bodily injury caused by QlikTech’s negligence, QlikTech’s and its suppliers’ and Affiliates’ maximum, cumulative liability for any damages arising under this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, shall in no event exceed the amount of fees received by QlikTech for Licensee’s Use of the Software during the twelve (12) months preceding such claim.
Except for Licensee’s: (i) non-compliance with the use restrictions contained within this Agreement or violation of any of QlikTech’s Intellectual Property Rights; (ii) breach of its obligations under Section 7 (Confidentiality); (iii) breach of its obligations under Section 9.4 (Export Controls); (iv) negligence resulting in death or bodily injury; and/or (v) obligation to pay amounts owed to QlikTech hereunder, Licensee’s maximum, cumulative liability for damages arising under this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, shall in no event exceed the amount of fees paid or payable by Licensee set forth in the terms of the Applicable Order.

No Consequential Damages. EXCEPT FOR LICENSEE’S: (I) NON-COMPLIANCE WITH THE USE

RESTRICTIONS CONTAINED WITHIN THIS AGREEMENT OR VIOLATION OF ANY OF QLIKTECH’S INTELLECTUAL PROPERTY RIGHTS; AND/OR (II) BREACH OF LICENSEE’S OBLIGATIONS PURSUANT TO SECTION 7 (CONFIDENTIALITY) OR SECTION 9.4 (EXPORT CONTROLS), IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE LICENSORS OR AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, GOODWILL, REPUTATION OR DATA, INACCURACY OF ANY DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733) or (b) for any other matter for which liability cannot be excluded by law or (c) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the GSA Schedule 70 contract.

Third Party Beneficiaries. Under no circumstances shall any Affiliate of Licensee, Authorized Third Party, Authorized Contractor, or any other person be considered a third party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement even if such Affiliates of Licensee, Authorized Third Party, Authorized Contractor or other persons are provided access to the QlikTech Materials pursuant to this Agreement.

THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EACH PARTY HEREBY DISCLAIMS ALL LIABILITY OF ANY KIND ON BEHALF OF ITS LICENSORS AND SUPPLIERS.

Term and Termination

Term. This Agreement is effective as of the date specified by the terms of the Applicable Order and shall continue until terminated pursuant to this Section 6 or the terms of the Applicable Order.

Effect of Termination. Upon the effective date of termination of this Agreement according to this Section 6, all rights of Licensee, its Authorized Affiliates, Authorized Contractors and/or Authorized Third Parties with respect to the QlikTech Materials shall immediately cease to be of any further force or effect. In addition, Licensee shall certify to QlikTech within ten (10) days following the effective date of such termination that Licensee has destroyed or has returned said materials and all copies thereof. Upon termination of this Agreement, each Party shall certify to the other Party within ten (10) days following the effective date of such termination that it has destroyed or returned all Confidential Information of the other Party. Termination of this Agreement shall not limit either Party from pursuing other remedies available to it nor shall such termination relieve Licensee of its obligation to pay all fees that have accrued prior to the effective date of such termination.
Confidentiality

Each Party will protect the other’s Confidential Information from unauthorized distribution and use with the same degree of care that each Party uses to protect its own like information, but in no event less than a reasonable degree of care. Neither Party will make the other Party’s Confidential Information available in any form to third parties nor use the other Party’s Confidential Information except as necessary to exercise its express rights or perform its express obligations under this Agreement. The receiving Party shall not circulate Confidential Information within its own organization or that of its Affiliates except to those employees or consultants who need to know such information in connection with the business relationship between the Parties. Notwithstanding the foregoing, the receiving Party may disclose Confidential Information of the disclosing Party to the extent that such information is required to be disclosed by the receiving Party as a matter of law; provided that the receiving Party uses all reasonable efforts to provide the disclosing Party with prior notice of such disclosure and to obtain a protective order therefore. The Parties agree to hold each other’s Confidential Information in confidence during the term of this Agreement and for a period of five (5) years following any termination of this Agreement, provided, however, that Licensee’s obligations hereunder shall survive and continue in effect thereafter with respect to any of QlikTech’s Confidential Information that continues to be a trade secret under applicable law. All tangible Confidential Information shall be so marked.

Audit

During the term of this Agreement and for a period of one (1) year thereafter, upon QlikTech’s written request, but no more frequently than once annually, QlikTech or an independent and reputable agent or accounting firm chosen by QlikTech will be provided reasonable access during Licensee’s normal business hours to examine Licensee’s records and computer equipment as long as all security requirements are met, at QlikTech’s expense, for the purpose of auditing Licensee’s obligations under this Agreement. QlikTech’s written request for audit will be submitted to Licensee at least fifteen (15) days prior to the specified audit date.

General Provisions

Definitions. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the meanings given to them in this Section 9.1.

“Affiliate” means any entity which controls, is controlled by, or is under common control with QlikTech or Licensee, as applicable, where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity, but only for so long as such control exists.

“Authorized Affiliate” means any Affiliate, Agency, or Department of Licensee that is authorized by Licensee to Use the Software, but only for so long as it constitutes and Affiliate of Licensee pursuant to Section 9.1.1. Upon request by QlikTech, Licensee agrees to confirm the Affiliate status of any particular entity and/or their authorization to Use the Software.

“Authorized Contractor” means any third party contractor(s) or service provider(s) authorized by Licensee to perform services for Licensee.

“Authorized Third Party” means any non-employee external third party of Licensee located outside of Licensee’s firewall that is authorized by Licensee to Use the QlikView® Extranet Server in accordance with Section 1.1.1.
“Client” means a software application that invokes, typically via a network protocol, the software functions provided by one or more Servers.

“Confidential Information” means all business information disclosed by one Party to the other in connection with this Agreement. Without limiting the generality of the foregoing, Confidential Information shall include QlikTech Confidential Information. Confidential Information does not include information that: (i) enters the public domain through no fault of the receiving Party; (ii) is communicated to the receiving Party by a third party under no obligation of confidentiality; (iii) has been independently developed by the receiving Party without reference or access to or use of any Confidential Information of the disclosing Party; or (iv) was in the receiving Party’s lawful possession prior to disclosure and had not been obtained either directly or indirectly from the disclosing Party.


9.1.8. “Delivery Date” means the date on which both the Software specified in the relevant Order Form is available for download by Licensee from QlikTech’s website and QlikTech delivers to Licensee the license keys therefor.

9.1.9. “Initial Maintenance Period” means the initial period of Maintenance purchased by Licensee for Software licensed pursuant to this Agreement, which shall commence on the Delivery Date and CONTINUE FOR AN INITIAL PERIOD OF TWELVE (12) MONTHS THEREAFTER.

9.1.10. “INTELLECTUAL PROPERTY RIGHTS” MEANS PATENT APPLICATIONS, PATENTS, DESIGN RIGHTS, COPYRIGHTS, TRADEMARKS, SERVICE MARKS, TRADE NAMES, DOMAIN NAME RIGHTS, MASK WORK RIGHTS, SUI GENERIS DATABASE RIGHTS, Rights in know-how and other trade secret rights, and all other intellectual property rights and forms of protection of a similar nature anywhere in the world.

9.1.11. “Maintenance” means the maintenance and support services and Updates provided by QlikTech pursuant to its then-current Maintenance policy.

9.1.12. “QlikTech Confidential Information” means any confidential or proprietary information which relates to QlikTech’s trade secrets, Software, source code for the Software, the Documentation, services, deliverables, training materials, technology, research, development, pricing, product plans, mar keting plans, business information, proprietary materials visual expressions, screen formats, report formats, design features, ideas, methods, algorithms, formulae, and concepts used in the design and all future modifications and enhancements. QlikTech Confidential Information shall also include third party data or information that was disclosed to Licensee under a duty of confidentiality and any information, in whatever form, disclosed or made available by QlikTech to Licensee that relates to or is contai ned within QlikTech Materials that is not publicly known. All tangible Confidential Information shall be so marked.

9.1.13. “QlikTech Materials” means any proprietary materials distributed or made available by QlikTech to Licensee under this Agreement, including but not limited to Software, Documentation, training materials, QlikView® Applications any other deliverables related to Professional Services, but expressly excluding any Third Party Materials.

9.1.14. “QlikView® Application” means any program or other application (e.g., script) that is designed to integrate and be used with the Software and that allows Users to request, update and manipulate data which is displayed via the Software and to generate reports and other information from such data.

9.1.15. “Server” means the specific installed instance of the Software in execution on a given hardware/operating system combination (e.g., Sun/Solaris).

9.1.16. “Service Release” means an accumulation of error corrections (patches) to a current Version of the Software that QlikTech elects to make generally available to its customers who have purchased Maintenance. Service Releases are denoted by the numeral to the right of the decimal point (e.g., Version 11, Service Release 2 (or Version 11.2) compared to Version 11, Service Release 3 (or Version 11.3).

9.1.17. “Services” means Maintenance Services, which are provided or made available by QlikTech to Licensee.

9.1.18. “Software” means: (i) the initial Version(s) of QlikTech’s proprietary QlikView® software in object code form licensed in accordance with this Agreement; and (ii) subject to Licensee’s payment of Maintenance Fees, any Updates thereto made available to Licensee under this Agreement.

9.1.19. “Update” means any error corrections (patches), Service Releases and/or Versions, as the context requires, which QlikTech elects to make generally available to its customers at no additional charge who have a current Maintenance contract with QlikTech.
Updates do not include new or separate products, including, without limitation, any Versions, which QlikTech offers only for an additional fee to its customers generally, including, without limitation, those customers who have purchased Maintenance.

9.1.20. **Use** means to install and execute the Software (in object code form only) to request data, update data, administer any field changes to, or in connection with, the Software, as well as to view the number and types of documents specified in the terms of any Applicable Order, including, without limitation, reports and data as displayed via a QlikView® Application within the Software, all subject to the Documentation, license restriction, non-disclosure and other applicable terms of this Agreement.

9.1.21. **User** means any individual employee of Licensee, Authorized Contractor, Authorized Affiliate and/or Authorized Third Party, as the context requires.

9.1.22. **Version** means an entirely new version of the Software, which includes new as well as improved features and functionalities from the immediately preceding version of the Software, that QlikTech elects to make generally available to its customers who have purchased Maintenance. Versions are denoted by the numeral to the left of the decimal point (e.g. Version 10.0 compared to Version 9.0).

9.1.23. **View** means to view reports, data and other information as displayed via a QlikView® Application within the Software, but not to create, update or share any data, or administer any field changes to or in connection with the Software.

9.2. **Assignment** Licensee will not assign or transfer this Agreement or its rights and obligations under this Agreement to any third party. Any attempt by Licensee to assign this Agreement or its rights and obligations hereunder in violation of this Section 9.2 will be null and void.

9.3. **Entire Agreement** To the extent permitted by law, this Agreement supersedes all prior or contemporaneous Agreements or representations including, without limitation, all non-disclosure or confidentiality agreements, whether written or oral, concerning the rights and duties of QlikTech and the Licensee of the QlikTech Materials with respect to the Software License. No addition to, or modification of, any provision of this Agreement shall be binding upon QlikTech or the Licensee of the QlikTech Materials unless expressly stated in writing to amend the terms hereof and approved by a duly authorized representative of each Party. Licensee represents and acknowledges that in entering into this Agreement it did not rely on any representations (whether innocent or negligent), warranties, or terms other than those expressly set forth in the Documentation and this Agreement.

9.4. **Export Controls**

9.4.1. Licensee acknowledges that the license to use the Software hereunder may be subject to the export control laws of the United States which may include, without limitation, the United States Export Administration Regulations, the Trading With the Enemy Act, the International Emergency Economic Powers Act, the Arms Export Control Act and regulations promulgated by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), as amended from time to time (collectively, the “Export Control Laws”). Licensee agrees that all actions taken by Licensee in furtherance of fulfillment of this Agreement will be in compliance with applicable Export Control Laws. Licensee agrees to comply with all applicable Export Control Laws. In addition, Licensee agrees that it will not export, re-export, transfer or license any Software to any third parties that are named as “Specially Designated National” or “Blocked Person” as designated by the OFAC (which is currently published under the Internet address http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx).

9.4.2. If Licensee knows, or if acting reasonably, should know, that the Software could be exported, transferred or licensed in a manner violating applicable Export Control Laws, Licensee shall immediately notify QlikTech. Furthermore, if QlikTech suspects or determines, in its sole and absolute discretion, that any sale of the Software to Licensee may violate applicable Export Control Laws, Licensee acknowledges and agrees that QlikTech may refuse to accept such order for the Software and such refusal will not be a breach of this Agreement.

9.5. **Compliance with Laws** Licensee agrees at all times to comply with applicable laws and regulations in its performance of this Agreement, including, without limitation, the provisions of the United States’ Foreign Corrupt Practices Act (“FCPA”).

9.6. **Governing Law and Jurisdiction** This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

9.7. **Notices** All notices and other communications given or made pursuant to this Agreement, whether concerning a breach, violation or termination hereof or otherwise will be in writing and will be delivered: (i) by certified or registered mail; or (ii) by an internationally recognized express courier. All notices or other communications to QlikTech shall be addressed to: QlikTech Inc., 150 N. Radnor Chester Road, Suite E220, Radnor, PA 19087; Attention: Legal Department. All notices to Licensee shall be sent to the address specified in the Applicable Order.

9.8. **Relationship between the Parties** QlikTech is an independent contractor. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

9.9. **Severability** If any provision of this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect. Any term which refers to a legal concept or process which exists in one jurisdiction.
shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a Party may be or become subject.

9.10. Successors. All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of QlikTech and Licensee.

9.11. Waiver. No term of this Agreement shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same.

9.12. Limitation. To the extent permitted by law, no action, regardless of form, arising out of this Agreement may be brought by Licensee more than one (1) year after the cause of action arose.

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Vendor may assign all or part of the Services to be performed hereunder to an affiliate or third party. Vendor retains the right to assign, reassign and substitute personnel at any time.

If the Services are to be performed at Licensee’s location: (i) Licensee will provide, and shall ensure it has all rights to provide, all necessary working facilities (including, but not limited to, meeting facilities, desks, computers, software, hardware, equipment, telephone, facsimile, internet access, and access to the applicable locations, computers and systems of Licensee) to enable Vendor to perform the Services at Licensee’s premises; (ii) Licensee shall ensure that the premises at which the Services are to be carried out comply at all times with all applicable legislation, including but not limited to, any applicable health or safety laws, rules and regulations; and (iii) ensure that its employees and contractors cooperate fully with Vendor in relation to the provision of the Services;

Only upon agreement by the parties, Licensee may be responsible for all reasonable travel and living expenses incurred in connection with the Services, as per the then current US Government per diem rates.

Services are conducted and billed on an hourly basis. Any reference to Days or Daily is equal to eight (8) hours of service.

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Licensee acknowledges and agrees that any Services to be held at Licensee’s location have been reserved specifically for Licensee. Any cancellation or rescheduling of any such on-site Services requires at least ten (10) business days’ written notice prior to the date of the scheduled Consulting Services. No refunds of any Consulting Services fees will be given for any cancellation made less than ten (10) business days prior to the scheduled Consulting Services date.

Exhibit
Training Terms

All Training is subject to space availability and Vendor or its suppliers or subcontractors scheduling requirements. Licensee shall promptly complete all registration or information forms required for any Training. Prior to the start date of any Private or Onsite Training, Licensee shall provide to Vendor the list of participants scheduled to attend such Training. In the event that a scheduled participant is unable to attend a Training Course due to illness or a new role at Licensee, or if such participant is no longer employed by Licensee, Licensee may substitute another participant for such Training Course upon prior written notice to Vendor of such new participant’s contact details.

Cancellations and requests by Licensee to reschedule Public Classroom, Private Classroom, Onsite Classroom, Virtual Private or Virtual Public Classroom Training must be made at least ten (10) business days prior to the applicable Training start date in order to receive a full refund (excluding any nonrefundable Vendor expenses). If Licensee has paid by Training Credit Voucher, such refund shall be credited to Licensee’s applicable Voucher number. No refunds or credits whatsoever shall be granted in the event such cancellation or rescheduling request is made less than ten (10) business days prior to the start date of the Training.

Each purchased Voucher entitles Licensee to a specific number of training credits (“Training Credit(s)”). Training Credit values are calculated based on the currency and location in which they are purchased, and may only be used by the Licensee entity that purchased such Voucher. Vouchers and Training Credits are non-refundable, and cannot be exchanged for cash or other credits. A Voucher shall be activated by Vendor or its subcontractor upon purchase thereof by Licensee, and shall be identified by a specific Voucher number. Each Training course shall have a cost denominated in Training Credits. All Training ordered, registered for, or attended on Licensee’s behalf that are paid for via a Voucher will incur the applicable reduction in the Training Credit value of such Voucher equal to the value of Training courses ordered at the time of registration or payment. If the applicable charge for a Training course is greater than the unused Training Credits connected with Licensee’s Voucher, such Training Credits may be applied against such Training course, and Licensee shall be responsible for payment of the additional charges for such Training Course. If Licensee’s proposed Private and/or Onsite Classroom Training Course exceeds the maximum number of participants, and Vendor agrees to accommodate any additional participants, an additional amount of Training Credits may be required to be redeemed for such course. Licensee’s order of such training constitutes Licensee’s acceptance to the use of additional Training Credits for any additional participants.

Voucher Training Credits are valid for a period of twelve (12) months from date of purchase (“Voucher Term”). All Training Credits must be used for Training Courses that occur during the Voucher Term. To the extent permitted by law, and except as otherwise expressly provided herein, at the end of the Voucher Term, any remaining, unused Training Credits under the applicable Voucher
number shall expire and shall be forfeited. No refunds shall be provided for any remaining, unused Training Credits following expiration of the Voucher Term. Vendor and its subcontractors are not responsible for a lost, expired, or invalid Voucher number. In order to obtain a replacement, Licensee must provide valid proof of purchase. Licensee shall have no right to transfer or assign any Voucher or Training Credits to any affiliate or third party.

Vendor reserves the right to reschedule or cancel a Training due to low enrollment or if necessitated by an emergency or other unforeseen circumstances. Licensee shall receive full credit for such course, which may be used before the expiration of the applicable Voucher Term or within ninety (90) days following the date of Vendor’s notice of cancellation or rescheduling, whichever is later. Vendor and its subcontractors shall not be liable for non-refundable travel arrangements made by Licensee in the event of a course rescheduled or cancelled by Vendor.

If Licensee attends Training at a Vendor or its subcontractor location or training center, Licensee shall be responsible to comply with all of policies and procedures that have been identified to Licensee, including but not limited to health and safety, access to equipment and systems, and confidentiality (collectively, “Policies” or individually, a “Policy”). Vendor reserves the right to remove from any Training or refuse to admit to any Training any participant who is not in compliance with any Policy. Licensee agrees to provide timely feedback to Vendor following completion of each Training event, which may include satisfaction forms, customer surveys or evaluations (collectively, “Feedback”). To the extent that Licensee provides any Feedback or any other suggestions, data, information, comments or ideas with respect to the products and services (individually and collectively "Contributions"), Licensee acknowledges and agrees that any and all Contributions made by Licensee or any of its participants shall be deemed the confidential and proprietary property of Vendor’s licensor, QlikTech. Licensee expressly assigns, transfers and conveys all right, title and interest in and to the Contributions to QlikTech. Licensee agrees that QlikTech and its designees will be free to use, copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use and exploit the Contributions, including derivative works thereto, for any and all commercial and non-commercial purposes, without any liability or obligation to Licensee whatsoever.

If required for any Training, Vendor shall provide the applicable participants with an evaluation version of QlikTech’s proprietary QlikView software to use during a live public or private classroom Training Course for instructional purposes only (the “Training Software”) and such right to use the Training Software shall automatically terminate upon conclusion of the applicable Training Course. Attendance at a Training does not entitle any Licensee or participant to any license whatsoever to any QlikView Software.

The QlikView On-Demand Technical Library is accessible only by the purchase of a twelve (12) month QlikView On-Demand Technical Library License (the “Technical Library License”). If Licensee has selected a Technical Library License, then subject to Licensee’s compliance with these terms, Vendor grants to Licensee a personal, limited, non-assignable, time-limited, non-exclusive, and non-transferable license, without the right to sublicense, to use the Technical Library License solely for Licensee’s personal training and education. The term of the Technical Library License shall commence on the date of Vendor’s email confirmation of the purchase of such license and shall automatically terminate twelve (12) months following such date.
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6.2. Exceptions. Qlik will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use, reproduction or distribution of the Software; (ii) any modification or alteration of the Software without the prior written approval of Qlik; (iii) use of the Software in combination with any other software or hardware not provided by Qlik; (iv) use of a prior version of the Software, if use of a newer version of the Software would have avoided such claim and such newer version is made available without charge; or (v) any Third Party Materials provided with the Software.

6.3 Remedies. If Software becomes, or, in Qlik’s opinion, is likely to become, the subject of an IP Claim, Qlik may, at its option and expense, either: (i) obtain the right for Licensee to continue using the Software in accordance with this Agreement; (ii) replace or modify the Software so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by Qlik, terminate the license(s) for the subject Software (without need for a ruling by a court or arbitrator) and refund as applicable a pro rata portion of prepaid subscription fees, or license fees amortized over three (3) years on a straight-line basis, provided that such Software is returned to Qlik promptly after the effective date of any such termination.

6.4 SOLE AND EXCLUSIVE REMEDY. THIS SECTION 6 STATES QLIK’S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND LICENSEE’S AND ITS AFFILIATES’ SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

7. CONFIDENTIALITY

Each Party will hold in confidence the other Party’s Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights or perform its express obligations hereunder. Any Party’s disclosure of the other Party’s Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein. Notwithstanding the foregoing, a Party may disclose the other Party’s Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party’s confidentiality obligations hereunder will continue for a period of five (5) years following any termination of this Agreement, provided, however, that each Party’s obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The Parties acknowledge and agree that the Qlik Products and all pricing information shall be treated as the Confidential Information of Qlik. Qlik recognizes that U.S. Government agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which can result in certain information being released, despite being identified as “confidential,” subject to procedural requirements of the Act which include notice, the right to present arguments, and the right to appeal a disclosure decision.

8. TERM AND TERMINATION

8.1. Term. This Agreement shall become effective as of the date the Parties execute an Order Form and shall remain in effect until terminated (i) pursuant to a breach as set forth in Section 8.3, or (ii) automatically upon expiration of all rights to use any Qlik Products pursuant to one or more Order Forms.

8.2. Reserved.

8.3. Termination for Breach or Insolvency. (a) If the Licensee is not an agency of the U.S. Government, either Party may terminate this Agreement or any applicable Order Form, individual Software licenses, subscriptions or Statements of Work (without resort to court or other legal action) if the other Party: (i) fails to cure a material breach within thirty (30) days (ten (10) days in the case of non-payment by Licensee) after written notice of such breach, provided that Qlik may terminate this Agreement immediately upon any breach of Section 1.4; (ii) terminates or suspends its business without a successor; (iii) becomes insolvent, admits in writing its inability to pay its debts or becomes subject to the jurisdiction of a court or similar authority; (iv) (b) When the End User is an agency or instrumentality of the U.S. government, any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Act or pursuant to other federal laws or regulations conferring jurisdiction over the matter at issue. During any legal dispute, Qlik shall proceed diligently with performance of this Agreement, pending final resolution.

8.4. Effect of Termination. Upon termination of this Agreement or any Qlik Product license, Licensee shall: (i) immediately cease using the applicable Qlik Products, including the Software API and Documentation; and (ii) certify to Qlik within thirty (30) days after expiration or termination that Licensee has destroyed or has returned to Qlik all copies of the applicable Software, any associated license keys, the Documentation and all other Qlik Confidential Information in its possession. Termination of this Agreement or any licenses shall not prevent either Party from pursuing all available legal remedies, nor shall such termination relieve Licensee’s obligation to pay all fees that are owed as of the effective date of termination. All provisions of this Agreement relating to Qlik’s ownership of the Qlik Products, limitations of liability, disclaimers of warranties, confidentiality (for the time periods specified in this Agreement), waiver, audit and governing law and jurisdiction, will survive the termination of this Agreement.
9. GENERAL PROVISIONS

9.1 Definitions. Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

9.1.1 “Affiliate” means, with respect to a Party, any entity which controls, is controlled by, or is under common control with such Party, where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests in such entity, but only for so long as such control exists.

9.1.2 “Agreement” means this Qlik User License Agreement and any Order Form(s) and Statement(s) of Work between Qlik and Licensee that reference it.

9.1.3 “Authorized User” means an employee or independent contractor of the Licensee or Licensee’s Affiliate, who has been licensed by Licensee to use the Qlik Products in accordance with the terms and conditions of this Agreement and has been allocated a license for which the applicable fees have been paid.

9.1.4 “Confidential Information” means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known to the receiving Party prior to the date hereof on a non-confidential basis from a source other than disclosing Party or its representatives; (iii) is independently developed by the receiving Party without the benefit of any of the disclosing Party’s Confidential Information; (iv) becomes lawfully known to the receiving Party on a non-confidential basis from a source (other than disclosing Party or its representatives) who is not prohibited from disclosing the information to the receiving Party by any contractual, legal, fiduciary or other obligation; or (v) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

9.1.5 “Consulting Services” means any mutually agreed upon consulting services performed by Qlik under the terms of this Agreement and any applicable Order Form or Statement of Work.

9.1.6 “Delivery Date” means the date on which both the Qlik Products specified in the relevant Order Form and the license key(s) for such Products are initially made available (via download or otherwise) to the Licensee or to the authorized reseller as applicable.

9.1.7 “Documentation” means the most current user documentation for the Qlik Products, including the license metrics. Documentation is available upon the request of Licensee at any time or upon Software download or service completion.

9.1.8 “Education Services” means any training or education services performed by Qlik under the terms of this Agreement and any applicable Order Form or Statement of Work.

9.1.9 “IP Claim” means a claim by a third party against Licensee or its Affiliates that the Software, as delivered by Qlik, infringes a third party copyright or trademark, infringes a patent issued by the United States, Canada, Australia, Japan, Switzerland, Singapore, Hong Kong, India, or any member country of the European Economic Area, or misappropriates a third party trade secret.

9.1.10 “Order Form” means a written document, executed by the Parties, pursuant to which Licensee orders Qlik Products, Education Services or Consulting Services. Where Qlik Products are procured through one of Qlik’s authorized resellers, an Order Form shall also mean any terms governing the use of any of the foregoing in the ordering documentation existing between such authorized reseller and Licensee, which may include a purchase order.

9.1.11 “Party” or “Parties” means Qlik and Licensee, individually and collectively, as the case may be.

9.1.12 “Software” means the generally available release of the Qlik software, in object code form, initially provided or made available to Licensee as well as updates thereto that Qlik elects to make available at no additional charge to all of its customers that subscribe to Maintenance for the Software. Unless otherwise indicated, the Software, Software API and Documentation are referred to collectively herein as “Software.”

9.1.13 “Statement of Work” means a document agreed to by the Parties that describes Consulting Services to be performed by Qlik pursuant to this Agreement.

9.1.14 “Subscription Services” shall have the meaning set forth in Section 2.5. Subscription Services excludes Consulting Services, Education Services, Maintenance, and Qlik Sense Cloud, which is subject to separate terms of service.

9.2 Recordkeeping, Verification and Audit. While this Agreement is in effect and for one (1) year after the effective date of its termination upon request by Qlik but not more than once per calendar year, Licensee shall conduct a self-audit of its use of the Qlik Products and, within ten (10) business days after receipt of such request, submit a written statement to Qlik verifying that it is in compliance with the terms and conditions of this Agreement. Qlik shall have the right, on its own or through its designated agent or third party accounting firm, and subject to Government security requirements, to conduct an on-premises audit of Licensee’s use and deployment of the Qlik Products for compliance with this Agreement. Qlik’s written request for audit will be submitted to Licensee at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Licensee’s business. If such audit discloses that Licensee is not in material compliance with the terms of this Agreement, then Licensee shall be responsible for paying additional license fees sufficient to cover the unauthorized use revealed by the audit due 30 days after receipt of an invoice.

9.3 Third Party Materials. Qlik Products may include certain open source or other third party software, data, or other materials (the “Third Party Materials”) that are separately licensed by their respective owners. Licensee terms and other information relating to such Third Party Materials, including any availability of source code, may be found within the Documentation or at www.qlik.com/license-terms. QLIK MAKES NO REPRESENTATION, WARRANTY, OR OTHER COMMITMENT REGARDING THE THIRD PARTY MATERIALS, AND HEREBY DISCLAIMS ANY AND ALL LIABILITY RELATING TO LICENSEE’S USE THEREOF.

9.4 Evaluation. If Licensee is provided Qlik Products for evaluation purposes, use of the Qlik Products is only permitted in a non-production environment and for the period limited by the corresponding license key. Notwithstanding any other provision in this Agreement, evaluation licenses for the Qlik Products are provided “AS-IS” without indemnification, maintenance and support, or warranty of any kind, expressed or implied.

9.5 Assignment. Neither party will assign or transfer this Agreement or its rights and obligations hereunder to any third party without the prior written consent of the other party. For purposes of this Section, any change of control of Licensee, whether by merger, sale of equity interests or otherwise, will constitute an assignment requiring the prior written consent of Qlik. Any attempt by Licensee to assign this Agreement or its rights and obligations hereunder in violation of this Section will be null and void. All terms of this Agreement will be
binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of Qlik and Licensee.

9.6 Statistical Data Collection and Use. Qlik may collect and use certain Statistical Data to enable, optimize, support, and improve performance of the Qlik Products. “Statistical Data” means non-personal statistical, demographic, or usage data or metadata generated in connection with any use of the Qlik Products. Statistical Data does not include any personally identifiable information or any personal data and is owned by Qlik.

9.7 Compliance with Laws. Licensee agrees at all times to comply with all applicable laws and regulations in its performance of this Agreement, which may include, without limitation, U.S. and E.U. export control laws and regulations, and regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the Council of the E.U. and their counterparts under applicable law (“Export Control Laws”).

9.8 Governing Law and Jurisdiction. This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

9.9 Excusable Delay. Qlik shall not be liable for delays caused by an occurrence beyond its reasonable control and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

9.10 Notices. All notices and other communications given or made pursuant to this Agreement concerning a breach, violation or termination hereof will be in writing and will be delivered: (a) by certified or registered mail; or (b) by an internationally recognized express courier. All notices or other communications to Qlik shall be addressed to: QlikTech Inc., 211 South Gulph Road, Suite 500, King of Prussia, PA, 19406 Attention: Legal Department. Unless otherwise specified by the Licensee, all notices to Licensee shall be sent to the address provided by Licensee in the Order Form.

9.11 Relationship between the Parties. The Parties are independent contractors. Nothing in this Agreement will be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

9.12 Waiver. No term of this Agreement will be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same Any additional or conflicting terms or conditions in any purchase order or other ordering documentation shall have no legal force or effect.

9.13 Reserved.

9.14 Limitation. Subject to applicable law, no action, regardless of form, arising out of this Agreement may be brought by Licensee more than six (6) years after the cause of action arose.

9.15 Reserved.

9.16 U.S. Government End Users. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and Documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

Addendum A to the Qlik User License Agreement

QLIK SUBSCRIPTION ADDENDUM
FOR DATAMARKET SERVICES, WEB CONNECTORS,
GEOANALYTICS AND THE SMART ANALYTICS ADAPTER

2. SUBSCRIPTION SERVICES
DataMarket Services, Qlik Web Connectors (“Connectors”), Smart Analytics Adapter, and GeoAnalytics (collectively, “Subscription Services”) are subject to and governed by the applicable Qlik User License Agreement (“Agreement”) between the parties and this Subscription Addendum (“Addendum”). Any capitalized term not defined herein shall have the same meaning ascribed to such term in the Agreement. In the event of a conflict between any term or condition contained herein and any term or condition of the Agreement, the term or condition of this Addendum shall take precedence, but only to the extent of the conflict.

3. DATAMARKET
3.1. Permitted Use. Qlik DataMarket is a cloud-based data service offering a large variety of external syndicated data sources (collectively, the “Data”). Subject to the terms of the Agreement and this Addendum, Licensee may (a) access, use, implement and integrate the Data, solely in conjunction with its authorized use of the Software in accordance with the Agreement, (b) store the Data on one or more desktop computers or servers, and (c) create Integrated Materials for Licensee’s internal business operations and not to redistribute to third parties. Integrated Materials may be distributed, transmitted and displayed only to Licensee’s Affiliates and their respective Authorized Users and only as necessary to conduct Licensee’s internal business operations. “Integrated Materials” are limited to those materials which (i) are developed by Licensee, Licensee’s Affiliates or their respective Authorized Users for the benefit of Licensee or its Affiliates, (ii) result from the integration, manipulation and/or analysis of the Data through the Software and (iii) display the Data as an integrated component of the output of the Software in combination with other data provided by Licensee. If Licensee has licensed Software with external use rights as set forth in the Documentation, Licensee may distribute and display the Integrated Materials to third parties that have a then-current business relationship with Licensee subject to the restrictions below and further provided that such third party’s access to the Integrated Materials is limited to viewing the Integrated Materials as part of its business relationship with Licensee. If the Qlik DataMarket Essentials Package is purchased as a stand-alone product, a Services subscription is required for each user license associated with the corresponding Software site.
3.2. Prohibitions and Restrictions. Except as expressly permitted in Section 2.1, Licensee will not, nor will it permit or authorize anyone to (a) use the Data for any purpose, (b) remove any copyright, trademark or other proprietary notice from the Data, (c) decompile (including, without limitation, to re-identify any personally identifiable information contained therein), modify or alter any part of the Data, (e) display, publish or perform any of the Data or (f) use the Data in any manner that violates applicable law.

3.3. Attribution. Licensee acknowledges that, as a condition of publishing, displaying, presenting or otherwise disclosing certain Data as permitted by this Addendum, Licensee shall be required to, and hereby agrees to, include notices attributing the source of the Data used in such publication, presentation, display or disclosure to the publisher of such Data, as set forth in the attached Qlik End User License Agreement.

3.4. Data Updates. During Licensee’s Subscription, Qlik may provide Licensee with notice of updates to the Data (“Data Updates”) from time to time as such Updates may be made available to Qlik by third parties. By accessing or downloading any Data Updates, Licensee agrees that such Data Updates shall be subject to, and used solely in accordance with, this Addendum.

3.5. Disclaimer of Warranties and Limitation of Liability

THE DATA IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QLIK AND ITS DATA VENDORS HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE DATA, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TIMELINESS, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INTERFERENCE WITH QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. FURTHER, QLIK AND ITS DATA VENDORS DISCLAIM ANY WARRANTY THAT LICENSEE’S USE OF THE DATA WILL BE UNINTERRUPTED OR ERROR FREE. QLIK DOES NOT WARRANT OR GUARANTEE THAT IT WILL CORRECT ANY ERRORS OR INACCURACIES IN THE DATA. LICENSEE HEREBY ACKNOWLEDGES THAT QLIK RETRIEVES, AGGREGATES, NORMALIZES AND DELIVERS THE DATA FROM A WIDE VARIETY OF THIRD-PARTY SOURCES AND DOES NOT GENERATE OR CREATE THE DATA ITSELF. THIS DISCLAIMER SHALL APPLY NOTWITHSTANDING ANY WARRANTIES MADE WITH REGARD TO THE SOFTWARE OR ANY OTHER STATEMENTS TO THE CONTRARY CONTAINED IN THE AGREEMENT. USE OF THE DATA DOES NOT IMPLY ENDORSEMENT OR CERTIFICATION OF SUCH USE BY QLIK OR ANY OF ITS DATA VENDORS.

EXCEPT FOR LICENSEE’S UNAUTHORIZED USE OF THE DATA OR SERVICES, EACH PARTY’S MAXIMUM, CUMULATIVE LIABILITY FOR ANY CLAIMS, LOSSES, COSTS AND OTHER DAMAGES ARISING UNDER OR RELATED TO USE OF THE DATAMARKET SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE LIMITED TO ACTUAL DAMAGES INCURRED, WHICH WILL IN NO EVENT EXCEED THE GREATER OF THE CONTRACT PRICE PAID OR PAYABLE BY THE LICENSEE ATTRIBUTABLE TO THE DATAMARKET SERVICES GIVING RISE TO SUCH DAMAGES, IN NO EVENT WILL QLIK, ITS AFFILIATES, OR VENDORS BE LIABLE FOR ANY INACCURACY OF THE DATA, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY. THE LIMITATIONS AND DISCLAIMERS CONTAINED IN THIS ADDENDUM WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

3.6. Free Services. Certain Data may be made available to Licensee through the Software without a subscription fee (“No Fee Data”). Licensee is not required to use the No Fee Data and Licensee may cease to use the No Fee Data at any time. All use of the No Fee Data shall be subject to and governed by this Addendum. Qlik reserves the right to add or remove any No Fee Data or to discontinue or alter content, availability and other characteristics of the No Fee Data Service at any time.

4. QLIK WEB CONNECTORS

4.1. Support Services. Support Services are included with any paid Connector subscription and shall be provided in accordance with the terms of the applicable maintenance and support policy for the Qlik Software. Licensee acknowledges and agrees that notwithstanding anything to the contrary in the Maintenance Policy or any Release Management Policy, Qlik shall provide Maintenance only with respect to the most current update of each Connector, and that Qlik shall have no obligation or liability under this Addendum to support any other version or update of any Connector.

4.2. Access to Third-Party Sites. Licensee acknowledges that use of the Connectors to access web-based applications or services may be governed by third-party terms and conditions. Licensee agrees it is solely responsible to comply with such third-party terms and that Qlik shall have no liability for any claims relating to third-party web-based applications, services or data sources. Qlik may terminate this Addendum upon written notice, if and only to the extent reasonably necessary to comply with any third-party restrictions. Licensee acknowledges that Qlik has no control over any third-party application programming interface (“API”) or any third-party data which may be used in conjunction with the Connectors, and shall have no liability for the Connectors if any third-party APIs are changed or discontinued by the respective third parties. Licensee shall promptly apply any updates to the Connectors, which are made available from time to time.

3.3 Beta Connectors. Certain Connectors may be made available to Licensee without a subscription fee (“Beta Connectors”). BETA CONNECTORS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND AND QLIK DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. INCLUDING ANY WARRANTY THAT USE OF ANY BETA CONNECTOR WILL BE UNINTERRUPTED OR ERROR FREE. Notwithstanding any provision in this Addendum or the Agreement, Qlik reserves the right at any time to add, remove, discontinue or alter the content, availability and other characteristics of the Beta Connectors without any further obligation or liability.
5. SMART ANALYTICS ADAPTER BY QLIK

5.1. The SMART Analytics Adapter by Qlik allows for integration of Qlik Sense with Cerner Millennium, as further described in the Documentation. This integration requires that the “SMART on FHIR” feature be enabled within the Licensee’s Cerner Millennium environment. Licensee assumes full responsibility for enabling SMART on FHIR, as well as implementing, and consulting with Cerner as necessary on, any other configuration changes that may be necessary within the Licensee’s Cerner Millennium environment in order to enable the deployment of the Cerner Adapter.

5.2. Qlik is not responsible for any performance issues or other non-conformities whose root cause is determined to exist within Cerner Millennium and not within the SMART Analytics Adapter by Qlik.

6. QLIK GEOANALYTICS AND GEOCODING

5.1. Qlik GeoAnalytics is not intended for use with high risk activities such as operation of nuclear facilities or life support systems, where the use or failure of the product or its operations could lead to death, injury, or environmental damage. The product is used to perform analytic operations and enables access to third-party data and other content without additional service or access fees, unless otherwise indicated. Third-party content may not be used or shared outside of a licensed implementation of Qlik GeoAnalytics. Qlik does not guarantee the accuracy of third-party data it provides for use with Qlik GeoAnalytics and may remove, discontinue, or alter content, availability and other characteristics of such data at any time. Unless otherwise expressly stated, any third-party component embedded in or otherwise provided with the product may only be used in conjunction with the product. Qlik reserves the right to charge (in accordance with the GSA price list) for any usage of GeoAnalytics Base above 1 million Map Views per month.

5.2. Qlik Geocoding is an add-on package for Qlik GeoAnalytics that is used to provide geographical (GPS) coordinates corresponding to a location, such as a street address (or vice-versa). Where Qlik Geocoding has been purchased, the following terms shall additionally apply:

5.2.1. Qlik Geocoding requires a Qlik GeoAnalytics Base or Qlik GeoAnalytics Enterprise Server license.

5.2.2. Qlik may temporarily suspend access to Qlik Geocoding: (a) for Licensee's overuse or misuse of Qlik Geocoding; (b) for scheduled maintenance; (c) to prevent a threat or attack on its services; or (d) if Qlik Geocoding become prohibited by law, or supporting third-party services become unavailable to Qlik on commercially reasonable terms.

5.2.4. Licensee shall not, as a component of any Qlik Geocoding lookup request, transmit any data (a) that it does not have the right to use and transmit; or (b) that is unclassified controlled technical information (UCTI) under DFARS 204.73, or protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA).

5.2.5. Certain third-party licensors of data used with Qlik Geocoding to return resultant geographical coordinates require Qlik to flow down additional attribution requirements and terms of use to Qlik’s licensees. These terms are required by the applicable vendors as a condition of use and are attached as Attachment 1 to this Addendum A Exhibit 1 to Addendum A – GeoAnalytics

Envirionics Data: Customers may use the data for non-commercial purposes or internal use only and may redistribute hardcopy or softcopy images of the data, reports, images and analysis for personal or internal use only.

Michael Bauer Research International Boundaries Data (“MBR Data”): Customer right to use data downloaded to the Customer's premises (e.g. MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates two years after download. For informational purposes only: Travel Midwest Gateway Traveler Information System https://www.travelmidwest.com/lgia/policies.jsp Neighborhood Boundaries in Transit and Pedestrian Data ©Maponics, LLC – Duplication is Strictly Prohibited.

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Contains information from car2go.

This product uses the Zipcar API but is not endorsed or certified by Zipcar.

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Ordering Activity is not bound by any terms not explicitly provided herein.
Data delivered as part of Esri Data and Maps cannot be redistributed.

Exhibit B

MAINTENANCE TERMS

Maintenance shall be provided in accordance with the Maintenance policy attached as Attachment 1 to this Exhibit B ("Maintenance Policy").

Licensee shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist

Reinstatement of lapsed Maintenance (whether the lapse is due to termination for Licensee’s non-payment of Maintenance Fees or voluntary non-renewal by Licensee) will be subject to payment by Licensee of the then-current annual Maintenance Fees listed or calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on reinstatement plus the aggregate Maintenance Fees that would have been payable for the relevant Software during the period of lapse in the absence of termination or non-renewal, provided that the combined reinstatement fees are paid within twelve (12) months after the date of the lapse. Reinstatement beyond this date will be at Qlik’s or its licensor’s sole discretion.

Qlik does not represent, warrant or make any commitment that: (i) the Maintenance services will meet Licensee’s requirements or (ii) that Qlik will be able to fully resolve any particular request for Maintenance of the Qlik Software or that such resolution will meet Licensee’s requirements or expectations. Qlik warrants that the Maintenance services shall be performed using reasonable care and skill consistent with generally accepted industry standards. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE MAINTENANCE SERVICES ARE PROVIDED "AS IS", AND QLIK AND ITS SUBCONTRACTORS AND LICENSORS AND THEIR RESPECTIVE AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE) INCLUDING, WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, PERFORMANCE, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIK OR ITS SUPPLIERS OR LICENSORS HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, EXPRESS OR IMPLIED WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, ANY STATEMENTS OR REPRESENTATIONS ABOUT THE MAINTENANCE SERVICES OR ANY THIRD PARTY MATERIALS IN ANY COMMUNICATION WITH LICENSEE ARE FOR INFORMATION PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY, REPRESENTATION OR CONDITION.

5. Qlik’s and its suppliers’ and licensors’, and their respective Affiliates’ maximum, cumulative liability for any damages arising under this Maintenance Agreement regardless of the form of action, whether in contract, tort or otherwise, shall in no event exceed the contract price paid by or on behalf of Licensee to Qlik hereunder for Maintenance. IN NO EVENT SHALL QLIK, ITS SUPPLIERS OR LICENSORS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF SAVINGS, GOODWILL, REPUTATION OR DATA, INACCURACY OF ANY DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF ANY OF THE FOREGOING ENTITIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Attachment 1 to Exhibit B – Maintenance Policy

This Maintenance Policy ("Policy") describes the current practices of Qlik with regard to its provision of Maintenance Services and Support Services as defined below (collectively “Maintenance”) to customers with a Maintenance agreement or a subscription which includes Maintenance (“Licensee(s)”). All Maintenance is subject to payment of applicable fees.

1. DEFINITIONS

“Affiliate” means any entity which controls, is controlled by, or is under common control with Licensee where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists.

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“Maintenance Agreement” means the Qlik® User License Agreement or other written agreement for Software or services between Qlik and Licensee, which includes the provision of Maintenance Services and/or Support Services.

“Authorized Affiliate” means any Affiliate of Licensee that is designated by Licensee as authorized to use the Software under the terms of an Agreement.

“Documentation” means the then-current documentation published and made generally available by Qlik for the Software in the form of manuals and functional descriptions in printed or electronic form, as may be modified by Qlik from time to time.

“Designated Support Engineer” or “DSE” means a designated Qlik support resource who acts as Licensee’s designated point of contact for all technical support matters.

“Error” means any verifiable and reproducible failure of the Software to materially conform to the Documentation.

“Initial Response Time” means the period commencing when an Error is first reported by Licensee’s Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) by telephone, email or through the Support Portal.

“Maintenance Services” means the release of Updates to the Software, which Qlik elects to make generally available to Licensees.

“Release Management Policy” means the then-current release management policy describing the release cadence for the applicable Software as currently set forth at http://www.qlik.com/license-terms, and as may be modified by Qlik from time to time.

“Self-Service Tools” means the Knowledge Base (Qlik’s online database of content and FAQs about the use and support of the Software), white papers, Community Forums, webcasts and other materials available in the Support Portal to Licensees that are current on Maintenance.

“Severity 1 Error” means any Error that has very serious consequences for normal business transactions and urgent, business critical work cannot be performed.

“Severity 2 Error” means any Error that (i) materially degrades the overall performance of the Software or (ii) materially impairs substantial functions of the Software published in the Documentation, but is not a Severity 1 Error.

“Severity 3 Error” means any Error that impairs the performance of the Software, but is not a Severity 1 Error or Severity 2 Error.

“Software” means the generally available release of Qlik’s proprietary software in object code form, as well as the software API, licensed to Licensee under an agreement. Software excludes early release, technical preview, beta, free trial or evaluation versions as well as any extensions, objects, open source projects or code made available without charge on Qlik Branch or other developer forums, and any Qlik products which exclude Maintenance in the terms of use.

“Software Family” means a line of related Software or services provided by Qlik, which share similar functions and may share a common brand. For example, QlikView® and Qlik® Sense are separate Software Families.


“Support Services” means the technical end user support for the Software as described in this Policy. Support Services do not include services performed onsite at any Licensee facility, consulting or education services, Maintenance Services or any services not expressly stated in this Policy.

“Technical Contact(s)” means Licensee’s personnel that have been identified by Licensee as the technical contact(s) for Licensee.

“Update” means any enhancement, modification or Error correction made available in accordance with the Release Management Policy for the applicable Software, which Qlik elects to make generally available to its customers as part of Maintenance Services.

2.1 Qlik will provide Licensee with Maintenance Services and Support Services for the Software in accordance with this Policy and the level of coverage purchased by Licensee as well as any applicable terms in the agreement for the Software, subject to Licensee’s timely payment of the applicable Maintenance fees or subscription fees.

2.2 Licensee is required to purchase Maintenance on all Software for a twelve (12) month period beginning on the delivery date of the Software (the “Initial Maintenance Period”). In addition, Licensee must maintain a uniform level of Maintenance across all licenses or subscriptions within the same Software Family. In order to purchase additional Software licenses or subscriptions, Licensee must be current on Maintenance for all previously purchased licenses within the same Software Family. Licensee may elect to upgrade the level of Maintenance at any time during a Maintenance Period, but such upgrade must apply to all Software licensed with the same Software Family. In the event the Licensee elects not to renew Maintenance, the non-renewal must apply to all licenses or subscriptions within the same Software Family. Notwithstanding the foregoing, any Software or subscriptions purchased as a bundle, package, or special promotion (e.g., enterprise licenses) must be maintained together at a uniform level, regardless of whether such Software or subscription purchase includes multiple Software Families, and cancellation of Maintenance by Software Family is not permitted in such case.

2.3 Maintenance fees for any additional Software purchases will be prorated to achieve a common annual Maintenance Period with existing licenses, but does not relieve Licensee of its payment obligations for the remainder of the Maintenance Period. For avoidance of doubt, Licensee is responsible to pay the entire Maintenance Fee for the Initial Maintenance Period on all additional purchases of Software regardless of any proration of Maintenance Fees.
2.4 Reinstatement of lapsed or cancelled Maintenance will be subject to payment by Licensee of (a) the then-current annual
Maintenance Fees calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on the date of
reinstatement and (b) the aggregate Maintenance Fees that would have been payable for the relevant Software during the period of
lapse in the absence of termination or non-renewal, provided that (i) the combined reinstatement fees are paid within twelve (12) months
after the date of the lapse. Reinstatement beyond this date will be at Qlik’s sole discretion. Reinstatement fees may be assessed once
notice of cancellation or non-renewal is provided, even if a request for reinstatement is provided prior to the expiration of the current
Maintenance Period.
2.5 Qlik may elect to make certain software publicly available under an open source license and free of charge on various online
communities (“Extensions”). This Policy excludes Maintenance with regard to any Extensions. Support for Extensions is provided solely
by the open source community. To the extent Extensions are used in connection with the Software, this Policy provides Maintenance
for the Software and Software API only.
2.6 Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes (“Freeware”).
Maintenance for Freeware, if any, will be provided at Qlik’s discretion and in accordance with the license terms for such Freeware.
2.7 Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only
apply during Qlik’s Standard Business Hours, regardless of when a support matter is reported to Qlik. Qlik’s “Standard Business Hours”
mean from 08:00 to 17:00, Monday to Friday (excluding national and bank holidays) for the Support Center in the specific geographic
region to which the applicable licenses are assigned in Qlik’s records. By way of example, Standard Business Hours for licenses
assigned to New York in Qlik’s records would be 08:00 to 17:00, Eastern Time, Monday to Friday (excluding U.S. federal and bank
holidays). Times expressed as a number of “business days” include Standard Business Hours. When used in this Policy, “Enterprise
Business Hours” means from 08:00 to 17:00 for the Support Center in the specific geographic region to which the applicable licenses
are assigned in Qlik’s records.
2.8 Any Support Services provided by Qlik hereunder via telephone will be provided in the English language or, as applicable, such
other languages that may be specified on the Support Portal, which may change from time to time. The availability of support provided
in any language other than English is provided at Qlik’s sole discretion and is not guaranteed by Qlik, and will depend
on the location of Qlik’s technical support personnel providing such support, including whether or not Licensee is entitled to contact that
particular support line based on the type of Support Services purchased and Licensee’s geographic location.

3. SUPPORT LEVELS
3.1 Basic Support Coverage.
3.1.1 Scope of Coverage. Licensees who have purchased “Basic Support Coverage” from Qlik receive access to Qlik’s technical
support services for problem determination, verification and resolution (or instruction as to work-around, as applicable), via the Support
Portal or a dedicated telephone number provided to Licensee by Qlik. Such technical support is provided during Qlik’s Standard
Business Hours. Licensee will also be entitled to receive Updates as well as access to the Support Portal and the Self-Service Tools as
part of Basic Support Coverage.
3.1.2 Response Times. Qlik will use commercially reasonable efforts to respond (a) within the Initial Response Times set forth in the
table below, to Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth
in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or the Support
Portal. Qlik will respond to Licensee’s Technical Contact by email or telephone or through the Support Portal. Qlik shall use
commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error
present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a
workaround, including, without limitation, by providing Licensee with an Update. Qlik will communicate with Licensee at least once each
business day (with respect to any Severity 1 Errors) or otherwise as reasonably necessary based on the nature and type of Error (with
respect to Severity 2 Errors and Severity 3 Errors) until the applicable Error is resolved (in accordance with Section 4.1 below) or work-
around is provided. All responses and communications from Qlik to Licensee in connection with Qlik’s provision of Basic Support
Coverage will be provided during Qlik’s Standard Business Hours.

<table>
<thead>
<tr>
<th>Basic Support Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Severity Level</strong></td>
</tr>
<tr>
<td>Severity 1 Error</td>
</tr>
<tr>
<td>Severity 2 Error</td>
</tr>
<tr>
<td>Severity 3 Error</td>
</tr>
</tbody>
</table>

3.2 Enterprise Support Coverage.
3.2.1 Scope of Coverage. Licensees who have purchased "Enterprise Support Coverage" receive, in addition to the elements of Basic Support Coverage described above, unlimited telephone support for Error determination, verification and resolution (or instruction as to work-around, as applicable) twenty-four (24) hours a day, seven (7) days a week, 365 days a year for Severity 1 Errors and 365 days a year during the applicable Enterprise Business Hours for Severity 2 and Severity 3 Errors.

3.2.2 Response Times. Qlik will use commercially reasonable efforts to respond (a) within the Initial Response Times set forth in the table below, to Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or the Support Portal. Qlik will respond to Licensee’s Technical Contact by telephone or via the Support Portal. Qlik shall use commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a workaround, including, without limitation, by providing Licensee with an Update. Qlik will communicate with Licensee at least with the frequency set forth in the table below until the Error is resolved (in accordance with Section 4.1 below) or work-around is provided.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response Time</th>
<th>Communication Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 Error</td>
<td>30 minutes, 24x7</td>
<td>Every 4 hours, 24x7</td>
</tr>
<tr>
<td>Severity 2 Error</td>
<td>1 hour, 8x7</td>
<td>Every day</td>
</tr>
<tr>
<td>Severity 3 Error</td>
<td>4 hours, 8x7</td>
<td>Every 2 days</td>
</tr>
</tbody>
</table>

*All severity levels will be initially logged and acknowledged by Qlik during Qlik’s business hours in the region where the Error is reported. For Severity 1 Errors, provided that Licensee provides Technical Contacts in other regions that are available to help troubleshoot issues, all Errors will be addressed and handed over between regions for as long as the Licensee provides the available Technical Contacts in such region(s).

3.2.3 Support Case Handling. Errors reported by Enterprise Support Licensees shall be given priority case handling in a designated priority support queue. Further, Qlik will assist Enterprise Support Licensees in issue analysis to determine whether or not the technical issue is related to the third-party hardware or software. In order to isolate the issue, Qlik reserves the right to request that the third-party hardware or software be removed. Qlik may reach out to third-party vendors based on the established Technical Support Alliance Network (TSANet) to troubleshoot the issue. TSANet is a vendor-neutral global support alliance where companies work together to support mutual customers more effectively. Qlik will only engage TSANet for Licensees who are using supported configurations.

3.2.4 Update Information. Enterprise Support Licensees may contact Qlik Enterprise Support for information regarding Updates performed by Licensee, such as installation instructions, release documentation, and general guidance for multiple environments.

Error Resolution and Escalation.

An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Licensee mutually agree in writing (including via email) that the issue or problem is resolved; (ii) Qlik has provided Licensee with an Update; (iii) Qlik is able to provide a reasonable and mutually acceptable technical work-around solution; (iv) any of Licensee’s Technical Contacts requests that Qlik close the support case; or (v) the support case has been left open for ten (10) consecutive business days, during which period Qlik has not received a response from any of Licensee’s Technical Contacts.

Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem that Qlik determines is not due to any Error or deficiency in the Software (e.g., without limitation, issues or problems caused by stand-alone third party software products used in conjunction with the Software); (ii) any Errors or problems with the Software that are not reproducible; (iii) any Error or problem that is reported by Licensee via any Qlik support telephone number or email address associated with any geographic territory other than the one to which Licensee has been assigned on the Support Portal; or (iv) any Errors or problems with the Software that result from: (a) the use of the Software with software or hardware not designed for use with the operating systems approved by Qlik in the
Documentation; (b) the use of the Software with hardware that does not satisfy the minimum system requirements specified by Qlik in the Documentation; (c) changes, modifications, or alterations to the Software not approved in writing by Qlik or its authorized representatives; (d) use of the Software other than in accordance with the Documentation and the Agreement; (e) use of other than a Supported Version of the Software as defined in the applicable Release Management Policy; or (f) Software provided on an evaluation basis or for which Licensee has not paid any maintenance fees. If Qlik does correct any of the Errors described in subsections (a)-(f) above, or otherwise provides support for Software that is not covered by the terms and conditions contained in this Policy, such Error resolution or Software support will be provided only following Licensee’s written request and approval of all charges, and Licensee will be invoiced for such support at Qlik’s then-current “time and materials” rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with the Software. Licensee may elect to purchase Extended Maintenance services on certain non-Supported Versions of the Software by entering into an agreement with Qlik.

If any Licensee (i) believes that Qlik has failed to meet any of the response and/or communication frequency time frames with respect to any Errors reported to it in accordance with Sections 3.1.2 or 3.2.2, as applicable, or (ii) feels that the quality of the Support Services provided to Licensee by Qlik is not satisfactory, then Qlik encourages such Licensee to escalate the problem to the appropriate level of Qlik management as follows:

<table>
<thead>
<tr>
<th>Hierarchical Escalation Levels</th>
<th>Notification to Regional Support Manager</th>
<th>Notification to Global Support Director</th>
<th>Notification to Vice President – Global Support</th>
<th>Notification to Global Sales Senior Vice-President</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actions</td>
<td>Corrective Measures</td>
<td>Corrective Measures</td>
<td>Corrective Measures</td>
<td>Corrective Measures</td>
</tr>
<tr>
<td></td>
<td>Resource Allocation</td>
<td>Resource Allocation</td>
<td>Monitoring of Progress</td>
<td>Monitoring of Progress</td>
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<tr>
<td></td>
<td>Monitoring of</td>
<td>Monitoring of</td>
<td>Progress</td>
<td>Progress</td>
</tr>
<tr>
<td></td>
<td>Progress</td>
<td>Review of Licensee</td>
<td>Review of Licensee</td>
<td>Review of Licensee</td>
</tr>
<tr>
<td></td>
<td>Review of Licensee</td>
<td>Satisfaction</td>
<td>Satisfaction</td>
<td>Satisfaction</td>
</tr>
<tr>
<td></td>
<td>Satisfaction</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time Frame</td>
<td>Twelve (12) hours</td>
<td>Forty-eight (48) hours</td>
<td>Seventy-two (72) hours</td>
<td>Five (5) business days</td>
</tr>
</tbody>
</table>

Qlik recommends that Licensee-initiated escalation begin at the regional support manager level and proceed upward, using the escalation guidelines shown above for reference, if the actions described in the foregoing chart are not taken to Licensee’s reasonable satisfaction within the applicable timeframes.

5. DESIGNATED SUPPORT ENGINEER

5.1 Subject to Licensee’s timely payment of the applicable DSE fees, and provided that Licensee has purchased Enterprise Support and is current on all Maintenance Fees, then Qlik shall provide the following DSE Services for up to four (4) Licensee Technical Contacts:

- Direct access to a Designated Support Engineer with knowledge of Licensee’s environment
- Service Implementation Plan
- Fast-track into R&D for critical bugs
- Weekly Progress Call
- Quarterly on-site visits and service reviews
- Access to beta releases

5.2 DSE Services are supplemental to Support Services, and are not available as a stand-alone service. The term of the DSE Services shall be for a period of twelve (12) months, commencing on the date that the DSE is assigned to Licensee ("DSE Services Commencement Date"), provided, however, that the DSE Services shall automatically terminate in the event that Support Services are not renewed by Licensee or are otherwise terminated. Provided that Licensee is enrolled in Enterprise Support at the time, Licensee may renew DSE Services upon payment of the applicable DSE fees. For avoidance of doubt,
DSE Services are only available for Licensees who are current on Enterprise Support (and for Licensees with existing DSE Services who continue to renew). DSE Services are provided as a part of Maintenance pursuant to this Policy, and not as a consulting service.

6. Updates

In addition to its obligations under Sections 2 and 3 of this Policy, Qlik will make Updates available to all Licensees with a current Maintenance Agreement, when and if Qlik elects to make them generally commercially available. All Updates provided to any Licensee under this Policy will be made available, at Qlik’s discretion, in a form of digital medium, or via the Qlik Software download site. Each Update will be provided together with the associated Documentation, in printed or electronic form, written in English or another language officially supported by Qlik. Unless otherwise agreed in writing by Qlik, Licensee shall be responsible for installation of all Updates.

7. Licensee’s Obligations

7.1 The Licensee shall: (i) not request, permit or authorize anyone other than Qlik to provide any form of support services in respect of the Software; (ii) cooperate fully with Qlik’s personnel in the diagnosis or investigation of any Error or other issue or problem with the Software; (iii) only report Errors to Qlik via the dedicated Qlik support telephone number or email address associated with Licensee’s designated geographic territory as set forth on the Support Portal; (iv) be responsible for purchasing, installing and maintaining all hardware and operating systems required to use and support the Software; (v) be responsible for maintaining all third party software not explicitly licensed under the Agreement; and (vi) maintain an email address for electronic mail communications with Qlik.

7.2 Licensee’s contact with Qlik in connection with Licensee’s requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Licensee’s and its Authorized Affiliates’ personnel who are authorized to use the Software per the terms of the Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Licensee and its Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Licensee is three (3) for Basic Support Coverage, six (6) for Enterprise Support Coverage, and four (4) for DSE Service, regardless of the number or types or quantities of licenses purchased for the Software. Licensee shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Licensee may change its Technical Contact(s) by notifying Qlik in writing.

7.3 Upon reasonable request by Qlik, Licensee shall provide Qlik a detailed description of its IT system(s) within which the Software operates, together with the basic structure of that system, any operational disruption experienced by Licensee, and the effect of the disruptions on Licensee’s operations.

7.4 If Licensee desires Qlik to provide support via remote access, Licensee shall ensure that a functioning system enabling Qlik to have remote access to Licensee’s technical equipment is installed (subject to Licensee’s reasonable security measures and policies) and that satisfactory communication between the parties’ computer systems is possible. Licensee agrees to be solely responsible for protecting and backing up its equipment, software and data prior to any such access. Qlik accepts no liability in connection with remote access support.

7.5 Licensee will be responsible for primary support of its Authorized Affiliates in connection with their use of the Software in accordance with the terms of the Agreement. Licensee is solely responsible for: (i) distributing all Updates to its Authorized Affiliates; (ii) passing on to its Authorized Affiliates all support materials as appropriate; and (iii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, in each case of (i), (ii) and (iii) above, as necessary to enable the Authorized Affiliate to continue to use the Software as authorized under the Agreement. Licensee will not refer any third party, including without limitation, any of its contractors, authorized end users or any Authorized Affiliate to Qlik for support of Software.

7.6 Qlik supports designated operating systems, not specific hardware configurations. If Licensee is running the Software on a virtual environment, Licensee and the virtual environment vendor will be responsible for any interactions or issues that arise at the hardware or operating system layer as a result of the use of a virtual environment. Qlik reserves the right to request Licensees to diagnose certain issues in a native designated operating environment, operating without the virtual environment, as needed to determine whether the virtual environment is a contributing factor to the issue.

7.7 For certain services provided under this Policy, the transmission of machine logs may be required. For avoidance of doubt, Licensee shall not include any business sensitive and/or personal information via such transmissions. Accordingly, Qlik shall not be deemed a Data Processor under EU Data Protection Directive 95/46/EC (as amended) (the “Directive”). However, should Licensee send to Qlik any log files or other information containing personal data, Qlik will (i) comply with the Directive and any relevant national enacting legislation in relation to its treatment of that personal data as required under relevant, applicable law; and (ii) in accordance with Qlik’s privacy policies from time to time in effect. Licensee shall take reasonable measures to limit the amount and sensitivity of such data provided to Qlik (by anonymization, for example). Qlik’s privacy policies are available to view online at www.qlik.com under “Cookie and Privacy Policy.”

8. Reserved
9. Disclaimer
THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. THE SOFTWARE AND MATERIALS AND SERVICES RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT.
TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL.

Exhibit C
Education Services Terms

1. Training Courses
1.1 Training Course Delivery Options
Qlik currently offers its training courses (“Training Courses”) via the following delivery options:

<table>
<thead>
<tr>
<th>Training Course Delivery Options</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Public Classroom</td>
<td>Live public classroom training at a designated Qlik location. Courses are delivered by Qlik authorized instructors.</td>
</tr>
<tr>
<td>(2) Private Classroom</td>
<td>Live private classroom training at a designated Qlik location. Courses are delivered by Qlik authorized instructors.</td>
</tr>
<tr>
<td>(3) Onsite Classroom</td>
<td>Live private classroom training onsite at Customer’s location. Courses are delivered by Qlik authorized instructors.</td>
</tr>
<tr>
<td>(4) Virtual Public Classroom</td>
<td>Live virtual public training using online (in the cloud) class environment consisting of live interactive webcasts, hands-on labs and mentoring. Courses are delivered by Qlik authorized instructors.</td>
</tr>
<tr>
<td>(5) Virtual Private Classroom</td>
<td>Live virtual private training using online (in the cloud) class environment consisting of live interactive webcasts, hands-on labs and mentoring. Courses are delivered by Qlik authorized instructors live through a virtual environment.</td>
</tr>
</tbody>
</table>

1.2 Requirements for Onsite Classroom Training Courses.
Customer is responsible for compliance with all of the following requirements for all Onsite Classroom Training Courses:
Maximum number of participants for Onsite Classroom Training Courses is 10 participants.
Each participant must have a dedicated computer for the duration of the course. The course location must be of adequate size (as determined by Qlik) to support the actual number of participants attending the course. The course location facility must be equipped with the following:

Projection equipment, including but not limited to an overhead projector, LCD panel, high-definition television or equivalent display device with a diagonal display area of 40 inches (one meter).

A projection screen with a diagonal measurement of at least six feet (two meters).

Room darkening for display purposes to be operated by instructor.

A blackboard, whiteboard, or flipchart of at least 10 square feet (or one square meter).

If indicated by Qlik for a particular course, a high-speed Internet connection (wired or wireless), of approximately 1.5Mbps of bandwidth so that all participants may connect in the same room.

2. Training Services
2.1 Training Services Delivery Options
Qlik currently offers the following training services (“Training Services) via the following delivery options:

<table>
<thead>
<tr>
<th>Training Services</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Qlik Continuous Classroom – Qlik Hosted</td>
<td>Self-Service, on-line learning platform hosted by Qlik</td>
</tr>
<tr>
<td>(2) Qlik Continuous Classroom – Customer Hosted</td>
<td>Self-Service, on-line learning platform hosted by Customer.</td>
</tr>
<tr>
<td>(3) Custom Application Training</td>
<td>Custom training videos for Customer Qlik Applications hosted by Customer.</td>
</tr>
</tbody>
</table>

2.2 Qlik Continuous Classroom (Qlik Hosted)

Access to Qlik Continuous Classroom (Qlik Hosted) (“QCCQH”) is provided on a subscription basis for the applicable subscription period, selected User type and authorized quantity of Users. Subject to the Users’ compliance with these Education Terms and the payment of the applicable fees, Qlik grants to such Users a personal, limited, non-assignable, non-exclusive, and non-transferable term license, without the right to sublicense, to access and view QCCQH solely for such Users’ personal training and education. “Users” shall mean Customer’s employees or FTE contractors. The QCCQH subscription date shall start on the date that Qlik delivers the QCCQH subscription registration to Customer or its authorized reseller.

QCCQH for Individuals Users. Each User shall access QCCQH via such User’s Qlik Account. User acknowledges and agrees that User’s Qlik Account is confidential and nontransferable, and may not be shared with any other person or entity. Further, any use of User’s ULC to allow or permit another person or entity to access QCCQH shall terminate User’s license to QCCQH.

Corporate Qlik Continuous Classroom (Qlik Hosted). Upon the purchase of Corporate QCCQH, Customer (through its administrator), shall be responsible to enable, via the Qlik Subscription Management Portal (“SMP”) for up to the amount of authorized quantity of Users. Customers are fully responsible for the proper use of the SMP, and any use of the SMP allowing or permitting (i) more than the authorized number of Users or and (ii) any person (other than Customer’s authorized Users) or entity to access Corporate QCCQH shall terminate Customer’s license to Corporate QCCQH.
QCCCH may include community forums, office hours, or other interactive features. Such features are provided by Qlik in its sole discretion, and Qlik makes no representation, warranty or covenant about the availability, content or timeliness of any such features. Users should refer to the Usage Guidelines for Qlik Continuous Classroom Interactive Forums for further information.

2.3 Qlik Continuous Classroom (Customer Hosted)

Qlik Continuous Classroom (Customer Hosted) (QCCCH) is accessible only by the purchase of a QCCCH license by Customer for its Users. Subject to the Users’ compliance with these Education Terms and the payment of the applicable fees, Qlik grants to such Customer and its Users a personal, limited, non-assignable, perpetual, nonexclusive, and non-transferable license, without the right to sublicense, to use the videos, exercises, quizzes and instructional materials that are made available by Qlik in QCCCH solely for such Users’ personal training and education. Qlik in its discretion shall determine the content and medium of the components of QCCCH.

QCCCH Customers may host QCCCH on a web server or LMS system, provided that Customer is solely responsible for integration and/or implementation efforts for such hosting. Further, Customer is responsible to ensure that any third party hosting entity of QCCCH on its behalf is in compliance with these Education Terms.

For clarity, no interactive features, including but not limited to student forums and instructor office hours, are included with QCCCH. Customer may not copy, reproduce, publish, display, modify, rent, lease, distribute, sell, sublicense, transfer or use in any way all or any part of QCCCH. Under no circumstances may Customer resell or use QCCCH to offer or provide any training or education (whether or not for fee) to any third party, or to offer any training or education materials, instruction or courses that incorporate or relate in any way to QCCCH to any third party. Customer acknowledges and agrees that it is fully responsible for any changes, modifications, alterations or customizations it makes to QCCCH.

Updates to QCCCH are provided by Qlik only upon the purchase of QCCCH updates. QCCCH updates must be purchased within the 90-day period following the 1-year anniversary date of QCCCH purchase or last QCCCH updates purchased. Purchases of QCCCH updates made after such period shall require the purchase of all updates since the date of original QCCCH purchase or last QCCCH updates purchase.

2.4 Custom Application Training (CAT) Services

Subject to payment of the applicable fees and Customer’s compliance with these Education Terms, Qlik will provide to CAT Customers the training video(s) (“Videos”) for Customer’s designated Qlik Applications applicable to the level of CAT Services purchased by Customer. Customer acknowledges that the CAT Services levels designate the number of total content minutes of Videos provided by Qlik, and do not guarantee that any specific number of Videos shall be provided by Qlik. Customer acknowledges that Qlik makes available resources to perform the CAT Services based upon the date of Customer’s order.

Each Video will be delivered to Customer in a mutually agreed format such as MP4 or html. Customer is responsible to attend a kickoff meeting with Qlik to establish the requirements gathering process for the CAT Services. Customer shall work with Qlik to complete all requirements documents for each Video, which may include in person or on-line or telephone meetings between Customer and Qlik personnel. Further, Customer shall provide access to all Customer business and technical personnel needed for requirements gathering, and shall reasonably cooperate with Qlik in the performance of the CAT Services and shall provide Qlik with the information, feedback, instructions, and access to applicable equipment necessary to enable the timely performance of the CAT Services by Qlik in the manner provided herein. Customer shall be responsible for the completeness and accuracy of all information, data material, logos, trademarks and other intellectual property provided by Customer or its authorized representatives to Qlik. Customer represents and warrants that it has the full legal rights to provide the information, data, material, logos, trademarks, and other intellectual property (collectively, the “Customer Materials”) to Qlik for inclusion in, or with respect to, the CAT Services.

The CAT Services also include applicable training reference card templates (“Reference Cards”), best practices for launching app and communication (“Launch Kit”) and access to Qlik’s adoption measurement tools to monitor user adoption metrics (collectively, the “CAT Materials”). Qlik grants to Customer a non-exclusive, non-transferable, nonassignable perpetual license to use each Video and the CAT Materials delivered by Qlik for Customer and its Users’ training and informational use. Customer may copy, modify and distribute to its Users the Reference Cards and the Launch Kit for its Users training and informational use. Customer may not, rent, lease, distribute, sell, sublicense, transfer or use with any third party in any way any of the Videos or the CAT Materials. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors on any of the Videos or any CAT Materials. All CAT Materials (and the intellectual property rights associated therewith) are and will remain at all times the sole and exclusive property of Qlik and its affiliates and licensors.

Qlik grants to Customer a non-assignable, non-transferable and non-exclusive right to access and use the Introduction to Qlik Training Content Videos in the CAT Services Application provided by Qlik solely for such Customer’s Users’ training and informational use. The foregoing videos may not be reproduced, modified, rented, leased, distributed, sold, sublicensed, transferred or used by any third party. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors in or on the Qlik Training Content Videos.
3. Terms and Conditions

3.1 Payment. a. Ordering Activity shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist.

b. For all Training Courses to be held at a non-Qlik location, Ordering Activity Licensee agrees to pay any travel expenses incurred by Qlik to deliver such courses (collectively, “Qlik Expenses”) in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable ordering document.

3.2 Training Cards

Purchase and Redemption. Training Cards are purchased by Customers in the currency of the Customer’s location, and may only be used by the Customer entity that purchased such Training Card. A Training Card shall be activated by Qlik upon purchase thereof by Customer, and shall be identified by a specific Training Card number. All

Training Courses and Training Services ordered, registered for, or attended on Customer’s behalf that are paid for via a Training Card will incur the applicable reduction in the value of such Training Card equal to the value of Training Courses or Training Services ordered at the time of registration or payment. If the applicable charge for a Training Course or Training Service is greater than the unused amount connected with Customer’s Training Card, such amount may be applied against such Training Course or Training Service, and Customer shall be responsible for payment of the additional charges for such Training Course or Training Service. If Customer’s proposed Private and/or Onsite Classroom Training Course exceeds the maximum number of participants, and Qlik agrees to accommodate any additional participants, the Customer shall be required to pay the additional amount to Qlik for such additional participants.

Expiration, Replacement and Non-transferability. The amounts purchased on any Training Cards do not expire. Refunds will be provided upon request for any remaining, unused value on any Training Card. Customers may add value to any Training Card at any time. Qlik is not responsible for a lost, expired or invalid Training Card number. In order to obtain a replacement, Customer must provide valid proof of purchase from Qlik or the Qlik authorized partner from whom Customer obtained the Training Card number. Customer shall have no right to transfer or assign any Training Card to any affiliate or third party.

3.3 Training Courses Availability; Registration of Participants, Cancellation and Rescheduling

All Training Courses are subject to space availability and Qlik’s scheduling requirements. Customer shall promptly complete all registration or information forms required for any Training Course. Prior to the start date of any Private or Onsite Training Course, Customer shall provide to Qlik the list of participants scheduled to attend such Training Course. In the event that a scheduled participant is unable to attend a Training Course due to illness or a new role at Customer, or if such participant is no longer employed by Customer, Customer may substitute another participant for such Training Course upon prior written notice to Qlik of such new participant’s contact details.

Cancellations and requests by Customer to reschedule Public Classroom, Private Classroom, Onsite Classroom, Virtual Private or Virtual Public Classroom Training must be made at least ten (10) business days prior to the applicable Training Course start date. If Customer has paid by Training Card, such refund shall be credited to Customer’s applicable Training Card number.

Qlik reserves the right to reschedule or cancel a Training Course due to low enrollment or if necessitated by an emergency or other unforeseen circumstances. Customer shall be credited for the full amount paid by Customer for such course.

3.4 Customer Obligations

If Qlik is to perform any Education Services at Customer’s site or location, Customer shall carry and maintain public liability insurance and employers’ liability insurance, covering its employees, suppliers and contractors engaged at its premises, in amounts no less than required by the applicable law. Customer shall be responsible to comply with all of Qlik’s policies and procedures that have been identified to Customer, including but not limited to health and safety, access to Qlik’s equipment and systems, and confidentiality (collectively, “Qlik Policies” or individually, a “Qlik Policy”). Qlik reserves the right to remove from any Training Course or refuse to admit to any Training Course any participant who is not in compliance with any Qlik Policy.

Customer agrees to provide timely feedback to Qlik following completion of each Training Course or applicable Training Service, which may include satisfaction forms, customer surveys or evaluations (collectively, “Feedback”); To the extent that Customer provides any Feedback or any other suggestions, data, information, comments or ideas with respect to Qlik’s products and services (individually and collectively “Contributions”), Customer acknowledges and agrees that any and all Contributions made by Customer or any of its participants shall be deemed the confidential and proprietary property of Qlik. Customer expressly assigns, transfers and conveys all right, title and interest in and to the Contributions to Qlik. Customer agrees that Qlik and its designees will be free to use, copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use and exploit the Contributions, including derivative works thereto, for any and all commercial and non-commercial purposes, without any liability or obligation to Customer whatsoever Qlik shall not refer to this Agreement in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by
the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services.

3.5 Access to Training Courses; Ownership

If required for any Training Course, Qlik shall provide the applicable participants with an evaluation version of the applicable Qlik proprietary software to use during a live public or private classroom Training Course for instructional purposes only (the “Training Software”) and such right to use the Training Software shall automatically terminate upon conclusion of the applicable Training Course. Attendance at a Training Course does not entitle any Customer or participant to any license whatsoever to any Qlik Software.

In connection with the Training Services or a Training Course, Qlik may distribute to or make available for download by participants Qlik-branded Training Course materials, in printed form or other medium ("Course Materials"). Subject to Customer’s compliance with these Education Terms and the payment of the applicable fees, Qlik grants to Customer a personal, limited, non-assignable, non-exclusive, and non-transferable right, without the right to sublicense, to use the Course Materials solely for Customer’s personal training and education.

Customer may not copy, reproduce, modify, rent, lease, distribute, sell, sublicense, transfer or use in any way except for in accordance with the limited right granted herein the Course Materials, the Training Services, Training Courses or any part thereof. Customer may use the information contained in the Course Materials, the Training Services and the Training Courses solely for education purposes only and may not disclose or make available to any person any information contained therein, except to others who have also rightfully received the same Course Materials, Training Services or Training Courses from Qlik. Except for the limited right to use granted herein, all rights in and to the Training Courses, Training Services and the Course Materials, and all copies thereof, are retained by Qlik and its licensors, including, without limitation, all patent rights, copyrights, trademark rights and trade secret rights. Customer shall not remove or alter any copyright or other proprietary rights notice of Qlik and/or its licensors in or on the Course Materials. All Training Services, Training Courses and Course Materials and the intellectual property rights associated therewith are and will remain at all times the sole and exclusive property of Qlik and its affiliates and licensors, and Customer has no right, title or interest in or to the Training Services Training Courses, Course Materials or the intellectual property associated therewith.

Certain Education Services require Customer to have sufficient Internet access. Qlik is not responsible for Customer’s inability to access any such Education Services due to User’s failure to have adequate Internet or bandwidth capabilities, or for any failure of the Internet or other communications or connectivity networks, or any disruptions or inaccessibility caused by third party sites, software or hardware.

3.6 Verification

Customer understands that Qlik may contact Customer, using the information provided by Customer, and that Qlik may verify such contact information in accordance with Qlik’s then current privacy policy. Qlik has no obligation to allow Customer to use or access the Training Services, any Training Course and/or the Course Materials, unless Qlik is satisfied, in its discretion, that Customer is a bona fide trainee, that Customer has all necessary valid Customer licenses, if any, that Customer has paid the applicable fees for use of the Training Services, Training Courses and/or Course Materials, and that the information provided by Customer to Qlik in registering for the Training Services, Training Courses and/or Course Materials is current, accurate and complete and in compliance with Export Control Laws.

3.7 Confidentiality

Customer acknowledges and agrees that the intellectual property associated with the Training Services, Training Courses and the Course Materials, and any other nonpublic information of a technical or commercial nature concerning Qlik or the Training Services, Training Courses and the Course Materials disclosed to Customer in connection with these Education Terms constitute Qlik’s proprietary information and trade secrets, and Customer agrees to hold such information in strict confidence, and not disclose or otherwise share the Training Services, Training Courses or Course Materials or any other confidential information with any third party except as expressly provided in these Education Terms.

3.8 Disclaimer; Limitation of Liability

Qlik warrants that the Training Services, the Course Materials and the Training Courses shall be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Customer shall promptly notify Qlik of the warranty claim within five (5) business days of Customer's receipt of the applicable Training Services the Course Materials or the Training Courses. Customer’s sole and exclusive remedy for any breach of this warranty shall be, at Qlik’s sole option, re-performance of the non-compliant Training Services, Course Materials or Training Courses or return the fees paid for the non-compliant Training Services, Course Materials or Training Courses. Client shall provide reasonable assistance to Qlik in Qlik’s efforts to furnish a remedy for any breach of this warranty regarding Professional Services.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.8 (a), TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TRAINING SERVICES, THE COURSE MATERIALS AND THE TRAINING COURSES ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THESE EDUCATION TERMS, QLIK AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED (BY STATUTE, COMMON LAW OR OTHERWISE). Qlik does not warrant that: (i) the Course Materials, the Training Services or any Training Course
will meet Customer’s or its Users’ requirements; or (ii) the content of any Training Services, Course Materials or any Training Course will be error free.

IN NO EVENT SHALL QLIK OR ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES OF ANY KIND ARISING UNDER ANY THEORY OF LIABILITY (INCLUDING TORT), INCLUDING WITHOUT LIMITATION DAMAGES OR LOSSES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF BUSINESS DATA OR INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF QLIK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. QLIK’S MAXIMUM AGGREGATE LIABILITY FOR ANY EDUCATION SERVICES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE CONTRACT PRICE. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THESE EDUCATION TERMS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. ANY CONTENT DOWNloaded OR OTHERWISE OBTAINED THROUGH THE USE OF THE EDUCATION SERVICES IS DONE AT USER’S OWN DISCRETION AND RISK. QLIK AND ITS SUPPLIERS SHALL HAVE NO RESPONSIBILITY FOR ANY DAMAGE TO USER’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH CONTENT. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
Exhibit D
Consulting Services Terms

Unless otherwise agreed in writing, any consulting services (“Consulting Services”) provided by Qlik to a client (“Client”) are subject to and governed by these Consulting Services Terms and Conditions (“Terms”). Consulting Services may be described in an Order Form and also may be subject to a Statement of Work (“SOW”) referencing these Terms and executed by authorized representatives of Qlik and Client.

Client shall obtain all necessary consents, permissions and authorizations to enable Qlik and/or its subcontractors to provide the Consulting Services and shall provide access to all staff and data necessary for Qlik’s performance of the Consulting Services. Client is responsible for the completeness and accuracy of all information, data and material provided by or on behalf of Client to Qlik.

Qlik may delegate all or part of the Consulting Services to be performed hereunder to a Qlik affiliate or third party. Qlik shall remain liable for the actions and services provided by such affiliate, Third-Party and subcontractors at all times. Qlik retains the right to assign, reassign and substitute personnel at any time.

If the Consulting Services are to be performed at Client’s location and subject to Government security requirements: (i) Client will provide, and shall ensure it has all rights to provide, all necessary working facilities (including, but not limited to, meeting facilities, desks, computers, software, hardware, equipment, telephone, facsimile, internet access, and access to the applicable locations, computers and systems of Client) to enable Qlik to perform the Consulting Services at License’s premises; (ii) Client shall ensure that the premises at which the Consulting Services are to be carried out comply at all times with all applicable legislation, including but not limited to, any applicable health or safety laws, rules and regulations; and (iii) ensure that its employees and contractors cooperate fully with Qlik in relation to the provision of the Consulting Services.

Ordering Activity shall pay any fees due in accordance with the payment terms set forth in the Order Form or Statement of Work entered into between Ordering Activity and the GSA Schedule holder in accordance with the GSA Pricelist. Ordering Activity agrees to pay any travel expenses incurred in connection with the Consulting Services in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved as by Ordering Activity and funded under the applicable order form.

Consulting Services are conducted and billed on an hourly basis. Any reference to Days or Daily is equal to eight (8) hours of service. For the duration of the Consulting Services engagement or a period of twelve (12) months from the effective date of any Order Form referencing such Consulting Services, whichever is shorter, Qlik will provide the services at rates set forth in the Order Form. Thereafter, Qlik’s Consulting Services rates shall apply in accordance with the GSA Pricelist unless otherwise agreed in writing between Client and Qlik.

Client acknowledges that any time frames set forth in an SOW are estimates only of the amount of time required by Qlik for the provision of the Consulting Services and time shall not be of the essence. All work will be performed on a time and materials basis and the Client will be invoiced for the actual (and not estimated) time spent in providing the Consulting Services to the Client.
Client is responsible for supplying Qlik with any required information within any timeline set out in an SOW. Client is also responsible to assign a contact person who will be available to answer any questions in person or by telephone and also have the authority to make prompt decisions.

Client acknowledges and agrees that any Consulting Services to be held at Client’s location have been reserved specifically for Client. Any cancellation or rescheduling of any such on-site Consulting Services requires at least ten (10) business days’ written notice prior to the date of the scheduled Consulting Services.

Rescheduling of any such Consulting Services is subject to availability of Qlik personnel, and Qlik makes no commitment or guaranty that any such rescheduling can be accommodated.

10 (a) Qlik warrants that the Consulting Services shall be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Client shall promptly notify Qlik of the warranty claim within five (5) business days of Client’s receipt of the applicable Consulting Services. Client’s sole and exclusive remedy for any breach of this warranty shall be, at Qlik’s sole option, re-performance of the noncompliant Professional Services or return the fees paid for the non-compliant Consulting Services. Client shall provide reasonable assistance to Qlik in Qlik’s efforts to furnish a remedy for any breach of this warranty regarding Professional Services.

(b) Qlik will have no liability to Client with respect to any warranty claim made pursuant to Section 10(a), or any obligation to correct any defect or problem with the Software, to the extent that it: (i) arises out of any use of the Software by Client or its authorized affiliates not in accordance with the Documentation; (ii) arises out of any modification or alteration of the Software by anyone other than Qlik or its authorized contractors; or (iii) arises out of the Software when combined with any other software or equipment not specified in the Documentation as supported by Qlik. QLIK AND ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS OR IMPLIED (BY STATE COMMON LAW OR OTHERWISE) INCLUDING WITHOUT LIMITATION, AS TO THEIR ACCURACY, TIMELINESS, COMPLETENESS, RESULTS, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF QLIK HAS BEEN INFORMED OF SUCH PURPOSE, AND ANY REPRESENTATIONS, WARRANTIES OR OTHER TERMS ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

EXCEPT FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, THE AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY FOR DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT SHALL IN NO EVENT EXCEED THE CONTRACT PRICE PAID OR PAYABLE

BY CLIENT FOR THE APPLICABLE SERVICES WHICH GAVE RISE TO THE CLAIM, IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE SUPPLIERS, RESELLERS OR AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, SAVINGS, GOODWILL, DATA OR INACCURACY OF ANY DATA OR COST OF SUBSTITUTE GOODS OR SOFTWARE REGARDLESS OF THE THEORY OF LIABILITY OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS, HOWEVER ARISING, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH IN THESE TERMS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Qlik and its affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the Consulting Services and the deliverables provided, including all patents, trademarks (registered or unregistered), trade names, copyrights, trade secrets and any Confidential Information which Qlik may disclose. Qlik grants to Client a license to use any deliverable with the same scope and limitations as the license Client has for the Qlik proprietary software that is the subject matter of such deliverable.

Client acknowledges and agrees that all intellectual property associated with the Consulting Services and any other nonpublic information of a technical or commercial nature concerning Qlik or the Consulting Services constitute Qlik’s proprietary and confidential information and trade secrets (“Qlik Confidential Information”). Any nonpublic information disclosed by or on behalf of Client during or in relation to Qlik’s performance of Consulting Services that is identified as confidential or proprietary shall constitute Client Confidential Information, Confidential Information of a party does not include information which, and solely to the extent it (i) is generally available to the public other than as a result of a disclosure by the receiving party or any of its representatives; (ii) was known to the receiving party prior to the date hereof on a non-confidential basis from a source other than disclosing party or its representatives; (iii) is independently developed by the receiving party without the benefit of any of the disclosing party’s Confidential Information; (iv) becomes lawfully known to the receiving party on a non-confidential basis from a source (other than disclosing party or its representatives) who is not prohibited from disclosing the information to the receiving party by any contractual, legal, fiduciary or other obligation or (v) was disclosed by disclosing party to a third party without an obligation of confidence. Each party will protect such information from unauthorized distribution and use with the same degree of care that it uses to protect its own like information, but in no event less than a reasonable degree of care. The
receiving party shall not disclose Confidential Information within its own organization nor that of its affiliates except to those employees or consultants who need to know such information in connection with the business relationship between the parties. Qlik recognizes that U.S. Government agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which can result in certain information being released, despite being identified as “confidential,” subject to procedural requirements of the Act which include notice, the right to present arguments, and the right to appeal a disclosure decision.

General

This Agreement is governed by and construed in accordance with U.S. Federal law. Any suit, action or proceeding arising out of or relating to this Agreement shall be resolved by a court or administrative tribunal of competent jurisdiction.

Excusable Delay.  Qlik shall not be liable for delays caused by an occurrence beyond its reasonable control and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Client agrees to comply with all export control laws applicable to the Consulting Services.

Reserved.

All notices or other communications to Qlik shall be addressed to: QlikTech Inc., 211 South Gulph Road, Suite 500, King of Prussia, PA, 19406; Attention: Legal Department

Support Policy
This Support Policy (“Policy”) describes the current practices of Qlik with regard to its provision of Maintenance Services and Support Services as defined below (collectively “Support”) to customers with a Support agreement or a subscription which includes Support (“Customer(s)”). Prior versions of this Policy were titled “Qlik Maintenance Policy” and any reference to such Maintenance Policy in any customer agreement shall be deemed a reference to this Policy.

DEFINITIONS

“Affiliate” means any entity which controls, is controlled by, or is under common control with Customer where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists.

“Authorized Affiliate” means any Affiliate of Customer that is designated by Customer as authorized to use the Software if permitted under the terms of an Agreement.

“Documentation” means the then-current documentation published and made generally available by Qlik for the applicable Qlik Product in the form of manuals and functional descriptions in printed or electronic form, as may be modified by Qlik from time to time.

“Error” means any verifiable and reproducible failure of a Qlik Product to materially conform to the Documentation.

“Initial Response Time” means the period commencing when an Error is first reported by Customer’s Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) by telephone, email or through the Support Portal.

“Maintenance Services” means the release of Updates to the applicable Qlik Product, which Qlik elects to make generally available to Customers.

“Product Line” means a group of related products or items, which have common features, functions or branding, and are deployed in a common environment. For example, Professional User and Analyzer User are part of the same Qlik Sense Enterprise product line. Qlik Sense Enterprise and Qlik Sense Business are deployed in different environments and not part of the same Product Line.

“Qlik Product” means the applicable Software.

“Self-Service Tools” means the Knowledge Base (Qlik’s online database of content and FAQs about the use and support of the Software), white papers, Community Forums, webcasts and other materials available in the Support Portal to Customers that are current on Support.

“Severity 1 Error” means that the Software is inoperable or not accessible in a production environment due to i) a server-side failure, but not as a result of scheduled maintenance and/or upgrades, or ii) any event beyond the reasonable control of Qlik, including but not limited to any interruption of power, telecommunications or Internet
connectivity, and any failure of Customer’s internal telecommunications equipment, browser or network configurations, hardware and/or third party software).

“Severity 2 Error” means that major functionality is materially impacted and not working in accordance with the technical specifications in the Documentation or significant performance degradation is experienced so that critical business operations cannot be performed.

“Severity 3 Error” means any Error that is not a Severity 1 Error or Severity 2 Error.

“Software” means the generally available release of Qlik’s proprietary software in object code form, as well as the software API, licensed to Customer under an agreement. Software excludes early release, technical preview, beta, free trial or evaluation versions as well as any extensions, objects, open source projects or code made available without charge on Qlik Branch or other developer forums, and any Qlik products which exclude Support in the terms of use.

“Standard Business Hours” mean from 08:00 to 17:00, (8:00 am to 5:00 pm) Monday to Friday (excluding national and bank holidays) for the Support Center in the specific geographic region to which the applicable licenses are assigned in Qlik’s records.

“Support Agreement” means the Qlik® User License Agreement or other written agreement for Software or services between Qlik and Customer, which includes the provision of Support Services and/or Maintenance Services.

“Support Portal” means Qlik’s online support website.

“Support Services” means the technical end user support for the Qlik Products as described in this Policy. Support Services do not include services performed onsite at any Customer facility, consulting or education services, Maintenance Services or any services not expressly stated in this Policy.

“Supported Version” a major release of the Software. Qlik provides Support Services and Maintenance Services for Supported Versions for a period of twenty-four (24) months from the date such Supported Version was made generally available by Qlik.

“Technical Contact(s)” means Customer’s personnel that have been identified in writing by Customer as the technical contact(s) for Customer and authorized to contact Qlik for support.
“Update” means any Software enhancement, modification or Error, which Qlik elects to make generally available to its customers as part of Maintenance Services. For all Qlik Products, Updates do not include new or separate products which Qlik offers only for an additional fee to its customers generally.

OVERVIEW
Qlik will provide Customer with Support Services and Maintenance Services for the Qlik Products in accordance with this Policy and the level of coverage purchased by Customer as well as any applicable terms in the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), and agreement for the Software, subject to Customer’s timely payment of the applicable Support Services fees (“Support Fees”) or subscription fees.

Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only apply during Qlik’s Standard Business Hours, regardless of when a support matter is reported to Qlik. Times expressed as a number of “business days” include Standard Business Hours.

Any Support Services provided by Qlik hereunder will be provided in the English language or, as applicable, such other languages that may be specified on the Support Portal, which may change from time to time. The availability of support provided in any language other than English is provided at Qlik’s sole discretion and is not guaranteed by Qlik, and will depend on the location of Qlik’s technical support personnel providing such support, including whether or not Customer is entitled to contact that particular support line based on the type of Support Services purchased and Customer’s geographic location.

SUPPORT LEVELS
Enterprise Support Coverage for Software.

Scope of Coverage. Customers with Enterprise Support receive support for Error determination, verification and resolution (or instruction as to work-around, as applicable) twenty-four (24) hours a day, seven (7) days a week, 365 days ayeaer for Severity 1 Errors and during Qlik’s Standard Business Hours for Severity 2 and Severity 3 Errors.

Support Case Handling. Qlik will assist Enterprise Support Customers in issue analysis to determine whether or not the technical issue is related to the third-party hardware or software. In order to isolate the issue, Qlik reserves the right to request that the third-party hardware or software be removed. Qlik may in its discretion reach out to third-party vendors based on the established Technical Support Alliance Network (TSANet) to troubleshoot the issue. TSANet is a vendor-neutral global support alliance where companies work together to support mutual customers more effectively. Qlik will only engage TSANet for Customers who are using supported configurations.

Update Information. Customers may contact Qlik Enterprise Support for information regarding Updates performed by Customer, such as installation instructions, release documentation, and general guidance for multiple environments.

Qlik will use commercially reasonable efforts to respond (a) within the initial response time targets set forth in the table below for Severity 1 Errors reported by a Technical Contact to Qlik via telephone or (b) within the Initial Response Times set forth in the table below for Severity 2 and Severity 3 Errors that are reported by a Technical Contact to Qlik via telephone or
the Support Portal. Qlik will respond to Customer’s Technical Contact by telephone or via the Support Portal. Severity 2 & 3 Errors will be initially logged and acknowledged by Qlik during Qlik’s Standard Business Hours in the region where the Error is reported. Provided that Customer provides Technical Contacts in other regions that are available to help troubleshoot issues, all Severity 1 Errors will be addressed and handed over between regions for as long as the Customer provides the available Technical Contacts in such region(s). Qlik shall use commercially reasonable efforts, consistent with industry practice, to investigate such reports to determine whether there is an Error present. If Qlik determines that an Error is present, Qlik will use commercially reasonable efforts to correct the Error and/or provide a workaround, including, without limitation, by providing Customer with an Update. Qlik will communicate with Customer at least with the frequency targets set forth in the table below until the Error is resolved (in accordance with Section 4 below) or a work-around is provided.

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response Time</th>
<th>Communication Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 Error</td>
<td>30 minutes, 24x7</td>
<td>Every 4 hours, 24x7</td>
</tr>
<tr>
<td>Severity 2 Error</td>
<td>1 hour*</td>
<td>72 Hours*</td>
</tr>
<tr>
<td>Severity 3 Error</td>
<td>4 hours*</td>
<td>Weekly*</td>
</tr>
</tbody>
</table>

*During Standard Business Hours

ERROR RESOLUTION AND ESCALATION

An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Customer mutually agree in writing that the issue or problem is resolved; (ii) Qlik has provided Customer with an Update; (iii) a technical work-around solution is provided and is reasonable in Qlik’s discretion; (iv) Customer requests that Qlik close the support case; or (v) the support case has been left open by the Customer for ten (10) consecutive business days, during which period Qlik has not received a response from any of Customer’s Technical Contacts.

Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem caused by stand-alone third party software products used in conjunction with the Qlik Product, the Internet or other communications, Customer network or browser matters, or login issues; (ii) any Error or problem that is reported by Customer via any Qlik support telephone number or email address associated with any geographic territory other than the one to which Customer has been assigned on the Support Portal; or (vi) any Errors or problems with the Software that result from: (a) the use of the Software with software or hardware not designed for use with the operating systems approved by Qlik in the Documentation; (b) the use of the Software with hardware that does not satisfy the minimum system requirements specified by Qlik in the Documentation; (c) changes, modifications, or alterations to the Software not approved in writing by Qlik or its authorized representatives; (d) use of the Software with third party operating systems, databases, data sources, network software and client applications that are no longer supported by the related product vendors, or (e) use of other than a Supported Version of the Software. If Qlik does correct any of the Errors described in subsections (a)-(e) above, or otherwise provides support for a Qlik Product that is not covered by the terms and conditions contained in this Policy, such Error resolution or support will be provided only following Customer’s written request and written approval of all charges, and Customer will be invoiced for such support at Qlik’s then-
current “time and materials” rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with a Qlik Product.

**UPDATES**

In addition to its obligations under Sections 2 and 3 of this Policy, Qlik will make Updates available to all Customers with a current subscription or Support Agreement, when and if Qlik elects to make them generally commercially available. All Updates provided to any Customer under this Policy will be made available at Qlik’s discretion, in a form of digital medium, or for Software, via the
Qlik Software download site. Each Update will be provided together with the associated Documentation written in English or another language officially supported by Qlik. Unless otherwise agreed in writing by Qlik, Customer shall be responsible for installation of all Updates. Qlik is under no obligation to develop any future functionality, programs, services or enhancements.

CUSTOMER’S OBLIGATIONS

Customer will provide timely information and access to knowledgeable resources as reasonably required to provide support. Qlik’s support obligations shall be excused to the extent Customer fails to cooperate in this regard. The Customer shall: (i) not request, permit or authorize anyone other than Qlik (or a Qlik-authorized partner or provider) to provide any form of support services in respect of the Qlik Products; (ii) cooperate fully with Qlik’s personnel in the diagnosis or investigation of any Error or other issue or problem with the Qlik Products; (iii) be responsible for purchasing, installing and maintaining all hardware and operating systems required to use and support the Software; and (iv) be responsible for maintaining all third party software not explicitly licensed under the Support Agreement.

Customer’s contact with Qlik in connection with Customer’s requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Customer’s and its Authorized Affiliates’ personnel who are authorized to use the Qlik Products per the terms of the Support Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Customer and its Authorized Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Customer is six (6), regardless of the number or types or quantities of licenses purchased for the Software.

Customer shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Customer may change its Technical Contact(s) by notifying Qlik in writing. If Qlik is unable to reproduce a problem or the solution requires modifying Software configuration parameters, Qlik may require Customer to provide remote access in order to continue providing support. Customer shall ensure that a functioning system enabling Qlik to have remote access to Customer’s technical equipment is installed (subject to Customer’s reasonable security measures and policies) and that satisfactory communication between the parties’ computer systems is possible. Customer agrees to be solely responsible for protecting and backing up its equipment, software and data prior to any such access. Qlik accepts no liability in connection with remote access support. A request for a remote connection will come only after other options are explored.

Customer will be responsible for primary support of any Authorized Affiliates in connection with their use of the Qlik Product in accordance with the terms of the Agreement. Customer is solely responsible for: (i) distributing all Updates to its Authorized Affiliates; (ii) passing on to its Authorized Affiliates all support materials as appropriate; and (iii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, in each case of (i), (ii) and (iii) above, as necessary to enable the Authorized Affiliate to continue to use the Qlik Product as authorized under the Support Agreement. Customer’s Authorized Affiliates, as well as its contractors and third party users, may not contact Qlik directly for support of the Software, unless designated as a Technical Contact by the Customer.

Qlik supports the Software in designated operating systems as described in the Documentation and not specific hardware configurations. If Customer is running the Software on a virtual environment, Customer and the virtual environment vendor will be responsible for any interactions or issues that arise at the hardware or operating system layer as a result of the use of a virtual environment. Qlik reserves the right to request Customers to diagnose certain issues in a native designated operating system environment, operating without the virtual environment, as needed to determine whether the virtual environment is a contributing factor to the issue.

Customer is expected to use a non-production environment for development and to conduct sufficient testing before making any updates to production. For certain services provided under this Policy, the transmission of machine logs may be required. For avoidance of doubt, Customer shall not include any business sensitive and/or personal information via such transmissions. Accordingly, Qlik shall not be deemed a Data Processor under EU Data Protection Directive 95/46/EC (as amended) (the “Directive”) in providing support for the Software. However, should Customer send to Qlik any log files or other information containing personal data, Qlik will (i) comply with the Directive and any relevant national enacting legislation in relation to its treatment of that personal data as required under relevant, applicable law; and (ii) in accordance with Qlik’s privacy policies from time to time in effect. Customer shall take reasonable measures to limit the amount and sensitivity of such data provided to Qlik (by anonymization, for example). Qlik’s privacy policies are available to view online at www.qlik.com under “Cookie and Privacy Policy”.
ADDITIONAL TERMS

Support is included in the subscription fee for all subscriptions and provided by Qlik. Customer is required to separately purchase Support on all perpetually licensed Software for a twelve (12) month period beginning on the delivery date of the Software (the “Initial Support Period). In addition, Customer must maintain support across i) all perpetual licenses within the same Product Line and, ii) all licenses, whether perpetual or subscription, within the same deployment. Customer must be current on Support for all previously purchased licenses in the same Product Line in order to purchase additional licenses. In the event the Customer elects not to renew a Support Agreement for its perpetual licenses, the non-renewal must apply to all licenses within the same Product Line. Notwithstanding the foregoing, any Software or subscriptions purchased as a bundle, package, or for special promotion (e.g., enterprise licenses) must be supported together at a uniform level, regardless of whether such Software purchase includes multiple Product Lines.

Unless otherwise agreed in writing, Support Agreements for perpetually licensed Software may be renewed for successive twelve (12) month periods (each, a “Support Period”) by both parties executing an agreement in writing. Support fees for any additional Software purchases will be prorated to achieve a common annual Support Period with existing licenses.

Reinstatement of lapsed or cancelled Support Agreements for perpetually licensed Software will be subject to payment by Customer of (a) the then-current annual Support Fees calculated in accordance with the GSA Pricelist payable for the 12-month period beginning on the date of reinstatement and (b) the aggregate Support Fees that would have been payable for the relevant Software during the period of lapse in the absence of termination or non-renewal, provided that (i) the combined reinstatement fees are paid within twelve (12) months after the date of the lapse. Reinstatement beyond this date will be at Qlik’s sole discretion. Reinstatement fees may be assessed once notice of cancellation or non-renewal is provided, even if a request for reinstatement is provided prior to the expiration of the current Support Period.

Qlik may elect to make certain software publicly available under an open source license and free of charge on various online communities (“Extensions”). This Policy includes Support with regard to any certified Qlik Extensions only. To the extent customer uses non-certified Extensions in connection with the Software, this Policy provides Support for the Software and Software API only.

While Qlik may make available certain open source libraries created by Qlik (each a “Qlik Library” and collectively the “Qlik Libraries”) that may be referenced in the Documentation as being available for use with Qlik
Core, Qlik Libraries are not supported under the Policy. To the extent an Error in Qlik Core arises from or relates to use of the Qlik Libraries, Qlik’s obligation to provide Support for such Error shall only exist during the period in which the applicable library remains a valid Qlik Library for use with Qlik Core (as set forth in the then-current Qlik Core Documentation) and the applicable Qlik Library must not have been changed, modified or altered in any manner by anyone other than Qlik.

Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes (“Freeware”). Support for Freeware, if any, will be provided at Qlik’s discretion and in accordance with the license terms for such Freeware.

**DISCLAIMER**

THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. THE QLIK PRODUCTS ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT. TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL.
These Qlik Cloud Terms of Service ("Terms") are effective when (A) a Customer places an Order with the Qlik entity identified in Table 1 to this Agreement ("Qlik") or (B) an Authorized Reseller places an order on behalf of the Customer (each an "Order Form"), are by and between Qlik and the Customer specified in the Order Form. These Terms govern the Customer's access to and use of all Qlik Cloud products and related Qlik Products and Services as referenced on the applicable Order Form. If the Customer does not agree to these Terms, or if the Terms are not incorporated into the Order Form, the Customer must not use Qlik Cloud.

2. DEFINITIONS

Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

2.1. "Account Data" means specific Customer Data is that exempt from the boundary established in Qlik's FedRAMP System Security Plan and permitted within Qlik corporate services.

2.2. "Agreement" means these Qlik Cloud Terms of Service, and any Order Form(s) between Qlik and Customer for the provision of Qlik Cloud and any applicable Qlik Software or Services used in connection with Qlik Cloud.

2.3. "Authorized Third Party" means any third party authorized by Customer to access and use Qlik Products.

2.4. "Authorized Reseller" means a reseller, distributor or other third party authorized by Qlik to sell Qlik Products or Services.

2.5. "Authorized User" means an employee or Authorized Third Party of Customer, who has been authorized by Customer to use the Qlik Products in accordance with these Terms and has been allocated a license or user credentials.

2.6. "Confidential Information" means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known or becomes known to the receiving Party from a source other than disclosing Party or its representatives without having violated any confidentiality agreement of the disclosing Party; (iii) is independently developed by the receiving Party without the use or benefit of any of the disclosing Party's Confidential Information; or (iv) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

2.7. "Consulting Services" means any consulting services performed by Qlik under these Terms and any applicable Order Form.

2.8. "Content" means information, data and metadata created, collected, processed, maintained, disseminated, disclosed or disposed of by or for the Customer in any medium or form provided by Customer or any Authorized User for use with Qlik Cloud.

2.9. "Customer" means any of the following third parties that is permitted by Qlik to use, license or access Qlik Cloud: (a) the federal government, a federal government department and/or United States federal governmental agency of the United States; (b) a state or local government or a state or local governmental department or agency located in the United States; (c) K-12 & Higher Education utilizing a Government Contracting Vehicle; (d) Healthcare vendors/hospitals (not payers) utilizing a government contracting vehicle; or (e) system integrators, contractors and companies doing work for the Government solely in connection with such work for a Government entity, in each case that has entered into this Agreement by electronically accepting the terms or by accessing or using the Qlik Products; or where an Order Form has been executed, then Customer means the entity identified on the Order Form. For clarity, a Customer may include the Government public safety agencies, tribal, territorial, federally funded research centers (FFRDCs), or lab entities.

2.10. "Delivery Date" means the date on which access to the Qlik Products is initially made available (via download or otherwise) to Customer or to the Authorized Reseller as applicable, which date may be specified in an Order Form.

2.11. "Documentation" means the then-current user documentation for the Qlik Products, including the product metrics available at www.qlik.com/product-terms.

2.12. "Education Services" means any training or education services performed by Qlik under the terms of this Agreement and any applicable Order Form.

2.13. "Export Control Laws" means export control laws and regulations of the U.S., E.U., and other governments, as well as regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the U.S. Department of Commerce, the Council of the E.U. and their counterparts under applicable law ("Export Control Laws"), including all end user, end-use and destination restrictions imposed by such Export Control Laws.
2.14. “External Use” means an Authorized Third Party’s use of any Qlik Products, which are designated for external use in the Documentation, provided such use is solely in connection with Customer’s business relationship with the Authorized Third Party.


2.16. “IP Claim” means a claim brought by a third party alleging that the Qlik Products, as delivered by Qlik and used as authorized under this Agreement, infringes upon any third-party copyright, trademark or a patent.

2.17. “Government” means any agency, department, territory, or instrumentality of the U.S. government or an agency, department, or instrumentality of a state, county, municipal, or local government located in the United States.

2.18. “Order Form” means an order form, statement of work or written document pursuant to which Customer orders Qlik Products or Services to be performed by Qlik and executed by the Parties or by Customer and an Authorized Reseller.

2.19. “Party” or “Parties” means Qlik and Customer, individually and collectively, as the case may be.

2.20. “Platform Data” means the statistical data and performance information, analytics, metadata, or similar information, generated through instrumentation and logging systems, regarding the operation of Qlik Cloud, including Customer’s use of Qlik Cloud.


2.22. “Qlik Cloud” means a subscription-based, hosted solution provided and managed by Qlik under these Terms to which the Customer is being granted access via a website or other designated IP address.

2.23. “Qlik Marks” means Qlik’s trademarks, service marks, trade names, logos, and designs, relating to Qlik Products, whether or not specifically recognized, registered or perfected, including without limitation, those listed on Qlik’s website.

2.24. “Qlik Products” means Software and Qlik Cloud. Qlik Products do not include Services or early release, beta versions or technical previews of product offerings.


2.26. “Services” means Support, Consulting Services or Education Services performed by Qlik under the terms of this Agreement and any applicable Order Form. Services does not include Qlik Cloud.

2.27. “Software” means the generally available release of the Qlik software, in object code form, initially provided or made available to Customer as well as updates thereto that Qlik elects to make available at no additional charge to all of its customers that subscribe to Support for the Software.

2.28. “Subscription” means access to and usage of Qlik Cloud subject to these Terms.

2.29. “Support” means end user support and access to updates for the Qlik Products, which are provided by Qlik as part of a subscription for Qlik Products.

3. CUSTOMER RIGHTS AND RESPONSIBILITIES

3.1. Use of Qlik Cloud. Customer directly, or through a Qlik Partner, may purchase a Subscription to Qlik Cloud. Qlik will provide the Customer and the Customer’s Authorized Users with non-exclusive access to Qlik Cloud, provided any use of Qlik Cloud shall be (i) in accordance with the Documentation and these Terms; and (ii) for the authorized scope and quantities which may be specified in an Order Form. Customer may use Qlik Cloud solely for the Customer’s own internal governmental purposes.

3.2. Use of Qlik Software. Subject to the terms of this Agreement, in the event Customer licenses Qlik Software to support its transition to Qlik Cloud, Qlik grants to Customer a world-wide, non-exclusive, non-transferable and non-sublicensable right for its Authorized Users to access or use Qlik Software for Customer’s internal business operations and for External Use, provided any use of Qlik Software shall be (i) in accordance with the Documentation and these Terms and (ii) for the authorized scope and quantities which may be specified in an Order Form.

3.3. Services. Qlik will support Qlik Cloud and related Qlik Software in accordance with Qlik’s Public Sector Service Level Agreement (available at https://www.qlik.com/us/legal/qlik-cloud-governementonboarding-terms.pdf) for Customer’s subscription period. Qlik may provide Consulting or Education Services to Customer pursuant to this Agreement, any applicable product descriptions (available at www.qlik.com/product-terms.pdf) and any applicable Order Form.

3.4. Restrictions. Customer will not, nor permit nor authorize anyone to: (i) make any Qlik Products available to anyone other than Customer or its Authorized Users; (ii) offer, use, or otherwise exploit the Qlik Products whether or not for a fee, in any managed service provider (MSP) offering; platform as a service (PaaS) offering; service bureau; or other similar product or offering; (iii) input, process or store any classified data in Qlik Cloud; (iv) copy, decompile, disassemble or reverse engineer or otherwise attempt to extract or derive the source code or any methods, algorithms or procedures from the Qlik Products, except as otherwise expressly permitted by applicable law, or modify, adapt, translate or create derivative works based upon the Qlik Products; (v) alter or circumvent any product, key or
license restrictions, or transfer or reassign a named user license or entitlement, in such a manner that enables Customer to exceed purchased quantities, defeat any use restrictions, or allows multiple users to share such entitlement to exceed purchased quantities; (vi) copy or create Internet “links” to Qlik Cloud or “frame” or mirror any of the Qlik Cloud; (vii) permit direct or indirect access to or use of any Qlik Cloud or Content in a way that circumvents any usage limit; (viii) use the Qlik Products if Customer is a competitor of Qlik; or (vii) access or use the Qlik Products in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Qlik Products, or (c) copy any ideas, features, functions or graphics of the Qlik Products.

4.1 Term. Customer's and its Authorized Users' access to the Services shall remain in effect, unless earlier terminated, for the Services subscription term set forth in the Order Form for such subscription ("Term"). The term may be renewed for additional successive one (1) year terms by executing an order in writing. If a Subscription cannot be automatically renewed due to applicable law or government appropriations processes, then Subscriptions shall automatically terminate at the end of the then-current Term, unless Qlik receives written notice of renewal no later than forty-five (45) days prior to the end of the then-current Term.

4.2 Termination for Breach. The Customer may terminate this Agreement (without resort to court or other legal action) if Qlik fails to cure a material breach within thirty (30) days in accordance with FAR 52.212-4(m) or other similar law or regulation if applicable to the relevant Order Form.

4.3 Termination for Cause. Subject to 41 U.S.C. § 71 (Contract Disputes), FAR 52.233-1(Disputes), applicable local law or regulation, and unless a remedy is otherwise ordered by a United States Federal Court, Qlik may terminate the Agreement if it is determined that the Customer failed to comply with these Terms. Customer may terminate the Agreement effective immediately upon written notice to Qlik if Qlik fails to cure a breach of the Agreement within 30 days of notice of the breach, or (B) commits an incurable material breach of these Terms, or (C) terminates or suspends its business.

4.4 Qlik may terminate Customer's or any individual Authorized User's access to all or any part of Qlik Cloud at any time if required by applicable law, effective immediately, which may result in the forfeiture and destruction of all information within Customer's subdomain. If the Qlik Products are purchased through an Authorized Reseller.

4.5 Termination for Convenience. Customer may terminate the Agreement for its sole convenience in accordance with FAR 52.212-4(l) or similar law or regulation if the clause is applicable to the relevant Order Form.
5.2 Warranties; Disclaimer; Limitation of Liability

5.1 Warranty. Qlik warrants that Qlik Cloud will perform substantially in accordance with the applicable Documentation when used as authorized under this Agreement. This warranty will not apply (i) unless Customer notifies Qlik of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears, or (ii) the event giving rise to the warranty claim was caused by misuse, unauthorized modifications, or third-party hardware, software or services. Customer’s exclusive remedy and Qlik’s sole liability with regard to any breach of this warranty will be, at Qlik’s option and expense, to either: (i) repair or replace the non-conforming portion of Qlik Cloud or (ii) terminate the affected portion of Qlik Cloud and refund Customer, on a pro rata basis, any unused, prepaid fees as of the termination effective date, but in no event less than one thousand U.S. dollars (USD $1,000).

5.2 Consulting and Education Warranty. Qlik warrants that Consulting Services and Education Services will be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Customer must notify Qlik of the warranty claim within thirty (30) days of Customer’s receipt of the applicable Consulting Services or Education Services. Customer’s exclusive remedy and Qlik’s sole liability with regard to any breach of this warranty will be, at Qlik’s option and expense, to either: (i) re-perform the nonconforming Consulting Services or Education Services; or (ii) refund to Customer the fees paid for the non-conforming Consulting Services or Education Services. Customer shall provide reasonable assistance to Qlik in support of its efforts to furnish a remedy for any breach of this warranty.

5.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE QLIK PRODUCTS AND SERVICES ARE PROVIDED “AS IS,” “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. QLIK AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS, SERVICE PROVIDERS AND LICENSORS DO NOT WARRANT THAT: (i) THE QLIK PRODUCTS WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (ii) THE QLIK PRODUCTS WILL BE FREE OF DEFECTS OR ERRORS; (iii) THE QLIK PRODUCTS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (iv) THAT THE QLIK PRODUCTS WILL NOT HARM COMPUTER SYSTEMS; OR (V) THE RESULTS OF THE USE OF THE QLIK PRODUCTS WILL MEET CUSTOMER’S REQUIREMENTS.

5.4 Limitation of Liability. Except for: (i) Qlik’s indemnification obligations hereunder; (ii) Customer’s breach of Section 3.3 (Restrictions), or Section 3.8(c) (Export Control); or (iii) Customer’s violation of Qlik’s intellectual property rights, each Party’s maximum cumulative liability for any claims, losses, costs (including attorney’s fees) and other damages arising under or related to this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, will be limited to actual damages incurred, which will in no event exceed the greater of (a) one thousand dollars (USD $1,000); or (b) the aggregate amount of subscription fees paid by Customer for the Qlik Cloud under the applicable order.

5.5 Exclusion of Damages. EXCEPT FOR EITHER PARTY’S BREACH OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES, INCLUDING FOR ANY LOST PROFITS, DATA OR CONTENT LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF THE PARTY HAD BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

5.6 The limitations, exclusions and disclaimers contained in this Agreement are independent of any agreed remedy specified in this Agreement and will apply to the fullest extent permitted by applicable law, even if any agreed remedy is found to have failed of its essential purpose. TO THE EXTENT THAT QLIK MAY NOT, AS A MATTER OF LAW, DISCLAIM ANY WARRANTY OR LIMIT ITS LIABILITIES, THE SCOPE OR DURATION OF SUCH WARRANTY AND THE EXTENT OF QLIK’S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. IF A WAIVER, RIGHT, OR REMEDY IS EXERCISED PURSUANT TO MANDATORY LAW, IT SHALL BE EXERCISED SOLELY FOR THE PURPOSE PROVIDED AND IN CONFORMANCE WITH THE PROCEDURES AND LIMITATIONS EXPRESSLY PROVIDED FOR BY SUCH LAW.

6. Intellectual Property Rights; Indemnification

6.1 Ownership. Customer retains all right, title and interest in and to all Content. Qlik retains all right, title and interest in and to the Qlik Products, Platform Data, and if applicable, all deliverables resulting from performance of Consulting Services, including all know-how, methodologies, designs and improvements to the Qlik Products, but excluding any Content incorporated into any such deliverable. Qlik hereby grants Customer a non-exclusive license to use any deliverables or work product that are the result of any Consulting Services in connection with Customer’s authorized use of the Qlik Products.
6.2. Retention of Rights. No title or ownership of any proprietary or other rights related to Qlik Products is transferred or sold to Customer or any Authorized User pursuant to this Agreement. All intellectual property rights not explicitly granted to Customer are reserved and Qlik, its affiliates, and their respective suppliers or licensors, where applicable, retain all right, title and interest in and to the Qlik Products, including all intellectual property rights embodied therein, as well as to all Qlik Marks. Customer is not obligated to provide Qlik with any suggestions or feedback about the Qlik Products, but if Customer elects to do so, Qlik may use and modify this feedback for any purpose, including developing and improving the Qlik Products, without any liability, time limitation, restriction, or payment to Customer.

6.3. Indemnification by Qlik. Qlik shall have the right to intervene to defend, indemnify and hold Customer and its directors, officers, employees, agents, and permitted successors and assigns harmless from any damages and costs awarded against Customer and its directors, officers, employees, agents, successors and assigns as a result of an IP Claim. Qlik will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use of, unauthorized access granted to or unauthorized distribution of the Qlik Products; and/or (ii) use of any Content with or in Qlik Cloud. If the Qlik Products become, or, in Qlik's opinion, is likely to become, the subject of an IP Claim, Qlik may, at its option and expense, either: (i) obtain the right for Customer to continue using the affected Qlik Products in accordance with this Agreement; (ii) replace or modify the Qlik Product so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by Qlik, terminate the Agreement (without need for a ruling by a court or arbitrator) and refund Customer any prepaid fees covering the remainder of the term of the terminated subscription. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. THIS SECTION 6.3 STATES QLIK’S SOLE AND ENTIRE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

6.4. Conditions. Qlik’s indemnification obligations hereunder are subject to: (i) prompt notification of a claim in writing to the indemnifying party; (ii) consent to allow Qlik to have control of the defense and any related settlement negotiations; and (iii) provision of information, authority and assistance as necessary for the defense and settlement of the IP Claim.

7. Fees; Payment and Taxes

7.1 Customer shall pay all fees due within thirty (30) days from the receipt date of Qlik’s valid invoice therefor, unless otherwise stated on an Order Form. Fees are not subject to any right of offset or suspension and all payments shall be non-cancelable, and non-creditable. Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). If the Customer fails to pay any Fee when due, then Qlik may charge Customer interest in an amount indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. In the event any use of Qlik Products exceeds purchased quantities (“Overage”), without limiting Qlik’s other rights and remedies at law or in equity, Customer will be invoiced and shall pay for such Overage as specified in an Order Form.

8. Confidentiality

8.1. Each Party will hold in confidence the other Party's Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights to perform its express obligations hereunder. Any Party’s disclosure of the other Party’s Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein. Notwithstanding the foregoing, a Party may disclose the other Party’s Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party’s confidentiality obligations hereunder will continue for a period of three (3) years following any termination of this Agreement, provided, however, that each Party’s obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. Qlik recognizes that Customers may be subject to the Freedom of Information Act 5 U.S.C. 552 or other similar open records law which may require that certain information be released, despite being characterized as “confidential” by the vendor. The Parties acknowledge and agree that the Qlik Products and all pricing information are Confidential Information of Qlik.

9. General

9.1. Entire Agreement; Severability; No Wavier; Headings. This Agreement is the entire agreement between Customer and Qlik with respect to the Qlik Products and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Qlik and Customer with respect to the Qlik Products, including any prior version of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. In addition, this Agreement shall supersede any conflicting or contradictory terms contained in any purchase order, order form, or any other document Customer submits to any of Qlik’s designated vendors in connection with a purchase of a subscription to the Qlik Products, and any such conflicting or contradictory terms will be of no force or effect. Failure to enforce any part of this Agreement shall not constitute a waiver of any right to later enforce that or any other part of this Agreement. The section and paragraph headings in this Agreement are for convenience only and shall not affect their interpretation.

9.2 Governing Law; Jurisdiction. This Agreement is governed by the law of the jurisdiction set out in Table 1 corresponding to the Qlik entity identified therein as the contracting party, but excluding any conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any suit, action or proceeding arising out of or relating to this Agreement will be brought before the courts or arbitration boards set out in Table 1 corresponding to the contracting
9.3 Early Release Products. Qlik may, in its discretion, periodically provide certain Customers with an opportunity to test additional early release features or functionality in connection with Qlik Products. Customer may decline to participate in the testing of such additional features or functionality at any time. Customer acknowledges that such features or functionality are not considered part of the Qlik Products under this Agreement, are not supported, and are provided “as is” with no warranties of any kind and may be subject to additional terms. Qlik reserves the right at any time, in its sole discretion, to discontinue provision of, or to modify, any such features or functionality provided for testing purposes.

9.4 Third-Party Materials. Qlik Products may incorporate or otherwise access certain open source or other third-party software, data, services, or other materials for the hosting and delivery of the Qlik Products, which are identified in the Documentation (the “Third-Party Materials”). Qlik represents that if the Qlik Products are used in accordance with this Agreement, such use shall not violate any license terms for the Third-Party Materials. Qlik makes no other representation, warranty, or other commitment regarding the Third-Party Materials, and hereby disclaims any and all liability relating to Customer’s use thereof.

9.5 Statistical Information. Qlik may collect and use certain Platform Data to enable, optimize, support, and improve performance of the Qlik Products. Platform Data does not include any personally identifiable information or any personal data and is owned by Qlik.

9.6 Connectivity to Third-Party Applications. Use of Qlik Products to connect or interoperate with or access third-party web-based applications or services may be governed by terms and conditions established by such third party. Third-party application programming interfaces and other third-party applications or services (“Third-Party Applications”) are not managed by Qlik, and Qlik shall have no liability for connectivity if any Third-Party Applications are changed or discontinued by the respective third parties. Qlik does not support, license, control, endorse or otherwise make any representations or warranties regarding any Third-Party Applications.

9.7 Force Majeure. FAR 52.212-4(f) governs all excusable delays defined as an occurrence beyond the reasonable control of the Qlik and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Qlik will notify the Customer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, as shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Customer of the cessation of such occurrence.

9.8 Recordkeeping, Verification and Audit. While this Agreement is in effect and for one (1) year after the effective date of its termination, upon request by Qlik but not more than once per calendar year, Customer shall conduct a self-audit of its use of the Qlik Products and, within ten (10) business days after receipt of such request, submit a written statement to Qlik verifying that it is in compliance with the terms and conditions of this Agreement. Qlik shall have the right, on its own or through its designated agent or third-party accounting firm, to conduct an audit of Customer’s use and deployment of the Qlik Products and monitor use of Qlik Cloud, in order to verify compliance with this Agreement. Qlik’s written request for audit will be submitted to Customer at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Customer’s business. If such audit discloses that Customer is not in material compliance with the terms of this Agreement, then Customer shall be responsible for the reasonable costs of the audit, in addition to any other fees or damages to which Qlik may be entitled under this Agreement and applicable law.

9.9 Commercial Terms. Qlik Cloud is a commercial item and commercial off the shelf products as defined in FAR Part 202-1. These Terms reflect (a) standard commercial practices for the acquisition of Qlik Cloud and (b) terms and conditions that Qlik customarily provides to its other customers. These Terms apply to the Customer’s use of Qlik Cloud as consistent with applicable law and regulation. If the Agreement conflicts with applicable law and regulation (such as FAR Part 12.212(a)), those terms are deleted and unenforceable as applied to any Order Forms. Qlik developed Qlik Cloud solely at private expense. All other use is prohibited.

9.10 Assignment; Relationship between the Parties. Unless law or regulation prohibit restrictions on transfer, Customer may only assign these Terms, any Order Form, or any right or obligation under the Agreement, or delegate any performance, with Qlik’s prior written consent, which will not be unreasonably withheld. Qlik may assign its right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. § 3727) and FAR 52.212-4(b), and may assign the Agreement if the Anti-Assignment Act (41 U.S.C. § 15) does not prohibit the transfer. Subject to FAR 42.12 (Novation and Change-of-Name Agreements), Customer must recognize Qlik’s successor in interest following a transfer of all or substantially all of Qlik’s assets or a change in Qlik’s name. Any assignment contrary to this Section will be void. The Agreement will be binding upon and benefit the parties and their respective successors and assigns. No agency, partnership, joint venture, fiduciary, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.

9.11 Notices. All notices concerning a default, breach or violation of this Agreement by Qlik must be in writing and delivered to Qlik: (a) by certified or registered mail; or (b) by an internationally recognized express courier, and shall be addressed to: Qlik at 211 S. Gulph Rd., Suite 500, King of Prussia, PA 19406 USA, Attention: Legal Department. All other notices to Qlik, including account related communications, will be electronically sent to Qlik at CustomerNotices@qlik.com. Unless otherwise specified in writing by the Customer, all notices to Customer shall be sent to the address provided by Customer in the Order Form.

9.12 Evaluation Subscriptions. (a) Qlik may make a free evaluation subscription of Qlik Products (“Free Evaluation Subscription.”) If Customer uses a Free Evaluation Subscription, Qlik will make such Free Evaluation Subscription available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for such Free Evaluation Subscription, (b) the start date of Qlik Product
subscription purchased by Customer for such or (c) termination of the Free Evaluation Subscription by Qlik in its sole discretion. Notwithstanding anything to the contrary in this Agreement, a Free Evaluation Subscription is provided “AS IS.” QLIK MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO AN EVALUATION SUBSCRIPTION. QLIK SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO AN EVALUATION SUBSCRIPTION, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE QLIK’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO AN EVALUATION SUBSCRIPTION IS US$1,000. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 5.4 (“LIMITATION OF LIABILITY”), CUSTOMER SHALL NOT USE THE AN EVALUATION SUBSCRIPTION IN A MANNER THAT VIOLATES APPLICABLE LAWS AND WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF AN EVALUATION SUBSCRIPTION. ANY DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER’S EVALUATION SUBSCRIPTION ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF AN EVALUATION SUBSCRIPTION. (b) For Government Users: Qlik may provide a free Evaluation Subscription to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data.” If Customer or any Authorized User is using the Evaluation Subscription on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, Customer and Customer’s Authorized Users must immediately discontinue use of the evaluation. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
<table>
<thead>
<tr>
<th>Customer Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States, Puerto Rico, Jamaica, Virgin Islands (US) or Haiti</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Qlik Contracting Entity</th>
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<tbody>
<tr>
<td>QlikTech Inc.</td>
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<table>
<thead>
<tr>
<th>Governing Law</th>
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<tbody>
<tr>
<td>(i) Federal laws of the United States govern the Agreement without reference to conflict of laws. In the absence of federal laws and/or to the extent federal law permits, the Governing Law shall be the laws of the Commonwealth of Pennsylvania, USA excluding the conflict of law principles, and</td>
</tr>
<tr>
<td>(ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the State and Federal Courts of Montgomery County in the Commonwealth of Pennsylvania.</td>
</tr>
</tbody>
</table>
This Hosted Services Acceptable Use Policy (“AUP”) defines acceptable practices and prohibited uses relating to Qlik’s network and systems that are used for hosting Qlik products and services or providing SaaS services (collectively, the “Services”) by users (“You” or “Your”). The Services must be used in a manner consistent with the intended purpose of the Services, the terms of Your applicable agreement with Qlik for the products and/or services being hosted and this AUP. By using the Services, you agree to the latest version of this AUP. For purposes of this AUP, “Qlik” includes QlikTech International AB and its affiliates, and Qlik may be referred to as “We” or “Our.”

Security

- You agree to maintain appropriate security, protection and backup copies of any content that is included, transmitted, stored, published, displayed, distributed, integrated, or linked by You in the Services (collectively, “Content”). We will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or backup any Content.
- You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a “System”). Prohibited activities include:
  - Unauthorized Access. Bypassing, circumventing, or attempting to bypass or circumvent any measures Qlik may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services), including any attempt to probe, scan, or test the vulnerability of the Services or to breach any security or authentication measures used by the Services.
  - Reverse Engineering. Deciphering, decompiling, disassembling, reverse engineering or otherwise attempting to derive any source code or underlying ideas or algorithms of any part of the Services, except to the limited extent applicable laws specifically prohibit such restriction. Falsification of Origin or Identity. Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route, or attempting to impersonate any of Our employees or representatives. Using manual or automated software, robotic process automation, devices, or other processes to harvest or scrape any content from the Services. Denial of Service (DoS)/Intentional Interference. Flooding a System with communications requests so the System either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective, or interfering with the proper functioning of any System, including by deliberate attempts to overload the System.

No Illegal, Harmful, or Offensive Use or Content

You may not use, or encourage, promote, facilitate or instruct others to use, the Services for any illegal (under applicable law), fraudulent, infringing or offensive use, or to transmit, store, display, distribute, post or otherwise make available content that is illegal (under applicable law), harmful, fraudulent, infringing or offensive. Prohibited activities or content include:

- Illegal, Harmful or Fraudulent Activities. Any activities that are illegal, that violate the rights of others, that may be harmful to others, or that may be harmful to Qlik’s operations or reputation.
- Infringing Content. Content that infringes or misappropriates the intellectual property or proprietary rights of others or that violates any law or contractual duty.
- Offensive Content. Content that is illegal, harassing, libelous, fraudulent, defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable.
  - Harmful Content. Content or other computer technology that may damage, interfere with, surreptitiously intercept or disrupt the Service, including viruses, Trojan horses, spyware, worms, time bombs, or cancelbots.
  - Unsolicited Content. Content that constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (“spamming”) or contains software viruses or any other computer codes, files or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password, or other information of ours or any third party.
- Competitive Content. Attempting to collect and/or publish performance data for the purposes of benchmarking, or developing a product that is competitive with any Qlik product or services.

Our Monitoring and Enforcement

We reserve the right, but do not assume the obligation, to monitor for, and investigate, any violation of this AUP or other misuse of the Services. Failure to comply with this AUP constitutes a material breach of the terms and conditions upon which You are permitted to use the Services, and at any time may result in Qlik taking any and all remedial actions in its sole discretion, up to and including:

- Warnings;
- Suspending or terminating access to the Services;
- Removing, disabling or prohibiting access to content that violates this AUP and/or Your applicable agreement with Qlik; and/or  
- Legal proceedings against You
We may report any activity that We suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this AUP.

Qlik takes no responsibility for any material created or accessible on or through the Services and will not exercise any editorial control over such material. Qlik is not obligated to monitor such material, but reserves the right to do so, as well as remove any content that We, in our sole discretion, determine to be in violation of this AUP.

**Reporting of Violations of this Policy**

If you become aware of any violation of this AUP, you will immediately notify us and provide us with assistance, as requested, to stop or remedy the violation.

Violation of this AUP may be reported to security@qlik.com

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**Exhibit 2**

**Rules of Behavior**

**QLIK CLOUD GOVERNMENT RULES OF BEHAVIOR FOR EXTERNAL USERS**

These Rules of Behavior for External Users (“Rules”) defines the responsibilities and expected behavior by users (“You” or “Your”) of QlikTech Inc.’s (“Qlik”) network and systems that are used for hosting Qlik Cloud Government SaaS Services (“QCG”). QCG must be used in a manner consistent with the intended purpose of QCG, the terms of Your applicable agreement with Qlik for QCG and these Rules. By using QCG, you agree to the latest version of these Rules.

1. You must report all security incidents or suspected incidents to the Qlik Customer Support Team (government.support@qlikcloudgov.com). Reports of any anomaly / possible security incidents are immediately analyzed and mitigated by the Information Security team.
2. As a Qlik customer, You are in sole control of the individual permissions on Your accounts and surveys, which enables integrity of the systems that You access.
3. You must meet Your agency’s password policy.
4. You must not store passwords or other sensitive information on desks or in plain sight. Passwords may not be shared, and must be protected at all times.
5. You must never share account information details with anyone from Qlik except members of the Qlik Customer Support Team (government.support@qlikcloudgov.com) if you require their assistance. You should only share the information after ensuring that the parties have the proper clearance, authorization, and need-to-know.
6. You must never leave your computer unattended while logged into QCG.
7. You own all right, title and interest in all data you enter into QCG, including uploaded content such as completed forms and documents. All reports and downloads that are derived from the data are also owned by you. All data specified is deemed as Confidential information and will not be utilized by Qlik for any purpose.
8. You are solely responsible for all data, and are liable for Your data and the manner in which You collect or distribute your data to third parties.
9. You must not resell QCG or permit third parties to use QCG without prior written consent.
10. You must not make unauthorized copies of any content within QCG except your own data.
11. You must not upload data that contains nudity, pornography, profanity, or foul language or links to such content.
12. You must not upload or store malicious software or data that endorses, promotes, contains or links to warez, cracks, hacks, their associated utilities, or other piracy related information, whether for educational purposes or not.
13. You must not upload data that infringes any copyrights, patents, trademarks or other Intellectual property.
14. You must not upload binary files or executable files.
15. You must use browsers using TLS 1.2, which use AES 128/256-bit encryption.
16. You must not reverse-engineer or tamper with the security of QCG.
17. You must not perform vulnerability tests, network scans, penetration tests or other investigative techniques on QCG services.
18. You must report a suspected security breach event to government.support@qlikcloudgov.com. In such a case, Qlik will provide reasonable assistance to mitigate further exposure and attempt to determine the root cause.

19. You agree to contact the Qlik Customer Support Team (government.support@qlikcloudgov.com) if you do not understand any of these Rules.

20. You acknowledge and accept that any violation of these Rules may subject You to civil and/or criminal actions and that Qlik retains the right, to terminate, cancel or suspend Your access rights to QCG in accordance with the Contract Disputes Act, in the event of Your violation of these Rules.

Exhibit 3
Qlik Public Sector Service Level Agreement

This Qlik Cloud Government Service Level Agreement ("Policy") describes the current practices of Qlik with regard to its provision of Support Services as defined below to customers with a Qlik Cloud Government subscription ("Customer(s)").

1. Definitions

"Affiliate" means any entity which controls, is controlled by, or is under common control with Customer where “control” means the legal, beneficial or equitable ownership of at least a majority of the aggregate of all voting equity interests of such entity, but only for so long as such control exists.

"Agreement" means the written agreement between Qlik and Customer for Qlik Cloud Government.

"Authorized Affiliate" means any Affiliate of Customer that is designated by Customer as authorized to use a Qlik Cloud Government subscription if permitted under the terms of an Agreement.

"Documentation" means the then-current user documentation for Qlik Cloud Government, including any product metrics available at www.qlik.com/product-terms, as may be modified by Qlik from time to time.

"Error" means any verifiable and reproducible failure of Qlik Cloud Government to materially conform to the Documentation.

"Initial Response Time" means the period commencing when an Error is first reported by Customer's Technical Contact(s) in the manner required by this Policy and ending when a member of the Qlik technical support team logs the report and responds to the Technical Contact(s) in accordance with this Policy.

"Qlik Cloud Government" refers to any paid SaaS offering deployed on Qlik's Government Cloud.

"Self-Service Tools" means the Knowledge Base (Qlik's online database of content and FAQs), white papers, Community Forums, webcasts and other materials available in the Support Portal to Customers.

"Severity 1 Error" means that Qlik Cloud Government is down or not available due to (i) a server-side failure, but not as a result of scheduled maintenance and/or upgrades, or (ii) any event beyond the reasonable control of Qlik, including but not limited to any interruption of power, third party hosting companies, telecommunications and/or Internet connectivity, and any failure of Customer's internal telecommunications equipment, browser or network configurations, hardware and/or third party software).

"Severity 2 Error" means that major functionality is materially impacted and not working in accordance with the technical specifications in the Documentation or significant performance degradation is experienced so that critical business operations cannot be performed.

"Severity 3 Error" means any Error that is not a Severity 1 Error or Severity 2 Error.

"Standard Business Hours" mean from 08:00 to 17:00 ET (8:00 am to 5:00 pm), Monday to Friday (excluding national and bank holidays).


"Support Services" means the technical end user support for Qlik Cloud Government as described in this Policy. Support Services do not include services performed onsite at any Customer facility, consulting or education services or any services not expressly stated in this Policy.

"Technical Contact(s)" means Customer's personnel that have been identified in writing by Customer as the technical contact(s) for Customer and authorized to contact Qlik for support.

"Update" means a subsequent release of Qlik Cloud Government which Qlik generally makes available at no additional fee.

2. Overview

2.1 Qlik will provide Customer with Support Services for Qlik Cloud Government in accordance with this Policy, subject to Customer’s timely payment of the applicable subscription fees. Support Services provided by Qlik hereunder will be provided in the English language

2.2 Unless otherwise expressly set forth herein, all references in this Policy to response times or communications from Qlik shall only apply during Qlik’s Standard Business Hours, regardless of when a support matter is reported to Qlik.

3. Support Levels

3.1 Enterprise Support Coverage for Qlik Cloud Government

3.1.1. Qlik will use commercially reasonable efforts to respond within the applicable initial response time targets set forth in the tables below for Severity 1, 2 and 3 Errors in Qlik Cloud Government reported by a Technical Contact to Qlik via email at government.support@qlikcloudgov.com. Qlik will respond to Customer’s Technical Contact by telephone or email. All Errors will be initially logged and acknowledged by Qlik during Qlik’s Standard Business Hours.
### Support Coverage for Qlik Cloud Government

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Initial Response Time</th>
<th>Communication Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1 Error</td>
<td>30 minutes*</td>
<td>Every 4 hours*</td>
</tr>
<tr>
<td>Severity 2 Error</td>
<td>1 hour*</td>
<td>48 Hours*</td>
</tr>
<tr>
<td>Severity 3 Error</td>
<td>4 hours*</td>
<td>Weekly*</td>
</tr>
</tbody>
</table>

*During Standard Business Hours

3.1.2 Qlik will report known outages of Qlik Cloud Government on Qlik’s status page, currently located at status.qlikcloud.com ("Status Page"). If a suspected outage is not listed on the Status Page, Customer may contact Qlik to report the suspected outage via email to government.support@qlikcloudgov.com. Qlik will respond to such report via email, by posting an update on the Status Page or by telephone. Scheduled maintenance times for Qlik Cloud Government will be posted on the Support Portal. Qlik endeavors to provide at least forty-eight (48) hours prior posting of any scheduled maintenance for the Qlik Cloud Government.

3.2 Updates. Updates for Qlik Cloud Government automatically replace the previous version of the Qlik Cloud Government. Updates do not include new or separate
products which Qlik offers only for an additional fee to its customers generally.

4. Error Resolution and Escalation

4.1 An Error is considered to be resolved upon the earlier to occur of the following: (i) Qlik and Customer mutually agree in writing that the issue or problem is resolved; (ii) Qlik has provided an Update; (iii) a technical work-around solution is provided and is reasonable in Qlik’s discretion; (iv) Customer requests that Qlik close the support case; or (v) the support case has been left open by the Customer for ten (10) consecutive business days, during which period Qlik has not received a response from any of Customer’s Technical Contacts.

4.2 Exclusions. Notwithstanding anything in this Policy to the contrary, Qlik will have no obligation to provide any Support Services in connection with: (i) any issue or problem that Qlik determines is not due to any Error or deficiency in Qlik Cloud Government (including without limitation, issues or problems caused by stand-alone third party software products used in conjunction with Qlik Cloud Government, the Internet or other communications, Customer network or browser matters, or login issues); (ii) use of Qlik Cloud Government other than in accordance with the Documentation and the Agreement; (iii) use of Qlik Cloud Government provided on a trial or evaluation basis or for which Customer has not paid any fees; (iv) any Errors or problems with the Qlik Cloud Government that are not reproducible; (v) any Error or problem that is not reported by Customer via email to government.support@qlikcloudgov.com; or (vi) any Error or problem that would require Qlik to have access to Customer’s Qlik Cloud Government tenant in order to provide Support Services. If Qlik does correct any of the Errors described in subsections (i)-(v) above, or otherwise provides support for Qlik Cloud Government that is not covered by the terms and conditions contained in this Policy, such Error resolution or support will be provided only following Customer’s written request and approval of all charges, and Customer will be invoiced for such support at Qlik’s then-current “time and materials” rates for such services. Without limiting any of the foregoing, Qlik has no obligation to provide support for any third party software, data, or other materials distributed or bundled with Qlik Cloud Government.

5. Customer’s Obligations

5.1 Customer will provide timely information and access to knowledgeable resources as reasonably required to provide Support Services. Qlik’s support obligations shall be excused to the extent Customer fails to cooperate in this regard.

5.2 The Customer shall: (i) not request, permit or authorize anyone other than Qlik (or a Qlik-authorized partner or provider) to provide any form of support services in respect of Qlik Cloud Government; (ii) cooperate fully with Qlik’s personnel in the diagnosis or investigation of any Error or other issue or problem with Qlik Cloud Government; (iii) be responsible for maintaining all third party software not explicitly licensed under the Agreement; and (iv) be fully responsible for the actions of any third party (including any Qlik-authorized partner or provider) that it allows to access any information relating to Support Services.

5.3 Customer’s contact with Qlik in connection with Customer’s requests for support and reports of Errors shall be solely through its Technical Contact(s). The Technical Contact(s) shall: (i) serve as the internal contact(s) for Customer’s and its Authorized Affiliates’ personnel who are authorized to use Qlik Cloud Government per the terms of the Agreement; (ii) be responsible for initiating all requests by, and maintaining all records of, the Customer and its Authorized Affiliates relating to Support Services; (iii) serve as the contact(s) with Qlik on all matters relating to Support Services; and (iv) be responsible for providing information and support, as requested by Qlik, to assist in the reproduction, diagnosis, analysis, and resolution of Errors. The maximum number of Technical Contacts for each Customer is six (6), regardless of the number or types or quantities of subscriptions purchased by the Customer. Customer shall ensure that its Technical Contacts comply with any reasonable training requirements for the Technical Contact(s) upon notification by Qlik. Subject to the previous sentence, Customer may change its Technical Contact(s) by notifying Qlik in writing.

5.4 Customer will be responsible for primary support of any Authorized Affiliates in connection with their use of Qlik Cloud Government in accordance with the terms of the Agreement. Customer is solely responsible for: (i) passing on to its Authorized Affiliates all support materials as appropriate; and (ii) providing software support, including operational instruction, problem reporting and technical advice to its Authorized Affiliates, as necessary to enable the Authorized Affiliate to continue to use Qlik Cloud Government as authorized under the Agreement. Customer’s Authorized Affiliates, as well as its contractors and third party users, may not contact Qlik directly for support, unless designated as a Technical Contact by the Customer.

5.5 For certain services provided under this Policy, the transmission of machine logs and/or sharing of data via screen share may be required. For avoidance of doubt, Customer shall not include any business sensitive and/or personal information via transmissions relating to Support Services. Customer shall take reasonable measures to anonymize such data before providing the data to Qlik. However, should Qlik agree to accept any log files or other information containing personal data, Qlik will comply with Qlik’s privacy policies, available to view online at www.qlik.com.

6. Additional Terms

6.1 Open Source. Qlik may make certain open source libraries available for use with Qlik Cloud Government as described in the Documentation (“Qlik Libraries”).
Qlik Libraries identified at https://qlik.dev/support are eligible for support, provided that Qlik shall only be obligated to support: (i) the most current release, (ii) Qlik Libraries which have not been changed, modified or altered in any manner except by Qlik, and (iii) Qlik Libraries used in accordance with the Documentation. Any other open source software leveraging and extending Qlik Cloud Government (an “Extension”) and released by Qlik on various online communities is supported solely by the open source community. Extensions, which are developed by Qlik’s partners, including certified Extensions, are also not eligible for support under this Policy.

6.2 Qlik may elect to make certain software available free of charge for trial, evaluation or other purposes (“Freeware”). Support for Freeware, if any, will be provided at Qlik’s discretion and in accordance with the license terms for such Freeware.

6.3 Support for QSE Client Managed for QSE SaaS – Government (US). If Customer has licensed QSE Client Managed for QSE SaaS – Government (US) Licenses in connection with its use of Qlik Cloud Government, the provisions of Sections 2 through 5, inclusive, of this Policy shall apply to such product.

7. Changes to Policy
Subject to the terms of the Agreement, Qlik reserves the right, at its discretion, to change the non-material terms of this Policy at any time based on prevailing market practices and the evolution of Qlik’s products and services.

8. Disclaimer
THIS POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A WARRANTY. QLIK CLOUD GOVERNMENT IS SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE APPLICABLE AGREEMENT. THIS POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT. TO THE EXTENT THERE IS A CONFLICT BETWEEN A TRANSLATED VERSION OF THIS POLICY AND THIS ENGLISH VERSION, THE ENGLISH LANGUAGE VERSION WILL PREVAIL.
QLIK® DATA PROCESSING ADDENDUM

This Data Processing Addendum including its Schedules 1, 2 and 3 ("DPA"), once executed and received by Qlik according to the instructions below, forms part of the Agreement between Qlik and the Customer (each defined below).

The Qlik party to this DPA is the Qlik entity that is the Qlik party to the Agreement. Only the Customer entity that is the party to the Agreement may sign this DPA. If the Customer entity signing this DPA is not a party to the Agreement, this DPA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Agreement executes this DPA. The Customer’s signatory represents and warrants that he or she has the legal authority to bind the Customer to this DPA.

The Parties hereby agree from the Effective Date to be bound by the terms and conditions of this DPA.

<table>
<thead>
<tr>
<th>Accepted and agreed to by Qlik</th>
<th>Accepted and agreed to by the Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of signatory</td>
<td>Customer legal name (include entity type, e.g., Inc., Ltd., etc.)</td>
</tr>
<tr>
<td></td>
<td>Country of customer</td>
</tr>
<tr>
<td>Position</td>
<td>Name of signatory</td>
</tr>
<tr>
<td>Signature</td>
<td>Position</td>
</tr>
<tr>
<td>Date</td>
<td>Signature</td>
</tr>
<tr>
<td></td>
<td>Date</td>
</tr>
</tbody>
</table>
This DPA is an agreement between the Customer and Qlik governing the Processing by Qlik of Customer Personal Data in its performance of the Services. Capitalized terms used in the DPA will have the meanings given to them in Section 1 below.

1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” means either (i) the Qlik Customer Agreement; (ii) the Qlik Cloud Government Terms of Service or (iii) the Qlik OEM Partner Agreement, between Qlik and the Customer under which Qlik provides the applicable Services.

“CCPA” means the California Consumer Privacy Act and its implementing regulations. The terms “Business” and “Service Provider” where used in this DPA addressing compliance under the CCPA will have the meanings given to them under the CCPA.

“Client-Managed Deployment” means a deployment of on-premise Qlik software managed and/or hosted by the Customer or by a Customer’s third party cloud provider.

“Consulting Services” means any consulting services provided to the Customer by Qlik pursuant to the Agreement.

“Customer” means the customer legal entity which is a Party to the Agreement.

“Customer Personal Data” means Personal Data which Qlik Processes on behalf of the Customer in the performance of the Services, including, where applicable, Qlik Cloud Customer Content. It does not include Personal Data for which Qlik is a Controller.

“Data Protection Law” means, as amended from time to time, the Australia Privacy Act, the Brazil General Data Protection Law (LGPD), the Canada Personal Information Protection and Electronic Documents Act, the EU GDPR, the Japan Act on the Protection of Personal Information, the Singapore Personal Data Protection Act, the UK Data Protection Act 2018 and UK General Data Protection Regulation, and the data privacy laws of the United States and its states (including, where applicable, the CCPA), and in each case only to the extent applicable to the performance of either Party’s obligations under this DPA. It does not include any Industry-Specific Data Law.

“Effective Date” means the date on which Qlik receives a validly executed DPA under the instructions above and always subject to the Customer having validly executed an Agreement.

“EEA” means, for the purpose of this DPA, the European Economic Area (including the European Union) and Switzerland.

“EU GDPR” means, in each case to the extent applicable to the Processing activities (i) Regulation (EU) 2016/679; and (ii) Regulation (EU) 2018/679 as amended by any legislation arising out of the withdrawal of the UK from the European Union.

“Industry-Specific Data Law” means any Data Protection Law that is specific to Customer’s industry, including the Health Insurance Portability and Accountability Act and its implementing regulations (“HIPAA”) and the Gramm Leach Bliley Act (“GLBA”), and any industry data standard to which Customer has agreed to comply, including the Payment Card Industry Data Security Standard of the PCI Security Standards Council (“PCI DSS”).

“Party” or “Parties” means Qlik and the Customer, individually and collectively, as the case may be.

“Personal Data” means information relating to an identified or identifiable natural person or as otherwise defined under applicable Data Protection Law.

“Personnel” means a Party’s employees or other workers under their direct control.

“Qlik” means the Qlik Affiliate which is party to the Agreement.

“Qlik Cloud Customer Content” means information, data, media, or other content to the extent it includes Customer Personal Data that is, by or upon the instructions of the Customer, uploaded into and residing in Qlik Cloud which Qlik Processes on behalf of the Customer. “Qlik Cloud” means a subscription-based, hosted solution provided and managed by Qlik under an Agreement.

“Security Breach” means any unauthorized or unlawful destruction, loss, alteration or access to, or disclosure of, Customer Personal Data that is in Qlik’s possession or under Qlik’s control. It does not include events which are either (i) caused by the Customer or Customer Affiliates or their end users or third parties operating under their direction, such as the Customer’s or Customer Affiliate’s failure to (a) control user access; (b) secure or encrypt Customer Personal Data which the Customer transmits to and from Qlik during performance of the Services; and/or (c) implement security configurations to protect Customer Personal Data; or (ii) unsuccessful attempts or activities that do not or are not reasonably likely to compromise the security of Customer Personal Data, including but not limited to unsuccessful login attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

“Services” means, pursuant to an Agreement, (i) Qlik Cloud, (ii) a Qlik Cloud trial, (iii) a Qlik Cloud presales proof-of-concept performed by Qlik, and/or (iv) Support Services and/or Consulting Services requiring Qlik personnel to access or otherwise Process either (a) Qlik Cloud Customer Content while within or originating from Qlik Cloud and/or (b) Customer Personal Data relating to a Client-Managed Deployment, and in each case, only as it relates to Processing by Qlik of Customer Personal Data. Notwithstanding the foregoing, “Services” does not include, and accordingly, this DPA does not cover, (i) Qlik Cloud Customer Content which leaves...
Qlik Cloud, and/or (ii) Customer Personal Data stored in a Client-Managed Deployment, including but not limited to Customer Personal Data stored within self-hosted software.

“Support Services” means end user support provided by Qlik to the Customer under the Agreement involving Processing by Qlik of Customer Personal Data either by way of (i) temporary remote access or screenshare, and/or (ii) receipt by Qlik of Customer files via Qlik’s support portal on the Qlik Community website.

“Termination Date” means the termination or expiration of the relevant Service(s) under the Agreement between the Parties, or, in the case of a Qlik Cloud presales proof-of-concept or trial, the termination or expiration of that presales proof-of-concept or trial.

“Third Country” means a third country not deemed by the EU Commission or UK Information Commissioner, as applicable, to have an equivalent level of privacy protection to those jurisdictions.


‘2021 SCCs’ means the 2021 SCCs Module Two and the 2021 SCCs Module Three, collectively or individually, as applicable, published under EU Commission Decision 2021/914/EU for EU Personal Data transfers outside the EU to Third Countries not deemed by the EU Commission to have an equivalent level of privacy protection. The terms “2021 SCCs Module Two” means the 2021 SCCs, module two (controller to processor), and “2021 SCCs Module Three” means the 2021 SCCs, module three (processor to processor).

“Controller”, “Data Subject”, “Processor”, “Process/Processed/Processing”, “Subprocessor” and “Supervisory Authority” will be interpreted in accordance with Data Protection Law.

2. PROCESSING BY QLIK OF CUSTOMER PERSONAL DATA

2.1 Details of Processing. The table below in this Section 2.1 sets out the Customer Personal Data Qlik may Process when providing the Services:

<table>
<thead>
<tr>
<th>Nature/Activities/Purpose of Processing</th>
<th>Data analysis and storage of Customer Personal Data by the Customer in Qlik Cloud and/or Support or Consulting Services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frequency and Duration of Processing</td>
<td>From time to time during the term of the Services under the Agreement or, in the case of a Qlik Cloud presales proof-of-concept or trial, the term of that proof-of-concept or trial. Duration of Processing and retention period shall be the duration of the Services unless Customer Personal Data is deleted sooner.</td>
</tr>
<tr>
<td>Types of Personal Data Processed</td>
<td>Customer Personal Data uploaded to and residing in Qlik Cloud and/or otherwise Processed by Qlik to provide the Services. Customer Personal Data may include sensitive Personal Data as long as such data is not regulated by an Industry-Specific Data Law.</td>
</tr>
<tr>
<td>Categories of Data Subjects whose Personal Data is Processed</td>
<td>Qlik will not be aware of what Personal Data the Customer may provide for the Services. It is anticipated that the Data Subjects may include employees, customers, prospects, business partners and vendors of the Customer.</td>
</tr>
</tbody>
</table>

2.2 Purpose of Processing Customer Personal Data. The Parties agree that either (a) the Customer is the Controller and Qlik is a Processor, or (b) Customer is the Processor and Qlik is a
Subprocessor, in relation to the Customer Personal Data that Qlik Processes on the Customer’s behalf in the course of providing the Services. For the avoidance of doubt, this DPA does not apply to Personal Data for which Qlik is a Controller. Qlik will Process the Customer Personal Data only to perform the Services for the Customer and for no other purpose. To the extent that the CCPA applies to the Processing of Customer Personal Data in the course of providing the Services, Qlik is a Service Provider and the Customer is a Business. If Qlik is required to Process the Customer Personal Data for any other purpose by applicable laws to which Qlik is subject, Qlik will, unless prohibited by such applicable laws and subject to the terms of this DPA, inform Customer of this requirement first.

2.3 Disclosure of Customer Personal Data. Unless otherwise provided for in this DPA, Qlik will not disclose to any third party any Customer Personal Data, except, in each case, as necessary to maintain or provide the Services, or, notwithstanding Section 5.5 below, as necessary to comply with the law or a valid and binding order of a governmental body (such as a subpoena or court order). If a governmental body sends Qlik such a demand for Customer Personal Data, Qlik will attempt, where possible under relevant law, to redirect the governmental body to request that data directly from the Customer. Qlik does not sell Customer Personal Data. The Customer will not disclose Personal Data to Qlik or request that Qlik Process Customer Personal Data that is subject to any Industry-Specific Data Law without first notifying Qlik and agreeing upon any additional written terms applicable to the Processing of such Industry-Specific Data Law. For clarity, Qlik expressly disclaims any responsibility under this DPA for the Processing of Personal Data under any Industry-Specific Data Law. Qlik has no obligation to assess the Customer Personal Data in order to identify information subject to any Industry-Specific Data Law.

2.4 Customer Personal Data for Support Services. The Parties acknowledge that Qlik does not ordinarily require to Process Customer Personal Data on the Customer’s behalf to resolve a technical issue for Support Services. Accordingly;

2.4.1 the Customer shall use their best efforts to minimize any transfer of Customer Personal Data to Qlik for Support Services. Such efforts shall include but not be limited to removing, anonymizing and/or pseudonymizing Customer Personal Data in files prior to Processing by Qlik; and

2.4.2 Qlik’s total liability in relation to the Processing of Support Services Customer Personal Data, whether in contract, tort or under any other theory of liability, shall be limited to the greater of the price Customer paid or US$20,000.

2.5 Obligations of Qlik Personnel. Qlik will ensure that Qlik Personnel required to access the Customer Personal Data are subject to a binding duty of confidentiality in respect of such Customer Personal Data and take reasonable steps to ensure the reliability and competence of such Qlik Personnel.

2.6 Instructions. Customer authorizes and instructs Qlik to Process Customer Personal Data for the performance of the Services. The Parties agree that this DPA and the Agreement are the Customer’s complete and final documented Processing instructions to Qlik in relation to Customer Personal Data. The Customer shall ensure that its Processing instructions comply with applicable Data Protection Laws and that the Customer Personal Data in accordance with the Customer’s instructions will not cause Qlik to be in breach of any relevant law. The Customer warrants that it has the right and authority under applicable Data Protection Law to disclose, or have disclosed, Customer Personal Data to Qlik to be Processed by Qlik for the Services and that the Customer has obtained all necessary consents and provided all necessary notifications required by Data Protection Law with respect to the Processing of Customer Personal Data by Qlik. The Customer will not disclose Customer Personal Data to Qlik or instruct Qlik to Process Customer Personal Data for any purpose not permitted by applicable law, including Data Protection Law. Qlik will notify the Customer if Qlik becomes aware that, and in Qlik’s reasonable opinion, an instruction for the Processing of Customer Personal Data given by the Customer violates Data Protection Law, it being acknowledged that Qlik is not under any obligation to undertake additional work, screening or legal assessment to determine whether Customer’s instructions are compliant with Data Protection Law.

2.7 Assistance to the Customer. Upon a written request, Qlik will provide reasonable cooperation and assistance necessary to assist the Customer, insofar as required by Data Protection Law and as it relates to Processing by Qlik for the Services, in fulfilling the Customer’s obligations to respond to requests from Data Subjects exercising their rights (notwithstanding the Customer’s obligations in Section 7) and/or to carry out data protection impact assessments. Qlik’s Data Protection Officer and privacy team may be reached at privacy@qlik.com.

2.8 Compliance with Data Protection Laws. Each Party will comply with the Data Protection Laws applicable to it in relation to their performance of this DPA, including, where applicable, the EU GDPR.

3. SECURITY

3.1 Security of Data Processing. Qlik will implement and maintain appropriate technical and organizational measures to protect Customer Personal Data against unauthorized or unlawful Processing and against accidental or unlawful loss, destruction, alteration or damage, and against unauthorized disclosure or access. These measures will be appropriate to the harm, which might result from any unauthorized or unlawful Processing, accidental loss, destruction, damage or theft of the Customer Personal Data and having regard to the nature of the Customer Personal Data which is to be protected. At a minimum, these will include the measures set out in Schedule 2.

3.2 Notification of a Security Breach. Upon becoming aware of a Security Breach, Qlik will notify the Customer without undue delay and take reasonable steps to identify, prevent and mitigate the effects of the Security Breach and to remedy the Security Breach to the extent such remediation is within Qlik’s reasonable control. A notification by Qlik to the Customer of a Security Breach under this DPA is not and will not be construed as an acknowledgement by Qlik of any fault or liability of Qlik with respect to the Security Breach.
3.3 Notification Mechanism. Security Breach notifications, if any, will be delivered to Customer by any means Qlik selects, including via email. It is the Customer’s responsibility to ensure that it provides Qlik with accurate contact information and secure transmission at all times.

4. SUBPROCESSORS

4.1 Authorized Subprocessors. The Customer agrees that Qlik may use its Affiliates and other Subprocessors to fulfil its contractual obligations under this DPA or to provide certain Services on its behalf. The Qlik website lists Subprocessors that are currently engaged by Qlik to carry out Processing activities on Customer Personal Data (currently located at https://community.qlik.com/t5/Qlik-Technical-Bulletin-Blog/Qlik-Subprocessors-General-Data-Protection-Regulation-GDPR/ta-p/1572352). The Customer may subscribe to the list in order to receive Subprocessor updates.

4.2 Subprocessor Obligations. Where Qlik uses a Subprocessor as set forth in this Section 4, Qlik will (i) enter into a written agreement with the Subprocessor and will impose on the Subprocessor contractual obligations not less protective on an aggregate basis than the overall obligations that Qlik has provided under this DPA, including but not limited to, where applicable, incorporating the 2021 and/or 2010 SCCs; and (ii) restrict the Subprocessor’s access to and use of Customer Personal Data only to provide the Services. For the avoidance of doubt, where a Subprocessor fails to fulfil its obligations under any subprocessing agreement or any applicable Data Protection Law with respect to Customer Personal Data, Qlik will remain liable, subject to the terms of this DPA, to the Customer for the fulfilment of Qlik’s obligations under this DPA.

4.3 Appointing a New Subprocessor. At least thirty (30) days before Qlik engages any new Subprocessor to carry out Processing activities on Customer Personal Data, Qlik will provide notice of such update to the Subprocessor list through the applicable website. The 2021 SCCs referred to in Section 5.1 above shall apply with the following particulars:

5. EEA/UK THIRD COUNTRY DATA TRANSFERS

5.1 Transfers of EEA Customer Personal Data. For transfers of EEA Customer Personal Data by the Customer to Qlik, where the Qlik party to this DPA is in a Third Country not deemed under EEA Data Protection Law to provide an equivalent level of privacy protection;

5.1.1 where the Customer is the Controller and Qlik a Processor of such EEA Customer Personal Data, such transfer(s) will be subject to the 2021 SCCs Module Two; and/or

5.1.2 where the Customer is the Processor and Qlik a Subprocessor of such EEA Customer Personal Data (i.e., where the EEA Customer Personal Data contains EEA Personal Data of the Customer’s customers where the Customer is a Processor), such transfer(s) will be subject to the 2021 SCCs Module Three;

in each case, the 2021 SCCs Module Two and 2021 SCCs Module Three are hereby incorporated in this DPA, as applicable, and shall apply as described in Section 5.2 below and subject to the provisions of this DPA.

5.2 Particulars regarding the 2021 SCCs. The 2021 SCCs referred to in Section 5.1 above shall apply with the following particulars:

5.2.1 the Customer will be the data exporter and Qlik will be the data importer;

5.2.2 for Clause 9 (a) (use of Subprocessors), the Parties agree to option 2 (general written authorization) as described in Section 4. A list of Qlik’s Subprocessors, for the purpose of Annex III to the 2021 SCCs, is available at Schedule 3;

5.2.3 the options in Clause 7 (docking) and Clause 11 (a) (redress) are not exercised;

5.2.4 for Clause 17 (governing law), Clause 18 (b) (choice of forum and jurisdiction) and Annex I (c) (Supervisory Authority), the Parties agree that the governing law, relevant Supervisory Authority, and relevant courts for a dispute regarding the 2021 SCCs will be those of the Customer country (or state, if relevant) if the Customer is an EEA entity and, in any event, decided in accordance with the relevant Data Protection Law. In the event of ambiguity, the governing law, Supervisory Authority and relevant courts will be those of Sweden;

5.2.5 the Parties agree that the aggregate liability of Qlik to the Customer under or in connection with this DPA and the 2021 SCCs will be limited as set out in Sections 2.4.2 and 8.3;

5.2.6 the Parties agree that any rights to audit pursuant to Clause 8.9 of the 2021 SCCs will be exercised in accordance with Section 6;

5.2.7 the details of the Processing to be provided in Annex I of the 2021 SCCs are provided in Section 2; and

5.2.8 the Technical and Organizational Measures to be provided in Annex II of the 2021 SCCs are provided in Schedule 2.
The Parties agree that in the event of a conflict between this DPA and the applicable 2021 SCCs (Modules Two or Three) the relevant 2021 SCCs will prevail.

5.3 Transfers of UK Customer Personal Data. For transfers of UK Customer Personal Data by the Customer to Qlik where the Qlik party to this DPA is in a Third Country not deemed under UK Data Protection Law to provide an equivalent level of privacy protection, the Parties agree that the provisions of the 2010 SCCs are hereby incorporated in this DPA in respect of such transfer of UK Customer Personal Data. In particular:

5.3.1 the Customer will be the data exporter, and Qlik the data importer; and

5.3.2 the Parties agree that the Processing details and other particulars required to be described in the 2010 SCCs shall be, where applicable to the 2010 SCCs, those set out above in Section 5.2 save that the governing law, jurisdiction and supervisory authority shall be England & Wales, and the UK Information Commissioner respectively.

5.4 Alternative Lawful Transfer Mechanisms. The Customer acknowledges that Qlik’s obligations under the 2010 SCCs or the 2021 SCCs under this DPA may be replaced by obligations under any successor or alternate EEA/UK Third Country lawful transfer mechanism adopted by Qlik which is recognized by the relevant EEA/UK authorities. In such instances, the Parties shall not be required to re-execute this DPA as they have already agreed to such measures, and such obligations will be deemed automatically included in this DPA. In particular, if the UK adopts as a lawful transfer mechanism the 2021 SCCs (or a UK enacted version thereof) these shall be considered automatically substituted or, as the case may be, supplemented, in this DPA by the Parties in place of the 2010 SCCs in respect of UK Customer Personal Data.

5.5 EEA/UK-US Transfers. In response to the Court of Justice of the European Union’s decision in Schrems II, Case No. C-311/18, and related guidance from Supervisory Authorities, the Parties acknowledge that supplemental measures may be needed with respect to EEA/UK-U.S. data transfers where Customer Personal Data may be subject to government surveillance. The Customer and Qlik agree that Customer’s EEA/UK operations involve ordinary commercial services, and any EEA/UK-U.S. transfers of EEA Customer Personal Data contemplated by this DPA involve ordinary commercial information, such as employee data, which is not the type of data that is of interest to, or generally subject to, surveillance by U.S. intelligence agencies. Accordingly, Qlik agrees that it will not provide access to Customer Personal Data of an EEA/UK Customer transferred under this DPA to any government or intelligence agency, except where its legal counsel has determined it is strictly relevant and necessary to comply with the law or a valid and binding order of a government authority (such as pursuant to a court order). If a law enforcement agency or other government authority provides Qlik with a demand for access to such Customer Personal Data, Qlik will attempt to redirect the law enforcement agency to request the Customer Personal Data directly from the Customer. If compelled by law to provide access to such Customer Personal Data to a law enforcement agency or other government authority, and only after a determination of such is made by legal counsel, then Qlik will, unless Qlik is legally prohibited from doing so: (1) give Customer notice of the demand no later than five (5) days after such demand is received to allow Customer to seek recourse or other appropriate remedy to adequately protect the privacy of EEA/UK Data Subjects, and Qlik shall provide reasonable cooperation in connection with the Customer seeking such recourse; and (2) in any event, provide access only to such Customer Personal Data as is strictly required by the relevant law or binding order (having used reasonable efforts to minimize and limit the scope of any such access). This Section 5.5 does not overwrite Clause 15 (where applicable) of the 2021 SCCs.

5.6 EEA Qlik Cloud Storage Capability. For the avoidance of doubt, although the Customer may select (where available) the region in which its Qlik Cloud Customer Content resides, including the EU, the ability to retain Qlik Cloud Customer Content (including Customer Personal Data) solely in-region is subject to how the Customer’s users of Qlik Cloud share and use applications and other technical particulars.

6. AUDITS

6.1 Audit Requests. Without prejudice to its other obligations in this DPA, Qlik will give to the Customer on written request (where such requests shall occur no more than once every 12 months) reasonable information necessary to determine Qlik’s compliance with this DPA and will discuss in good faith any audits reasonably required by the Customer, conducted by a third party agreed to by the Parties. Such audits, if agreed, must be carried out at the Customer’s cost, be conducted in a manner undistruptive to the business of Qlik and its Affiliates, be conducted subject to the terms of an applicable nondisclosure agreement, and not prejudice other confidential information (including but not limited to Personal Data) of Qlik, its Affiliates or its other customers.

6.2 Subprocessor Audits. If the Customer’s request for information relates to a Subprocessor, or information held by a Subprocessor which Qlik cannot provide to the Customer itself, Qlik will promptly submit a request for additional information in writing to the relevant Subprocessor(s). The Customer acknowledges that information about the Subprocessor’s previous independent audit reports is subject to agreement from the relevant Subprocessor, and that Qlik cannot guarantee access to that Subprocessor’s audit information at any particular time, or at all.

7. ACCESS AND DELETION OF CUSTOMER PERSONAL DATA

7.1 Access and Deletion of Qlik Cloud Customer Content during the Agreement. Qlik will, as necessary to enable the Customer to meet its obligations under Data Protection Law, provide the Customer via availability of Qlik Cloud with the ability to access, retrieve, correct and delete through to the Termination Date its Qlik Cloud Customer Content in Qlik Cloud. The Customer acknowledges that such ability may from time to time be limited due to temporary service outage for maintenance or other updates to Qlik Cloud. To the extent that the Customer, in its fulfilment of its Data Protection Law obligations, is unable to access, retrieve, correct or delete Customer Personal Data in Qlik Cloud due to prolonged unavailability of Qlik Cloud due to an issue within Qlik’s control (for example, exceeding 10 working days), upon written request from the Customer, Qlik will where possible use reasonable efforts to provide, correct or delete such Customer Personal Data. The Customer acknowledges that Qlik may maintain backups of Qlik Cloud Customer Content, which would remain in place for approximately third (30) days following a deletion in Qlik Cloud. The
Customer remains solely responsible for the deletion, correction and accuracy of its Qlik Cloud Customer Content and will be solely responsible for retrieving such Qlik Cloud Customer Content to respond to Data Subject access requests or similar requests relating to Customer Personal Data. If Qlik receives any such Data Subject request, Qlik will use commercially reasonable efforts to redirect the Data Subject to the Customer.

7.2 Access and Deletion of Customer Personal Data on Termination of the Agreement. By the Termination Date, the Customer will have deleted all Qlik Cloud Customer Content Personal Data, unless prohibited by law, or the order of a governmental or regulatory body. Notwithstanding the foregoing, after the Termination Date and upon the Customer’s written request Qlik will provide reasonable assistance to the Customer to securely destroy or return any remaining Customer Personal Data. The Customer acknowledges that Customer Personal Data may be stored by Qlik after the Termination Date in line with Qlik’s data retention rules and back-up procedures until it is eventually deleted. To the extent that any portion of Customer Personal Data remains in the possession of Qlik following the Termination Date, Qlik’s obligations set forth in this DPA shall survive termination of the Agreement with respect to that portion of the Customer Personal Data until it is eventually deleted.

8. MISCELLANEOUS

8.1 Entire Agreement. This DPA and the Agreement, where referenced, contain the entire agreement regarding the subject matter thereof and supersede any other data protection/privacy agreements and communications between the Parties concerning the Processing by Qlik of Customer Personal Data in Qlik’s performance of the Services.

8.2 Effect of this DPA. Except as amended by this DPA, the Agreement will remain in full force and effect. If there is a conflict between any other agreement between the Parties, including the Agreement and this DPA, the terms of this DPA will control. This DPA is effective from the Effective Date and only if and for so long as Qlik provides Services under the Agreement. This DPA will terminate, unless otherwise terminated by the Parties, on the Termination Date.

8.3 Liability. Subject to Section 2.4.2, the total combined liability of either Party towards the other Party, whether in contract, tort or under any other theory of liability, shall be limited to that set forth in the Agreement as well as any disclaimers contained therein. Any reference in such section to the liability of a Party means the aggregate liability of that Party under the Agreement and this DPA.

8.4 Third Party Rights. This DPA shall not confer any rights or remedies to any other person or entity other than the Parties except as to enable the Data Protection Law rights of Data Subjects of Customer Personal Data under this DPA.

8.5 Updates to this DPA. Qlik may modify the non-material terms of this DPA, such as to account for future changes in Data Protection Law to enable the continued Processing of Customer Personal Data to carry out the Services and shall do so by way of updating the DPA terms on www.qlik.com. Any future changes to this DPA published by Qlik on its website will become effective once published and shall supersede any previous DPA between the Parties, insofar and only to the extent that those changes (i) are to account for changes under Data Protection Law, which may include to account for revised guidance from a Supervisory Authority, or (ii) to enable an EEA/UK Third Country lawful transfer mechanism, as contemplated under Section 5.2, or (iii) are not less favorable to the Customer (for example, to permit further data types of Customer Personal Data to be uploaded to Qlik Cloud). The Customer is therefore encouraged to keep up to date with these DPA terms at www.qlik.com.

SCHEDULE 2
TECHNICAL AND ORGANIZATIONAL MEASURES
Qlik shall undertake appropriate technical and organizational measures for the availability and security of Customer Personal Data and to protect it against unauthorized or unlawful Processing and against accidental or unlawful loss, destruction, alteration or damage, and against unauthorized disclosure or access. These measures, listed below, shall take into account the nature, scope, context and purposes of the Processing, available technology as well as the costs of implementing the specific measures and shall ensure a level of security appropriate to the harm that might result from a Security Breach. Some of the measures below apply to Qlik’s general IT infrastructure/practices and may not necessarily apply to Qlik Cloud. While Qlik may alter its measures in line with evolving security practices and risks, and with due regard to the nature of the Processing, Qlik will not materially decrease the overall protections of the Customer Personal Data below the aggregate standard of the measures in this Schedule 2. Customers should stay up to date with Qlik’s security measures by visiting its security resources available at www.qlik.com.

1. **Access Controls to Premises and Facilities.** Qlik maintains technical and organizational measures to control access to premises and facilities, particularly to check authorization, utilizing various physical security controls such as ID cards, keys, alarm systems, surveillance systems, entry/exit logging and door locking to restrict physical access to office facilities.

2. **Access Controls to Systems and Data.** Qlik operates technical and organizational measures for user identification and authentication, such as logs, policies, assigning distinct usernames for each employee and utilizing password complexity requirements for access to on-premises and cloud-based platforms. In addition, user access is established on a role basis and requires user management, system or HR approval, depending on use. Second-layer authentication may be employed where relevant by way of multi-factor authentication. User access for sensitive platforms is subject to periodic review and testing. Qlik’s IT control environment is based upon industry-accepted concepts, such as multiple layers of preventive and detective controls, working in concert to provide for the overall protection of Qlik’s computing environment and data assets. To strengthen access control, a centralized identity and access management solution is used to manage application access. Qlik uses on-boarding and off-boarding processes to regulate access by Qlik Personnel.

3. **Disclosure Controls.** Qlik maintains technical and organizational measures to transport, transmit and communicate or store data on data media (manual or electronic). For certain data transfers, bearing in mind the risk and sensitivity of the data, Qlik may employ encrypted network or similar transfer technologies. Personnel must utilize a dedicated or local VPN network to access internal resources and/or industry-standard authentication and secure communication mechanisms to access cloud-based systems. Logging and reporting are utilized for validation and review purposes. Third party Subprocessors are subject to privacy and security risk assessments and contractual commitments.

4. **Input Controls.** Qlik maintains measures in its general IT systems for checking whether relevant data has been entered, changed or removed (deleted), and by whom, such as by way of application-level data entry and validation capabilities, and reporting is utilized for validation and review purposes. For Qlik Cloud Customer Content, other than as provided for under this DPA, the Customer is solely responsible for entry, alteration and removal (deletion) of any of its Qlik Cloud Customer Content in Qlik Cloud and, to respect the security and integrity of the Customer Personal Data, Qlik does not monitor Qlik Cloud Customer Content for regular entries, alterations or removals (deletion) by the Customer or its users in its use of the Services.

5. **Job Controls.** Qlik uses technical (e.g., access controls) and organizational (e.g., policies) measures to delineate, control and protect data for which the Qlik is the Controller or the Processor. Qlik records and delineates the data types for which it is a Controller or a Processor in its record of processing activities under Article 30 (2) EU GDPR.

6. **Separation Controls.** Qlik uses segregation standards and protocols between production, testing and development environments of sensitive platforms. Additionally, segregation of data is further supported through user access role segregation.

7. **Availability Controls.** Qlik maintains measures to assure data availability such as local and/or cloud-based back-up mechanisms involving scheduled and monitored backup routines, and local disaster recovery procedures. Qlik may supplement these with additional security protections for its business, for example malware protection. Additionally, data centers of a critical nature are required to submit to periodic 3rd party evaluation of operating effectiveness for significant controls ensuring data availability. Relevant systems and data center locations are protected through the use of industry-standard firewall capabilities.

8. **Other Security Controls.** Qlik maintains (i) regular control evaluation and testing by audit (internal and/or external), on an as needed basis, (ii) individual appointment of system administrators, (iii) user access by enterprise IDP, (iv) binding policies and procedures for Qlik’s Personnel, and (v) regular security and privacy training. Policies will clearly inform Personnel of their obligations (including confidentiality and associated statutory obligations) and the associated consequences of any violation.

9. **Certifications.** Qlik has, at the time of the Effective Date, and shall maintain, certifications regarding SOC 2 Type II and ISO 27001 or their equivalents, which may change over time in line with evolving security standards.

10. **Specific Qlik Cloud Services Measures.** Qlik shall in relation to Qlik Cloud (i) implement compliance audits, (ii) maintain applicable third-party certifications which may include audit reporting that can be provided to the Customer; and (iii) implement industry standard measures for data-at-rest, such as encryption. The Customer is responsible for any data minimization before inputting into Qlik Cloud any Customer Personal Data.
## SCHEDULE 3
### SUBPROCESSORS

**Qlik Affiliates:**

<table>
<thead>
<tr>
<th>Qlik Affiliates</th>
<th>Country</th>
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<tbody>
<tr>
<td>QlikTech International AB</td>
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<td>QlikTech Nordic AB</td>
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<td>QlikTech Iberica SL (Spain)</td>
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<td>QlikTech Iberica SL (Portugal liaison office)</td>
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<td>QlikTech GmbH</td>
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<tr>
<td>QlikTech GmbH (Austria branch)</td>
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<td>QlikTech Italy S.r.l.</td>
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<td>Blendr NV</td>
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<td>QlikTech Netherlands BV (Russian branch)</td>
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<tr>
<td>QlikTech International Markets AB (DMCC Branch)</td>
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<td>United States</td>
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<td>QlikTech México S. de R.L. de C.V.</td>
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<tr>
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<td>QlikTech Hong Kong Limited</td>
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<td>Qlik Technology (Beijing) Limited Liability Company</td>
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<td>QlikTech India Private Limited</td>
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<td>QlikTech Australia Pty Ltd</td>
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<tr>
<td>QlikTech New Zealand Limited</td>
<td>New Zealand</td>
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</table>

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Qualtrics, LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific warranty, license and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3701 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)) and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.23 (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72. Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.**Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not
when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, all applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Contractor through Qualtrics will provide the Qualtrics Service to Ordering Activity ("Licensee") as an end user customer. Qualtrics will use, operate, and/or make available applicable software, hardware, network, systems, platforms, and/or other technologies and expertise reasonably required to provide the Qualtrics Service to Licensee. The Qualtrics Service shall be hosted on Qualtrics' servers. Qualtrics may, at its election, outsource the hosting to a trusted third party in the business of hosting Internet services and/or applications.

License of Qualtrics Service

Contractor grants Licensee a non-exclusive, non-transferable worldwide license and lease, during the term of the Delivery Order, to use the Qualtrics Service for Licensee's own internal business purposes.

Access: During the term of the Delivery Order, provided that Licensee has paid all fees due and owed to Contractor and is in compliance with the terms of this Attachment A, Licensee will be able to access the Qualtrics Service by going to the web site specified in Exhibit 1. The Qualtrics Service will prompt Licensee for its login and password information and, if correct, will provide Licensee with access to the Qualtrics Service.

Unauthorized Duplication or Use: Licensee shall use commercially reasonable efforts to prevent its employees and other third parties from making unauthorized copies of any content in the Qualtrics Software or using the Qualtrics Service in violation of this Attachment A. If Licensee discovers any such unauthorized duplication or use, it will promptly notify Contractor through Qualtrics and take commercially reasonable actions to resolve the problem as soon as reasonably possible.

Restrictions: Licensee is not permitted to sublicense the Qualtrics Software to third parties without written permission of Qualtrics except to affiliates and third party vendors solely for providing services for Licensee and not for their own use.

Support and Maintenance

In consideration of the fees paid by Licensee, as part of the Qualtrics Services, Contractor through Qualtrics will provide the following support and maintenance services:

Technical Support: Contractor through Qualtrics shall provide Licensee with telephone-based and web site-based technical support services to assist Licensee in utilizing the Qualtrics Service, including the Software. Licensee may telephone or e-mail Qualtrics' offices for support during Qualtrics' regular business hours, 6:00 p.m. Sunday to 6:00 p.m. Friday U.S. Mountain Time (0100 Monday to 0100 Saturday GMT), except U.S. holidays. Qualtrics will respond to telephone calls or e-mails based on the following criteria: (a) the order that such calls or e-mails are received; and (b) the relative importance of such calls or e-mails as reasonably determined by Qualtrics. Qualtrics shall make reasonable, good faith efforts to respond to technical support requests and to correct errors within a reasonable time. Licensee agrees to cooperate with Qualtrics in providing such documentation and information as Qualtrics may reasonably request, so that Qualtrics can verify and reproduce the reported error. Additionally, Licensee may log on to the support web site to register e-mail requests.

Modifications and Enhancements: Contractor through Qualtrics may also make modifications to the Qualtrics Service to improve and enhance the Qualtrics Service, as it deems appropriate in its sole discretion, by adding additional service options, improving the user interface and otherwise responding to its licensees' feedback and requests. Qualtrics will make all such improvements and enhancements (including, but not limited to, error corrections, bug fixes and performance or functionality improvements) available to Licensee under the terms of this Attachment A at no additional charge. Licensee may also utilize Qualtrics' support web site to make enhancement requests and other special requests.

Account Managers

Each party shall appoint an Account Manager, as set forth on the signature page. The Account Managers shall be responsible for addressing and resolving issues relating to the delivery and use of the Qualtrics Service. Either party may change its Account Manager upon written notice to the other party.

Ownership

Subject to the licenses and rights granted herein, the parties acknowledge that:

As between the parties, Qualtrics owns all right, title and interest in and to the Qualtrics Service, all related software and technology, and all Qualtrics content provided in connection with the Qualtrics Service, including all intellectual property rights in the foregoing. Qualtrics reserves all rights not expressly granted to Licensee in this Attachment A.

Licensee owns all right, title and interest in and to any questions, responses, and other data and information input by Licensee and its survey recipients in the surveys conducted through the Qualtrics Service ("Data") including, but not limited to, any survey created by Licensee, as well as any additional data provided by the Licensee as part of the survey process including personally identifiable information provided by Licensee's survey recipients and respondents. All such Data shall be deemed Confidential Information of Licensee pursuant to the terms of the Schedule Contract and shall not be utilized by Qualtrics for any purpose other than to perform its obligations under this Attachment A or as agreed to in writing by an authorized representative of Licensee.

Term and Termination

Term: The initial term of a Delivery Order is one (1) year from the Effective Date. A Delivery Order may be renewed for additional one (1) year term upon mutual agreement in writing.

Effect of Termination: Upon termination of the Delivery Order for any reason, Contractor through Qualtrics shall discontinue providing the Qualtrics Service to Licensee and Licensee shall cease using the Qualtrics Service. Each party shall promptly return or destroy all Confidential Information of the other party, as applicable, in accordance with the terms of the Confidential Information in section of the Schedule Contract. Within thirty (30) days of the date of termination, Licensee shall pay to Contractor all outstanding undisputed fees due to Contractor as of the
effective date of termination. For thirty (30) days of the date of termination, Licensee shall have reasonable access to retrieve and secure its data contained in the service. In addition, any terms that by their nature extend beyond termination of the Delivery Order shall survive.

Representations and Warranties

By Contractor: Contractor represents and warrants to Licensee that:

it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Contractor is bound;

it will comply with the laws, rules and regulations that apply to Contractor in connection with the conduct of its business and its provision of the Qualtrics Service;

it will not knowingly infringe on any party’s patent, trademark, mask work, copyright, trade secret, or other intellectual property right; and will not violate any rules, or regulations applicable to Qualtrics or the Qualtrics Service; and

it will use commercially reasonable efforts to allow Licensee to access the Qualtrics Service seven (7) days per week, twenty-four (24) hours per day with a goal of ninety-nine percent (99%) reliability to the Qualtrics Service, excluding downtime (i) scheduled in advance for maintenance on a periodic basis, or (ii) due to faults caused by Licensee or Licensee’s system, or (iii) due to other causes outside of the reasonable control of Qualtrics, including without limitation malfunction or cessation of Internet services by any third party network or ISP.

it will use commercially reasonable efforts to ensure that updates and/or new releases will not introduce, any program, routine, subroutine, or data (including malicious software or “malware,” viruses, worms, and Trojan Horses) that are designed to disrupt the proper operation of the Service or any software or system used by Licensee in connection with the Service, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the Service or any system or software used in connection with the Software to be destroyed, damaged, or rendered inoperable.

to the best of Contractor's knowledge, it shall not violate the software as delivered to the Licensee shall not violate any proprietary rights of third parties, including, without limitation, patents, copyrights or trade secrets; and, that the software as delivered to the Licensee will not violate any applicable law, rule, regulation or contractual obligations or confidential relationships which Contractor may have or with any third party, or violate the privacy of any third party from whom Contractor through Qualtrics may obtain any information in connection therewith.

By Licensee: Licensee warrants and represents to Contractor that:

it has the power and authority to enter into a Delivery Order and perform its obligations hereunder, and such performance will not breach any separate agreement by which Licensee is bound;

it will comply with the laws, rules and regulations that apply to Licensee in connection with the conduct of its business and its use of the Qualtrics Service; and

it will not knowingly utilize (or allow utilization of) the Qualtrics Service in any manner prohibited by this Attachment A or written Qualtrics policies provided to Licensee, or reverse engineer or tamper with the security of any Qualtrics computer software.

Limitation of Warranties: EXCEPT AS SET FORTH IN THIS SECTION 7, (i) NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY, AND (ii) ALL PRODUCTS AND SERVICES ARE PROVIDED BY CONTRACTOR ON AN “AS IS” BASIS. CONTRACTOR DOES NOT WARRANT THAT THE QUALTRICS SERVICE OR ITS SOFTWARE WILL BE ERROR-FREE OR THAT ALL NON-CONFORMITIES CAN BE OR WILL BE CORRECTED. CONTRACTOR DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY CONTENT, EXPRESS OR IMPLIED. EXCEPT AS SET FORTH IN THIS SECTION 7, EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, CONDITIONS AND REPRESENTATIONS RELATED TO THE SUBJECT MATTER OF THIS ATTACHMENT A, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND MERCHANTABILITY.

Exhibit 1

QUALTRICS SERVICE: Develop and host the survey website which includes all survey development tools, e-mail delivery capabilities, online analysis tools, online survey libraries, tutorials and help facilities.

SCOPE OF LICENSE: The term of the license for the Qualtrics Software is one year, beginning on the date below and includes features as outlined below.

SUPPORT AND TRAINING: Contractor through Qualtrics will provide online tutorials, phone support and respond to e-mails during normal business hours. Qualtrics will provide a U.S. toll free number that may be used for contacting Qualtrics regarding support issues. As each survey project tends to be uniquely structured the majority of training will occur through telephone and e-mail support. Quarterly training calls may also be scheduled by the Qualtrics Account Manager to discuss and/or demonstrate new features that have been made available by Qualtrics.

BRANDED SURVEY SITE: This license will operate under a branded platform, which will be created by Qualtrics. The cost of this branded platform is included in the bid. Any changes to the site and domain are also included in the bid.

SKINS TO MATCH: The corporate branded solution comes with skins in a library that can be used to change the look and feel of a survey. Licensee will have the ability to request new skins that will fit their branding.
REQUESTS: A “Request” is a server call sent to Contractor through Qualtrics that occurs each time a site intercept code is triggered. Qualtrics will provide information on the number of requests to Licensee each month. In the event Licensee exceeds the number of allotted Monthly Requests by fifty percent (50%), or in the event Licensee exceeds the number of allotted Yearly Requests, Licensee must pay the overage at the current order rate.

DISTRIBUTION OF USERNAMES AND PASSWORDS: Contractor through Qualtrics will give the Licensee account manager an admin login name and password. With this admin login the account manager will be able to view the use of all users and create new usernames and passwords with unique permissions.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Quantum Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby
superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renews.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
QUANTUM MASTER PURCHASE AGREEMENT

This Master Purchase Agreement (“Master Agreement”) is made and entered into as of the final date executed by both parties (“Effective Date”) by and between Quantum Corporation, a Delaware, US corporation headquartered in San Jose, CA, USA (“Quantum”), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity”), and sets forth the terms governing the purchase, licensing, and provision of Quantum Products, Support Services, Software as a Service, and Cloud Services (as defined below) from Quantum, and the limited warranty provided thereon. The terms of this Master Agreement shall supersede any pre-printed or standard terms accompanying the Customer’s purchase order or Quantum’s Quote.

1. General Definitions

1.1 Product

“Product” shall be defined as Quantum branded hardware and Software collectively.

1.2 Support Services

“Support Services” shall be defined as repair, adjustments, and/or part replacements for the covered Quantum Product as Quantum deems necessary to bring Product in compliance with Product warranty or pursuant to the support plan purchased due to normal Product usage during the Support Term. Support Services do not include Professional Services or Limited Support Services (as defined herein).

1.3 Professional Services

“Professional Services” means services requested by Customer and provided by Quantum for an additional fee, and that are excluded as part of Support Services or are specifically identified as Professional Services herein. Professional Services are quoted on the Quantum Sales Quote and may be supplemented by a statement of work detailing the deliverables of the services purchased.

1.4 Cloud Services

“Cloud Services” shall be defined as the provision of computing and storage capacity as a service over a network.

1.5 Software as a Service

“Software as a Service” (SaaS) shall mean Software, delivered, and managed remotely by Quantum or a Quantum authorized provider, and received as a service by customers on a pay-for-use or subscription basis.

2. Quote

“Quote” shall refer to the Quantum issued Sales Quote to which these terms apply, and against which Customer issues an order purchasing the items quoted therein. Quantum does not warrant the accuracy of its Quotes in terms of sizing, configuration, cabling, porting, and other details specific to Customer’s network.
3. Delivery

Delivery of purchased Products will be FCA Quantum’s manufacturing facility (INCOTERMS 2010). Title and risk of loss or damage to the Products shall shift to Customer upon release to the initial carrier for holding or shipment. Customer hereby grants Quantum a purchase-money security interest in all Products to secure payment of the purchase price and any other charges due to Quantum. If delivery of the Products to the initial carrier is delayed in excess of twenty Business Days, Customer may cancel the order involved upon notice to Quantum prior to shipment. Such cancellation right is Customer's sole remedy for any delay or failure in delivery by Quantum. Customer purchases of Products from a Quantum Authorized Resellers shall be shipped pursuant to the terms between the Customer and the Reseller.

4. Prices and Payment

4.1 Generally
Quoted pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to Quantum the purchase price set forth in the Quote in accordance with the GSA Schedule Pricelist. Quantum shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

4.2 Software License Subscription Fee

Software License Subscriptions (defined below) shall be invoiced for the amount and on the periodic basis specified in the Quote, in advance of the invoice period, throughout the duration of the subscription term. Thereafter, unless terminated as provided herein or otherwise prohibited by law, the Software License Subscription may be renewed for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions by both parties exercising an option or a new purchase order in writing, and Customer will be invoiced for the then-current list price in accordance with the GSA Schedule Pricelist.

4.3 Fees for Training and Professional Services

Training and Professional Services may be purchased for the fees quoted. Customer shall have the time period specified in the quote, or one year from the time of purchase if no time period is specified, to schedule and receive such services, or receive a refund. Additional fees may be assessed if costs are incurred as a result of waiting, rescheduling, or other accommodations made as a result of lack of Customer availability, or lack of preparation by the Customer for services scheduled.

4.4 Lapse of Support Contract

In the event that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum Authorized Service Provider, and thereafter seeks to re-enroll into a current Support Contract, such re-enrollment shall be at Quantum's discretion and may require a re-enrollment fee equal to the fee for the lapsed period that would have been paid had the Customer maintained continuous support in addition to the fees for the upcoming Support Term. Quantum does not guarantee a level of support immediately following purchase of the renewal contract. Service calls received during this time will be addressed on a best effort basis.

4.5 Payment

Payment shall be due in full within thirty days from the receipt date of the invoice in the currency quoted. Payment terms are not guaranteed and are subject to approval and ongoing credit history and timely receipt of payment. Customer purchases from a Quantum Authorized Reseller shall be paid by the Customer pursuant to the payment terms between the Customer and the Reseller.

5. Order Cancellation

Subject to Quantum’s prior written approval, Customer may cancel an order, or any portion thereof, for standard Products at any time prior to thirty days before shipment when shipment is not delayed.

6. Termination of Software License Subscription
When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Quantum shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon expiration or termination of a Software License Subscription, the license and right to use Quantum Software shall terminate.

7. Third Party Product

Product sold to Customer by Quantum that is the branded product of a third party (“Third Party Product”) shall be identified under the third party brand on the Quote, shall be warranted directly to Customer by the third party. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties. Certain Third Party Product documentation is available at www.Quantum.com. Notwithstanding any provision herein, subject
to any non-excluded rights that you may have under the laws in your country, Quantum makes no representations or warranties regarding Third Party Product, and shall have no ongoing obligations to Customer for the support or maintenance of Third Party Product unless expressly agreed to in writing. Third party software licensed by Quantum and embedded in Quantum branded software or hardware and not separately licensed shall not be considered Third Party Product.

8. Limited Product Warranty

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT PRODUCTS (EXCLUDING MEDIA) WILL PERFORM IN ACCORDANCE WITH QUANTUM’S PUBLISHED PRODUCT SPECIFICATIONS, COMMENCING AT THE TIME OF SHIPMENT AND FOR THE DURATION PUBLISHED BY QUANTUM AND SPECIFIED IN THE PRODUCT WARRANTY INFORMATION TABLE ATTACHED HERETO. QUANTUM WARRANTS THAT MEDIA PRODUCTS WILL BE FREE FROM DEFECTS IN MATERIAL AND MANUFACTURE AT THE TIME OF PURCHASE. SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY SHOULD PRODUCT FAIL TO PERFORM ACCORDING TO SPECIFICATIONS, IS REPAIR, REPLACEMENT, OR ACCEPTANCE OF RETURN OF THE DEFECTIVE PRODUCT AT QUANTUM’S SOLE DISCRETION.

9. Support Services and Professional Services Warranty

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT THE SUPPORT SERVICES AND PROFESSIONAL SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR THIRTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHEVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AT ITS DISCRETION AND AS ITS SOLE RESPONSIBILITY AND LIABILITY, AND AS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR IN THE CASE OF PROFESSIONAL SERVICES REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE PROFESSIONAL SERVICES.

10. Disclaimers, and Limitations on Liability

THE FOREGOING WARRANTIES SHALL BE VOIDED IF THE PRODUCT IS NOT PROPERLY INSTALLED, USED, OR MODIFIED BY A PERSON OTHER THAN QUANTUM OR A QUANTUM AUTHORIZED SERVICE PROVIDER. THIS CLAUSE IS SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY. THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE PRODUCTS AND SERVICES. QUANTUM DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER’S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM
COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES.

EXCEPT FOR QUANTUM'S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES MAY NOT EXCEED THE MOST RECENT ANNUAL FEE OR THE PRICE PAID. Quantum and its subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, and expenses, costs of litigation and reasonable attorneys’ fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising
out of or in any way relating to Quantum’s presence on Customer's designated premises for the purposes of providing services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of Services, may be brought by either party more than six (6) years after such cause of action accrued.

The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

11. Proprietary Information

Pursuant to these Terms and Conditions, each party (the “disclosing party”) may occasionally provide the other (the “receiving party”) with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices (excluding GSA Schedule prices), product roadmaps, operations and plans and data, etc.) (“Proprietary Information”). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner will destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary Information of the disclosing party; (ii) will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party’s behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright, patent, trademark, confidentiality and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of these Terms and Conditions.

Quantum recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

12. Intellectual Property

Customer agrees and acknowledges that Quantum, its suppliers and its licensors are the owners of all right, title, and interest in and to Quantum-provided Software, SaaS, and Cloud Services, and all Intellectual Property (IP) therein, and that Customers will not obtain or claim any ownership interest in (i) any IP in Quantum provided hardware, and (ii) any Quantum-provided Software, SaaS, and Cloud Services. Customer shall not, unless expressly permitted by law or by Quantum (i) obscure, alter or remove any patent, copyright, trademark, or service mark marking or legend contained on or in any Quantum Products, SaaS, or Cloud Services, (ii) use any Quantum Products, SaaS, or Cloud Services except as licensed, (iii) permit or enable any third party to use Quantum Products, SaaS, or Cloud Services, unless Quantum provides its prior written consent to such use, (iv) copy, distribute, or transmit all or any portion of any Quantum Software except as expressly permitted, (v) cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination, transfer or other distribution of any Quantum Products, SaaS, or Cloud Services by any means or in any form, without the prior written consent of Quantum.

13. Infringement Indemnification

Quantum will indemnify Customer for any damages and costs finally awarded against Customer on the grounds that the Products, Support Services, Professional Services, SaaS, or Cloud Services, in the form and condition delivered by Quantum to Customer hereunder, infringe any valid United States patents or copyrights of any third party, provided that Customer
notifies Quantum in writing of any such claim within ten days after learning thereof and that Customer gives Quantum control over the defense and settlement of the claim and fully cooperates with Quantum with respect thereto. If any such claim is brought or appears to Quantum likely to be brought, Quantum may at its option (1) replace or modify the Products, Support Services, Professional Services, SaaS, or Cloud Services to make them non-infringing, (2) obtain rights for Customer to continue using Products, Support Services, Professional Services, SaaS, or Cloud Services, (3) terminate a subscription with no right of refund, or (4) refund to Customer, upon the return of the Products at issue and termination of any licenses, the price paid there for, less twenty percent for each year which has passed since the date of delivery hereunder. Customer shall discontinue all use of any portion of the Products, Support Services, Professional Services, SaaS, or Cloud Services that has been replaced or modified or for which such a refund has been tendered. Quantum’s obligations hereunder shall not apply to any claim based on (1) Quantum’s following Customer’s specifications or requests, (2) the use of the Products, Support Services, Professional Services, SaaS, or Cloud Services to practice a process not recommended by Quantum, (3) the use of Products, Support Services, Professional Services, SaaS, or Cloud Services in a way that is illegal, unethical, or immoral, or (4) in conjunction with items not supplied by Quantum, and Customer shall similarly indemnify Quantum with respect to any such claims.
THE FOREGOING STATES QUANTUM'S SOLE RESPONSIBILITY, AND CUSTOMER’S SOLE REMEDY, FOR ANY INFRINGEMENTS OF ANY PROPRIETARY RIGHTS.

14. Compliance with Laws

14.1 General Compliance

Each Party will comply, and will cause each of its employees, agents and subcontractors to comply, with the laws of all governmental authorities and all governmental regulations to the extent such laws are applicable. Each Party will also obtain all required regulatory approvals, licenses and permits.

14.2 Import/Export/Re-Export

14.2.1 Generally

Customer shall not, unless otherwise authorized by the U.S. Government, supply Products or enable use of SaaS or Cloud Services to entities identified on restricted lists (such as Denied Parties List, Debarred Parties, Specially Designated Nationals, Terrorists, Narcotics Traffickers, Blocked Persons and Vessels, or Entity List). Customer shall not ship or transfer Product or enable use of SaaS or Cloud Services, either directly or indirectly, to the countries identified as restricted in the U.S. Export Administration Regulations, without written approval from the United States Bureau of Industry and Security. Customer will comply with the export and re-export restrictions set forth in any export license (if applicable) or license exception used to ship Products or enable use of SaaS or Cloud Services. Terms of sale or other specific agreement will denote the Importer of Record. Importer of Record shall not violate any import laws, rules, or regulations of the United States and/or any other applicable country. Importer of Record is responsible for all Customs duties and other Customs related fees. Importer of Record is eligible for duty drawback rights to the Products, SaaS, or Cloud Services. Quantum shall mark each Product with the country of origin in compliance with the marking requirements of the United States.

14.2.2 Cloud/SaaS Services

Customer acknowledges that it will have exclusive responsibility for compliance with United States and multilateral export controls applicable to the data or software it uploads through SaaS or Cloud Services. This responsibility extends to the controls applicable to the computations and derivations (output) from the use of the software or data through SaaS or Cloud Services. Quantum assumes no responsibility to screen the Customer or its own employees from access to such data or Software and their output, or to track or control their export or transfer. Customer agrees to strictly prevent access, export, or transfer of its data, Software, and related output on the Cloud that is controlled under the mentioned regimes to countries and individuals sanctioned by the US Office of Foreign Assets Control (OFAC), the US Export Administration Regulations (EAR), the US International Traffic in Arms Regulations (ITAR), and other related laws and regulations, as applicable. Customer also agrees to prevent its Software and data uploaded to the Cloud from being used in the development, production, use, or proliferation of weapons of mass destruction (as defined in the aforementioned laws and regulations), to include chemical, biological or missile technologies. Any violation of these and other applicable laws and regulations will be the exclusive responsibility of the Customer. The Customer will indemnify Quantum and its affiliates in the event of investigation or prosecution by any government or government agency responsible for such controls and compensate Quantum for any costs and hardship incurred during and as a result of such an event.

14.2.3 Access Control
Customer acknowledges and agrees that any access to SaaS, Quantum’s Cloud, or Cloud Services given by Customer to any person outside of the countries of the European Economic Area shall be considered as an express written consent to Quantum to supply such services and data, and such consent shall be deemed given by Customer and the relevant person/data subject.

14.3 Data Protection

Customer (a) acknowledges that Customer is the Data Controller and that Quantum is a Data Processor as defined in the European Data Protection Directive 95/46/EC; (b) agrees to comply with Customer’s obligations under applicable United States Federal data protection legislation, processing and provision of personal data and sensitive personal data (“Data”) provided to Quantum in connection with SaaS or Cloud Services; (c) reserved; and (d) acknowledges that Quantum is reliant on Customer
for direction as to the extent to which Quantum is entitled to use and process Data. Consequently, Quantum will not be liable for any claim brought by Customer or any Data subject arising from any action or omission by Quantum to the extent that such action or omission resulted from Customer’s instructions. Customer shall be responsible to notify Quantum if any Customer data managed, accessed, hosted, or otherwise actively controlled by Quantum in conjunction with Cloud Services is subject to regulatory security or handling processes. Data residing in a customer environment shall not be considered managed, accessed, hosted, or otherwise actively controlled by Quantum.

15. SaaS and Cloud Services

Quantum’s SaaS and Cloud Services shall be provided under these Terms and Conditions supplemented by the terms of service, use policies, and other documents accompanying attached (“Supplemental Agreements”). The attached Supplemental Agreements are hereby incorporated by reference and to the extent the terms of the Supplemental Agreements conflict with these Terms and Conditions, the term of the Supplemental Agreement shall prevail. Nothing herein shall bind the Ordering Activity to any Supplemental Agreements terms unless the terms are provided for review and agreed to in writing by all parties. Customer’s use of SaaS and/or Cloud Services shall be limited to the use parameters specified at the time of purchase including but not limited to capacity and/or bandwidth. Customer shall deploy Quantum recommended policies to ensure use within such limitations. Use beyond such limitations will result in additional charges to Customer following Quantum’s assessment of the use.

16. Excluded Uses

Customer acknowledges that Products, SaaS, and Cloud Services are not absolutely fault-tolerant, and are not designed for use in or resale into hazardous environments requiring fail-safe performance in which the failure of the products could lead directly to death, personal injury or severe physical or environmental damage such as, but not limited to, the operation of nuclear facilities, aircraft navigation or communication systems, direct life support systems, critical safety systems, medical devices, weapons systems or satellite equipment (“high risk activities”). Quantum disclaims any express or implied warranty of fitness for high risk activities. Quantum will have no liability for any claims or damages arising from high risk activities.

17. Classified Environments

Purchases of Quantum Product or Services (of any kind) to be located, utilized or performed in US federally classified environments, and requiring response or services by cleared personnel, must be supported by a DD254 which must be generated by the Prime Contractor or the appropriate US Government Agency and issued to Quantum before services can be provided. Failure to do so may result in a delay of or inability to provide service for which Quantum shall not and does not assume liability. Customer shall, at or before the time of purchase, (1) confirm to Quantum whether classified environments are involved, (2) if so, that a DD254 will be issued, and (2) provide the name and contact information for the responsible Prime Contractor Contracting Officer.

18. Software License and Software License Subscription

Software Products are licensed, not sold, for use solely on the Designated System under the terms of the license agreement included within the Software or the Software package, however titled. Software Products licensed and paid for on a subscription basis (“Software License Subscription”) are licensed for use only during the paid-for period of a subscription term. Use of Software beyond the Designated System or following termination of the subscription shall constitute violation of the
License. If used or acquired by the U.S. government, then the U.S. government acknowledges that (a) the software constitutes “commercial computer software” and accompanying documentation constitutes “commercial computer software documentation” for purposes of 48 C.F.R. 12.212, and (b) the U.S. government’s rights are limited to those specifically granted to Customer pursuant to said license agreement. The contractor/manufacturer is Quantum, 224 Airport Parkway, San Jose, CA 95110.

19. Support Services

19.1 Definitions

In addition to terms defined elsewhere in these Terms and Conditions, the following terms will have the following specified meanings when used throughout these Terms and Conditions:

"Business Day" means any day except a Saturday, Sunday, or a holiday observed by Quantum;
"Business Hours" means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day;

“Critical Error” means any Software or Firmware Error that is an emergency condition and that causes the Software or Firmware to completely fail to function in accordance with its applicable Documentation and where there is no work-around to temporaril}

“Designated System” means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed;

“Documentation” means technical manuals describing the operation and use of Product;

“Error” means any reproducible failure of the Software or Firmware to substantially comply with its specifications as set forth in the applicable Documentation;

“Firmware” means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum;

“Major Error” means any Software or Firmware Error that causes one or more material components to fail to function as specified in its applicable Documentation;

“Minor Error” means any Software or Firmware Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation;

“Support Contract” means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product;

“Software” means the Quantum branded software designated at the time of sale and sold and licensed separately for a Designated System. Software does not include any third party software;

“Support Term” means the period of the fully paid Support Contract, available for purchase on a one year or multi-year basis, as may be extended under the terms of a renewal;

“Update” means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates, and designated by a change in the number to the right of the decimal point of the version number such as 1.1, 1.2, 1.3, etc.; and,

“Upgrade” means changes to Software resulting in new functionality or features for which Quantum separately charges its customers in the normal course of its business, and designated by a change in the number to the left of the decimal point of the version number such as 1.0, 2.0, 3.0, etc.

19.2 Selection of Provider
Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services or communication regarding status or maintenance of the Product shall be made to Quantum.

19.3 Support Contract Term and Termination

Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term. Thereafter, the Support Contract may be renewed for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions by both parties exercising an option in writing, or a new purchase order, and Customer will be invoiced for the then current list price in accordance with the GSA Schedule pricelist. Quantum will not be obligated to provide any Support Services, Updates, or other support after the end of the Support Contract.

19.4 Product Support
Support Services shall include unscheduled, on-call Support Services during the hours specified for the level of Support purchased ("Designated Working Hours"), provided after receipt of notice from Customer that Product is malfunctioning or otherwise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Service on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased. Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote locations.

19.4.1 Warranty Support

The warranty period and the level of service provided during the warranty period for each Product can be found in the Quantum Product Warranty Information Table at www.Quantum.com. At a minimum, Quantum warrants that the Product will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Product written materials accompanying it.

19.4.2 Uplifted/Extended Support

Uplifted and/or extended Support Services shall be available for purchase subject to regional availability and Product applicability, and provided on an on-call basis in accordance with the level of Support purchased by the Customer.

19.4.3 Parts Replacement

Replaceable parts shall be designated by Quantum as either a Customer Replaceable Unit ("CRU") or a Field Replaceable Unit ("FRU"). CRU’s shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a Support Contract. FRU’s shall be replaced by Quantum. Subject to any non-excludable rights that you may have under local law, replacement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the level of service purchased.

Certain Product may include spare parts as part of the initial Product shipment ("Critical Spare Parts"). Critical Spare Parts shall be utilized only upon authorization by Quantum after diagnosis by Quantum of the reported service issue.

Customer shall be responsible to replace used Critical Spare Parts, and arrange for acceptance of replacement parts and make them available at the time of on-site service. Delays in acceptance and/or failure to maintain stock of Critical Spare Parts may result in additional cost and/or delay in delivery of onsite service. The Product or parts of Product that are removed or replaced, either by Customer or Quantum will become property of Quantum and must be return shipped to Quantum within 10 business days. All replacement parts shipped to Customer shall be shipped DAP Customer site in accordance with INCO-TERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return facility in accordance with INCO-TERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to, loss of, or failure to return ship replaced parts within 10 business days shall be charged to the Customer and may result in withholding of support until resolution.

Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, INCLUDING CRITICAL SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.
19.4.4 Exclusions

Support Services do not include: (a) replacement of parts and/or services to repair damage or errors resulting from accident, neglect, or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (b) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (c) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (d) replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (e) services on Product which Customer has moved or relocated without notifying Quantum; (f) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product; (g) services required as a result of use of Product beyond its
rated capacity, not in accordance with manufacturer published specifications, or not in compliance with these Terms and Conditions or Documentation; (h) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (i) on-site Software or Firmware Support; (j) services required for correcting Errors if Customer fails to implement any Error correction or Update made available by Quantum; (k) services in connection with removal, relocation or reinstallation of Product; (l) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (m) installation or maintenance on third party equipment or software, or on product not quoted by Quantum; and (n) production of written reports related to service performed. Service requested and agreed to in writing for any of the above exclusions shall be considered Professional Services for which Quantum will charge an additional fee. THE OCCURRENCE OF EVENTS (A)-(G) ABOVE SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT A SUPPORT CONTRACT TO TERMINATION.

19.4.5 Installation

Quantum Products or upgrades that are designated non-customer installable shall require purchase of Professional Services for installation from Quantum, and failure to do so and self-installing such Products or upgrades may void the applicable warranty and/or support contract.

19.4.6 Movement of Product

If Customer plans to move, relocate, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer.

19.4.7 Customer Responsibilities

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum’s access to Customer’s facilities consistent with Customer’s security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum’s personnel may be exposed at any of Customer’s facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; (f) providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder; (g) performing visual inspection of Product; and, (h) performing standard operational activities. Upon Quantum's request, Customer will provide Quantum remote access to Quantum Product system performance data as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Obligations of Customer which must be fulfilled prior to Quantum performing any on-site services shall be communicated to Customer at the time services are scheduled.
19.4.8 Firmware

Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing of the product. The Customer may be required to install the latest Firmware Update prior to making any CRU or FRU replacements. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Firmware upgrades may be available for download and able to be installed by Customer. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware upgrades requiring an onsite visit.

19.4.9 Telephone Support
Telephone support included with a support contract purchase provides the following: (i) assistance in identifying and verifying causes of suspected Errors; (ii) work-around for identified Errors; (iii) answering questions regarding Software installation and configuration; and, (iv) answering questions regarding differences between Software versions.

19.4.10 Error Corrections

Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a workaround or correction in a Update). If Customer encounters an Error with the Software, Customer must sufficiently define the Error to Quantum so that Quantum can reproduce the reported Error. Non-reproducible Errors may require dispatch of an engineer on-site, which will be charged on a time and materials basis. After receipt of any such written notice of an Error from Customer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by Customer. In its notice of an Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer will use the nature of the Error and Customer's business circumstances to classify each Error. To the extent that Quantum disagrees with any Error classification provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

19.4.11 Updates and Upgrades

During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quantum will make available to Customer any and all Updates at no additional charge to Customer. Customer will install any and all Updates within a reasonable time after receipt of such Update or notice of availability. Support is available only for the Update that is currently shipping and the immediately prior Update. Support for the immediate prior Update shall be available for no longer than 12 months after a new Update is generally available. Quantum will provide Customer with access to Updates through Quantum's web site (www.Quantum.com). These Updates and/or patches will be customer installable, with technical assistance available from Quantum's Technical Assistance Center. Changes to Software designated by Quantum as Upgrades are sold separately and not included in a contract for Support Services. Quantum on-site installation services for Updates and/or Upgrades shall be available to Customer for a fee as Professional Services.

19.5 Limited Support Services

"Limited Support Services" means that the standard Support Services are no longer offered for Product. Limited Support contracts are offered by Quantum for the prices and duration quoted. Limited Support consists of support for errors which can be remedied utilizing the bug fixes and updates then known to Quantum, and does not include support for resolution of novel errors or bugs.

20. Notices

All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days’ advance written notice to the other party except as otherwise provided in these Terms and Conditions.
21. Integration and Notification

Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to these Terms and Conditions are hereby rejected and shall not be binding upon Quantum unless Quantum agrees to them in writing. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

22. Choice of Law
These Terms and Conditions shall be governed by and construed in accordance with the Federal laws of the USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under these Terms and Conditions, the parties agree to the exclusive jurisdiction of the courts located in Santa Clara County, California.

23. Severability and Waiver

In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of such right, power or privilege.

24. Force Majeure

Excusable delays shall be governed by FAR 52.212-4(f).

25. Assignment

Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party.

Acknowledged and Agreed, by the following parties:

Quantum Corporation, by: [Customer], by:

Signature: ____________________________ Signature: ____________________________

Printed Name: ____________________________ Printed Name: ____________________________

Title: ____________________________ Title: ____________________________

Date: ____________________________ Date: ____________________________
QUANTUM MASTER SERVICE AGREEMENT

This Master Service Agreement ("MSA") is made and entered into as of the final date executed by both parties ("Effective Date") by and between Quantum Corporation, a Delaware, US corporation headquartered in San Jose, CA, USA ("Quantum"), and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("Customer"), and sets forth the terms governing the purchase and performance of Services (as defined below) from Quantum, and the limited warranty provided thereon. The terms of this MSA shall supersede any pre-printed or standard terms accompanying the Customer’s purchase order or Quantum’s Quote. Capitalized terms shall have the meaning prescribed herein.

1. General Definitions

"Business Day" means any day except a Saturday, Sunday, or a holiday observed by Quantum;

"Business Hours" means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day;

“Critical Error” means any Software or Firmware Error that is an emergency condition and that causes the Software or Firmware to completely fail to function in accordance with its applicable Documentation and where there is no workaround to temporarily resolve or lessen the problem;

“Designated System” means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed;

“Documentation” means Quantum published technical manuals describing the operation and use of Product;

“Error” means any reproducible failure of the Software or Firmware to substantially comply with its specifications as set forth in the applicable Documentation;

“Firmware” means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum;

“Major Error” means any Software or Firmware Error that causes one or more material components to fail to function as specified in its applicable Documentation;

“Minor Error” means any Software or Firmware Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation;

“Product” shall be defined as Quantum branded hardware and Software collectively.

“Quote” shall refer to the Quantum issued Sales Quote to which these terms apply, and against which Customer issues an order purchasing the items quoted therein.
“Services” shall mean the following, collectively:

“Support Services” shall be defined as repair, adjustments, and/or part replacements for the covered Quantum Product as Quantum deems necessary to bring Product in compliance with Product warranty or pursuant to the support plan purchased due to normal Product usage during the Support Term. Support Services do not include Professional Services or Limited Support Services (as defined herein).

“Professional Services” means services requested by Customer and provided by Quantum for an additional fee, and are excluded as part of Support Services or are specifically identified as Professional Services herein. Professional Services are quoted on the Quantum Sales Quote and may be supplemented by a statement of work detailing the deliverables of the services purchased.

"Limited Support Services" means services provided on Product for which standard Support Services are no longer offered.

“Support Contract” means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product;
“Software” means the Quantum branded software designated at the time of sale and sold and licensed separately for a Desig-
nated System. Software does not include any third party software;

“Support Term” means the period of the fully paid Support Contract, available for purchase on a one year or multi-year
basis, as may be extended under the terms of a renewal;

“Update” means changes to Software or Firmware that Quantum designates as bug fixes, or as minor or incremental updates,
and designated by a change in the number to the right of the decimal point of the version number such as 1.1, 1.2, 1.3, etc.;
and,

“Upgrade” means changes to Software resulting in new functionality or features for which Quantum separately charges its
customers in the normal course of its business, and designated by a change in the number to the left of the decimal point of
the version number such as 1.0, 2.0, 3.0, etc.

2. Prices and Payment

2.1 Generally

Quoted pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to
Quantum the purchase price set forth in the Quote in accordance with the GSA Schedule Pricelist. Quantum shall state
separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on
the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-
1 and FAR 52.229-3.

2.3 Fees for Training and Professional Services

Training and Professional Services may be purchased for the fees quoted in accordance with the GSA Schedule Pricelist.

2.4 Lapse of Support Contract

In the event that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum
Author- ized Service Provider, and thereafter seeks to re-enroll into a current Support Contract, such re-enrollment shall be
at Quantum's discretion and may require a re-enrollment fee in addition to the fees for the upcoming Support Term equal
to the amount of the Support Fee for the lapsed period of support had support been maintained continuously. Quantum
does not guarantee a level of support immediately following purchase of the renewal contract. Service calls received during
this time will be addressed on a best effort basis.

2.5 Payment

Payment shall be due in full within thirty days from the receipt date of the invoice in the currency quoted. Payment terms are
not guaranteed and are subject to approval and ongoing credit history and timely receipt of payment. Customer purchases
from a Quantum Authorized Reseller shall be paid by the Customer pursuant to the payment terms between the Customer and
the Reseller.
3. Provision of Services

3.1 Support Contract Term and Termination

Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term. Thereafter, unless customer notifies Quantum at least 60 days prior to the expiration of the Support Term of Customers decision not to renew, the Support Contract may renew for successive one-year periods under the terms of the then-current Quantum Sales and Support Terms and Conditions, and Customer will be invoiced for the then current list price, if Customer and Quantum execute a new agreement in writing. Quantum will not be obligated to provide any Support Services, Updates, or other support after the end of the Support Contract.

3.2 Product Support
Support Services shall include unscheduled, on-call Support Services during the hours specified for the level of Support pur-
chased ("Designated Working Hours"), provided after receipt of notice from Customer that Product is malfunctioning or oth-
wise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Ser-
vice on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased.
Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local
service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote loca-
tions.

3.2 Selection of Provider

Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer
or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services
or communication regarding status or maintenance of the Product shall be made to Quantum.

3.3 Warranty Support

The warranty period and the level of service provided during the warranty period for each Product can be found in the Quan-
tum Product Warranty Information Table at www.Quantum.com.

3.4 Uplifted/Extended Support

Uplifted and/or extended Support Services shall be available for purchase subject to regional availability and Product applica-
bility, and provided on an on-call basis in accordance with the level of Support purchased by the Customer.

3.5 Parts Replacement

Replaceable parts shall be designated by Quantum as either a Customer Replaceable Unit ("CRU") or a Field Replaceable
Unit ("FRU"). CRU’s shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a
SupportContract. FRU’s shall be replaced by Quantum. Subject to any non-excludable rights that you may have under local
law, re-placement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the
level of ser-vice purchased.

Certain Product may include spare parts as part of the initial Product shipment ("Critical Spare Parts"). Critical Spare Parts
shall be utilized only upon authorization by Quantum after diagnosis by Quantum of the reported service issue.

Customer shall be responsible to replace used Critical Spare Parts, and arrange for acceptance of replacement parts and make
them available at the time of on-site service. Delays in acceptance and/or failure to maintain stock of Critical Spare Parts may
result in additional cost and/or delay in delivery of onsite service. The Product or parts of Product that are removed or
replaced, either by Customer or Quantum will become property of Quantum and must be return shipped to Quantum within
10 business days. All replacement parts shipped to Customer shall be shipped DAP Customer site in accordance with INCO-
TERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return
facility in accordance with INCOTERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer
shall be withCustomer. Damage to, loss of, or failure to return ship replaced parts within 10 business days shall be charged to
the Cus-tomer and may result in withholding of support until resolution.
Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, INCLUDING CRITICAL SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.

3.6 Exclusions

Support Services do not include: (a) replacement of parts and/or services to repair damage or errors resulting from accident, neglect, or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (b) replacement of parts and/or services to repair damage resulting from any act of God, including but not limited to storms, fires, floods, and earthquakes; (c) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (d)
replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (e) services on Product which Customer has moved or relocated without notifying Quantum; (f) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product; (g) services required as a result of use of Product beyond its rated capacity, not in accordance with manufacturer published specifications, or not in compliance with these Terms and Conditions or Documentation; (h) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (i) on-site Software or Firmware Support; (j) services required for correcting Errors if Customer fails to implement any Error correction or Update made available by Quantum; (k) services in connection with removal, relocation or reinstallation of Product; (l) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (m) installation or maintenance on third party equipment or software, or on product not quoted by Quantum; and (n) production of written reports related to service performed.

Service requested in writing for any of the above exclusions shall be considered Professional Services for which Quantum will charge an additional fee. THE OCCURRENCE OF EVENTS (A)-(G) ABOVE SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT A SUPPORT CONTRACT TO TERMINATION.

3.7 Installation

Quantum Products or upgrades that are designated non-customer installable shall require purchase of Professional Services for installation from Quantum, and failure to do so and self-installing such Products or upgrades may void the applicable warranty and/or support contract.

3.8 Movement of Product

If Customer plans to move, relocate, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer. Inadequate packaging may void the warranty, subject a support contract to termination and/or require Customer to recertify unit at Customer’s cost.

3.9 Customer Responsibilities

In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum’s access to Customer’s facilities consistent with Customer’s security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum’s personnel may be exposed at any of Customer’s facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; (f)
providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder;

(g) performing visual inspection of Product; and, (h) performing standard operational activities. Upon Quantum's request, Customer will provide Quantum remote access to Quantum Product system performance data as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Obligations of Customer which must be fulfilled prior to Quantum performing any on-site services shall be communicated to Customer at the time services are scheduled.

3.10 Firmware

Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing of the product. The Customer may be required to install the latest Firmware Update prior to making any CRU or FRU replacements. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Firmware upgrades may be available for download and able to be installed
by Customer. At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware up-
grades requiring an onsite visit.

3.11 Telephone Support

Telephone support included with a support contract purchase provides the following: (i) assistance in identifying and verifying
causes of suspected Errors; (ii) work-around for identified Errors; (iii) answering questions regarding Software installation
and configuration; and, (iv) answering questions regarding differences between Software versions.

3.12 Error Corrections

Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a
workaround or correction in a Update). If Customer encounters an Error with the Software, Customer must sufficiently define
the Error to Quantum so that Quantum can reproduce the reported Error. Non-reproducible Errors may require dispatch of an
engineer

on-site, which will be charged on a time and materials basis. After receipt of any such written notice of an Error from Cus-
tomer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the
Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist
Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by
Customer. In its notice of an Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer
will use the nature of the Error and Customer's business circumstances to initially classify each Error. Customer will classify
each Error as a Critical Error, Major Error or Minor Error. To the extent that Quantum disagrees with any Error classification
provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

3.13 Updates and Upgrades

During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quan-
tum will make available to Customer any and all Updates at no additional charge to Customer. Customer will install any
and all Updates within a reasonable time after receipt of such Update or notice of availability. Support is available only for
the Update that is currently shipping and the immediately prior Update. Support for the immediate prior Update shall be
available for no longer than 12 months after a new Update is generally available. Quantum will provide Customer with
access to Updates through Quantum's web site (www.Quantum.com). These Updates and/or patches will be customer
installable, with technical assistance available from Quantum's Technical Assistance Center. Changes to Software designated
by Quantum as Updates are sold separately and not included in a contract for Support Services. Quantum on-site
installation services for Updates and/or Upgrades shall be available to Customer for a fee as Professional Services.

3.14 Limited Support Services

Limited Support contracts are offered by Quantum for the prices and duration quoted. Limited Support consists of support for
errors which can be remedied utilizing the bug fixes and updates then known to Quantum, and does not include support for
resolution of novel errors or bugs.

4. Services Warranty
SUBJECT TO THE LIMITATIONS SET FORTH HEREIN, QUANTUM WARRANTS TO THE END-USER CUSTOMER THAT THE SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR SIXTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHERVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AT ITS DISCRETION AND AS ITS SOLE RESPONSIBILITY AND LIABILITY, AND AS CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALLY REASONABLE MEANS TO CORRECT SUCH DEFECT OR IN THE CASE OF PROFESSIONAL SERVICES REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE PROFESSIONAL SERVICES.

5. Disclaimers and Limitations on Liability
THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE SERVICES. QUANTUM DOES NOT WARRANT THAT THE SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER’S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER’S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES. EXCEPT FOR QUANTUM’S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM’S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES MAY NOT EXCEED THE PRICE PAID FOR THE PURCHASE ORDER(S)

GIVING RISE TO THE CLAIM. Quantum and its subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or to any other persons) and expenses, costs of litigation and reasonable attorneys’ fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising out of or in any way relating to Quantum’s presence on Customer's designated premises for the purposes of providing Services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of Services, may be brought by either party more than six (6) years after such cause of action accrued.

6. Proprietary Information

Pursuant to these Terms and Conditions, each party (the “Disclosing Party”) may occasionally provide the other (the “Receiving Party”) with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals, installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices, product roadmaps, operations and plans and data, etc.) (“Proprietary Information”). The Receiving Party acknowledges that use or disclosure of Proprietary Information of the Disclosing Party in any unauthorized manner will destroy its value to the Disclosing Party. Unless the Disclosing Party agrees otherwise in writing, the Receiving Party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary Information of the Disclosing Party; (ii) will only permit or allow access to Proprietary Information of the Disclosing Party to those employees or third parties who require such access in order to perform work on the Disclosing Party’s behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the Disclosing Party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the Disclosing Party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright, patent, trade- mark, confidentiality and similar notices in connection with the Proprietary Information of the Disclosing Party. The parties agree to return all Proprietary Information to the Disclosing Party upon the termination of these Terms and Conditions. Quantum recognizes that Federal agencies are subject to the Freedom of
Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

7. **Classified Environments**

Purchases of Services (of any kind) to be located, utilized or performed in US federally classified environments, and requiring response or services by cleared personnel, must be supported by a DD254 which must be generated by the Prime Contractor or the appropriate US Government Agency and issued to Quantum before services can be provided. Failure to do so may result in a delay of or inability to provide service for which Quantum shall not and does not assume liability. Customer shall, at or before the time of purchase, (1) confirm to Quantum whether classified environments are involved, (2) if so, that a DD254 will be issued, and (2) provide the name and contact information for the responsible Prime Contractor Contracting Officer.

8. **Notices**

All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days’ advance written notice to the other party except as otherwise provided in these Terms and Conditions.

9. **Integration and Notification**

Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to these Terms and Conditions are hereby rejected and shall not be binding upon Quantum. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

10. **Choice of Law**

These Terms and Conditions shall be governed by and construed in accordance with the Federal laws of the USA without regard to any conflict of laws rules thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

11. **Severability and Waiver**

In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of such right, power or privilege.

12. **Force Majeure**
Excusable delays shall be governed by FAR 52.212-4(f).

13. **Assignment**

Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party.

Acknowledged and Agreed, by the following parties:

**Quantum Corporation,**

Signature: ________________________________

Printed Name: ______________________________

Title: ______________________________

[Customer],

Signature: ________________________________

Printed Name: ______________________________

Title: ______________________________
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Rapid Ratings International, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (See, FAR 12.212(a)), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates antideficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule
dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the AntiDeficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
1.2 "Confidential Information" means all information regarding a Party’s business or affairs, including, business concepts, processes, methods, systems, know-how, devices, formulas, product specifications, marketing methods, customer lists, methods of operation, or other information, whether in oral, written, or electronic form, designated as confidential or that is disclosed under circumstances such that a reasonable person would know it is confidential.

1.3 "Documentation" means the user manuals, standard policies, training materials, and other materials describing the use and function of the Subscription Services. Documentation does not include the Subscription Reports.

1.4 "Order Form" means the ordering document specifying the Subscriptions Services purchased by Customer that is signed by Customer. Subscriptions Fees means the fees stated on the applicable Order Form in accordance with the GSA price list.

1.5 "Subscription Reports" means the reports authored by RapidRatings and made accessible through the Subscription Service, such as FHR® reports.

1.6 "Subscription Services" means the products and services purchased by Customer under an Order Form for a number of Users and made available through the RapidRatings electronic functionality accessible via the internet and telecommunications applications, including applicable Subscription Reports, technical support, solicitation or survey services, API Services, and Documentation.

1.7 "Subscription Term" means the period of time during which the Customer may access the applicable Subscription Services as set forth in the applicable Order Form and commencing upon the Order Effective Date.

1.8 "User" means an individual who is authorized by Customer to use the Subscription Service and has a login credential. A User may be an employee, contractor, or agent of Customer.

SECTION 2. SUBSCRIPTION SERVICES.

2.1 Access to Subscription Service. Subject to the terms and conditions of this Agreement, RapidRatings hereby grants the undersigned Ordering Activity under GSA Schedule contracts (“Customer” or “Ordering Activity”) a limited, revocable, non-exclusive, non-transferable, non-sublicensable right for the Subscription Term to access and use the Subscription Services as set out herein for Customer’s internal business purposes. Customer’s access and use under this Section extends only to the number of Users described in the applicable Order Form.

2.2 Restrictions. Without limitation, Customer shall not, and shall not permit any third party to: (a) use the Subscription Services in a manner not expressly permitted by the Agreement or in violation of applicable law; (b) attempt to access or access data, research, or software services that Customer is not expressly permitted to access in the Subscription Services or any database owned or maintained by RapidRatings, such as to access information of third parties without express written authorization or to benchmark or develop a competitive product or service; (c) copy, reproduce, distribute, publish, or otherwise make available copies or extracts in any medium of the Subscription Services, except that Users may download, use, and copy Subscription Reports for Customer’s internal (confidential) use only; (d) sell, resell, rent, license, sublicense, rent, lease, or otherwise commercialize (such as in a service bureau offering) the Subscription Services; (e) use the Subscription Services to store or transmit malicious code (meaning code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses) or transmit malicious code to RapidRatings; (f) decompile, disassemble or reverse engineer any aspect of the Subscription Services or RapidRatings’ software generally (except to the extent that Customer cannot by law waive its right to do so); or (g) permit direct or indirect access to or use of any Subscription Service or database owned or maintained by RapidRatings in a way that circumvents a contractual usage limit, is excessive, or otherwise interferes with RapidRatings’ ability to provide the Subscription Services or other customers’ use or enjoyment of the Subscription Services.

2.3 API Services. Customer’s use of the API Services are additionally subject to the provisions of Exhibit A, which is attached and hereby incorporated in its entirety into this Agreement.

2.4 Users. Customer shall have the right to increase the number of Users by providing RapidRatings with written notice and paying the additional Subscription Fees set forth on the applicable Order Form. At RapidRatings’ option, RapidRatings reserves the right to prorate a new User for the portion of a Subscription Term remaining at the time a new User was added, such that any added User access will terminate or expire on the same date as a prior User group. Customer will be responsible for each User’s, and for its other employees’ and contractors’, compliance with this Agreement. It is Customer’s responsibility to monitor credentials, password usage, and otherwise prevent unauthorized access to or use of the Subscription Services and to promptly notify RapidRatings if unauthorized access or use is detected or suspected.

2.5 Monitoring and Audit Rights. RapidRatings reserves the right to use tracking software and similar technology that automatically collects information about Customer’s use of the Subscription Services to ensure Customer’s compliance with the restrictions in this Agreement and to confirm the access to the Subscription Services. RapidRatings does not expressly grant Customer the right to audit the Subscription Services more than once a year, and at RapidRatings’ cost and expense, RapidRatings will have the right to audit Customer’s and any of its employees’ and contractor’s use of the Subscription Services to assure compliance with the terms of this Agreement. Customer will be responsible for assuring reasonable cooperation with RapidRatings in connection with such audits and will provide RapidRatings with or obtain for RapidRatings access to such properties, records, and personnel as RapidRatings may reasonably require for such purpose. RapidRatings will comply with Customer’s Government security policies provided to RapidRatings in writing reasonably in advance of any such audit and will take commercially reasonable steps to avoid material disruption of Customer’s business. Any audit will occur during Customer’s normal business hours. If RapidRatings reasonably determines that Customer used the Subscription Services in excess of its number of purchased Users or otherwise in excess of its rights hereunder, RapidRatings may invoice Customer for such overuse and Customer will pay such invoice within thirty (30) days of receipt.

2.6 Modifications. RapidRatings reserves the right, in its sole discretion, to amend, change, modify, update, or discontinue any aspect of the Subscription Services at any time without notice to Customer, provided such changes are not material and will not decrease the overall level of service. RapidRatings reserves the right to implement and update minimum system requirements from time to time, and Customer acknowledges that it is Customer’s responsibility to maintain reasonably current systems and software to access the Subscription Services. For clarity, nothing in this Section supersedes the warranty provisions of Section 5.

2.7 Affiliates. This Agreement is between the expressly named Parties and does not extend to any affiliates or subsidiaries of the Parties without the express written agreement of the Parties.

SECTION 3. RESERVED

SECTION 4. PROPRIETARY RIGHTS.

4.1 Ownership of Intellectual Property Rights; Feedback. RapidRatings, including RapidRatings licensors, own all intellectual property rights in and to the Subscription Services. Subject to the limited rights expressly granted hereunder, RapidRatings, including RapidRatings licensors, hereby reserve all rights not expressly granted to Customer in this Agreement, and Customer will not acquire any such rights, whether by virtue of this Agreement, operation of law, estoppel, or otherwise. Customer shall not contest, directly or indirectly, the validity or RapidRatings’ ownership of any intellectual property rights in and to the Subscription Services. Customer shall not do anything that may adversely affect the validity or enforceability of any intellectual property right licensed to or owned by RapidRatings, including any act, or assistance to any act, that may infringe or misappropriate or lead to the infringement or misappropriation of any such intellectual property right. Customer hereby irrevocably assigns to RapidRatings all right, title, and interest in to any suggestions, enhancement requests, recommendations, or corrections (collectively “Feedback”)
related to the Subscription Services, and agrees to provide RapidRatings with any assistance required to document, perfect, and maintain the rights in the Feedback at RapidRatings' expense. RapidRatings will not be obligated to compensate or credit Customer or any third party for such Feedback or hold any such Feedback in confidence. RapidRatings acknowledges that the ability to use this Agreement and any Feedback in advertising is limited by GSAR 552.203-71.

4.2 Enforcement. To the extent practicable, Customer shall make a good faith attempt to notify Rapid Rating promptly in writing if it has knowledge of a suspected infringement or misappropriation of an intellectual property right of RapidRatings by a third party, and shall provide RapidRatings with a copy of all documents and information relating thereto as long as such production is not proscribed by contract or other reason. RapidRatings shall have the right, but not the obligation, to take action in its own name to secure the cessation of any infringement or misappropriation of any intellectual property right or to bring an action against an alleged infringer. Customer shall cooperate with RapidRatings in RapidRatings' enforcement of its intellectual property rights hereunder and, if necessary, RapidRatings will be entitled to enforce such rights against any third party. Nothing contained herein shall be construed to derogate of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

5.3 DISCLAIMER OF WARRANTIES. RapidRatings makes no warranties other than those made expressly in this Agreement, and hereby disclaims any and all implied warranties, including warranties of fitness for a particular purpose, merchantability, and non-infringement. RapidRatings provides the Subscription Service on an "AS IS" and "AS AVAILABLE" basis. Except to the extent prohibited by law, or to the extent any statutory rights apply that cannot be excluded, RapidRatings does not represent or warrant that the Subscription Services or any third-party content, uses or data, or any component of the Subscription Services dependent on the actions or inactions of a third party, such as a third-party platform provider, shall occur, nor that any information obtained from any third party in performing any solicitation services under the Subscription Services will be accurate, complete, truthful, or free from defects of any kind. Customer acknowledges that any information provided by the Subscription Service, including the Subscription Reports, is not intended to be a substitute for a financial advisor's or investor's independent assessment of whether to buy, sell,
SECTION 6. CONFIDENTIALITY.

6.1 Confidential Information. Any information made available to Customer under this Agreement, except as otherwise set forth in the Order Form, including information disclosed by RapidRatings, is considered to be Confidential Information of RapidRatings and RapidRatings is authorized to use the Audit Reports, which includes information and communications, in accordance with the rules and regulations of RapidRatings and the laws and regulations applicable to RapidRatings, in connection with RapidRatings’ business purposes and activities, including but not limited to the provision of the Subscription Services to the extent otherwise permitted by FAR 52.204-7001. Customer hereby acknowledges that RapidRatings has conducted a reasonable investigation of the factual elements relied upon in determining Subscription Reports, and that RapidRatings’ procedures to verify a company’s financial information are reasonable.

SECTION 7. RESERVED.
pursuant to the terms and conditions of this Agreement. Use of any RapidRatings software is restricted by the terms of this Agreement and, in accordance with FAR Section 12.212, is further restricted in accordance with the terms of RapidRatings’ commercial end user license agreement/terms of use and/or license agreement/terms of service of the applicable RapidRatings product. Rights are strictly prohibited. This section describing government use, consistent with FAR 12.212, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in software as a service, computer software, computer software documentation, or technical data related to RapidRatings (here, the Licensor) under this Agreement and in any contract or subcontract under which this software service is acquired or licensed. Neither Customer nor the government is entitled to the software’s object code or source code.

9.7 Assignment. Neither Party shall assign, delegate, or otherwise transfer its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party (to be granted or withheld in its reasonable discretion). This Agreement will be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

9.8 Merger and Amendment. This Agreement (including the applicable Order Form(s), which are hereby incorporated herein) together with the underlying GSA Schedule Contract, Schedule price list and Purchase Order(s) constitutes the entire understanding and agreement, and supersedes any and all prior or contemporaneous representations, understandings, and agreements between the Parties with respect to the subject matter of this Agreement, all of which are hereby merged into this Agreement. No amendment to this Agreement or waiver of any provision hereof will be valid or binding unless reduced to writing and duly executed by the Party or Parties to be bound thereby.

9.9 Waiver, Relationship, Third Parties. A Party’s failure to enforce a right or remedy in this Agreement will not constitute a waiver of such right or remedy. Nothing contained in this Agreement will be deemed to create, or be construed as creating, a joint venture or partnership between the Parties. Neither Party is, by virtue of this Agreement or otherwise, authorized as an agent or legal representative of the other Party, except that Customer authorizes Rapid Ratings to collect information from third parties on Customer’s behalf. There are no third-party beneficiaries of this Agreement.

EXHIBIT A
RapidRatings API Services Terms
Customer has requested access to RapidRatings application programming interface (API) and associated services and software (collectively, “API Services”). The API Services include a API that provides access to RapidRatings computed ratings and other computed quantitative metrics. The scope of data available using the API Services is as described in API Services Documentation. The API Services will facilitate Customer’s extraction of Subscription Service content and data as defined in the Customer Agreement and the API Services Documentation. The scope of the Subscription Services, including the Subscription Reports of companies to which Customer may have access via the API Services, is additionally limited by applicable Order Form(s).

Customer agrees to these terms and conditions as fully incorporated into the Customer Agreement (the “API Services Terms”). If there is a conflict between these API Services Terms and the Customer Agreement, the API Services Terms will control only for the applicable API Services. All capitalized terms have the definitions as provided in the Customer Agreement above, unless otherwise expressly stated herein.

Section 1. API Services, Limitations
1.1 API Services. According to the terms and conditions of these API Services Terms and any applicable Order Form, Customer may access and use the API Services. For clarity, the API Services are provided pursuant to the Subscription Services terms and restrictions in the Customer Agreement and the API Services are provided on a non-exclusive basis.

1.2 Access Limitations. Customer may allow any employee or contractor to view the API Services. However, any use of any other Subscription Services content, such as Subscription Reports, obtained through access or use of the API Services, is limited to valid Users of Customer. Customer will require Users to comply with (and not knowingly enable them to violate) applicable law, regulation, and the API Service Terms. Customer will only access (or attempt to access) the API Services by the means described in the Documentation. If RapidRatings assigns Customer any credentials (e.g. client IDs, tokens, etc.), Customer must use them with the applicable API Services per the Order Form and Documentation. Customer will not misrepresent or mask either Customer’s or any User’s identity or any Customer’s API client identity when using the API Services.

1.3 Data Limitations. Customer agrees that data provided by RapidRatings through the API Services is provided on a company by company basis. All API Services queries shall be per permitted frequencies in the API Services

Documentation and caching is not permitted, without the written consent of RapidRatings. Customer agrees that the API Services facilitate access and use of highly confidential third-party data that must be handled in accordance with the terms of these API Services Terms. Data must also be stored separately from any RapidRatings’ third-party application providers or data aggregators who obtained (and/or contracted by) Customer to display the API Services. Customer understands that the API Services provide access to data that is deemed highly confidential by RapidRatings and third-parties. Customer further understands that release of this information may irreparably harm RapidRatings. Customer will use industry best-practices and comply with any applicable laws related to data security to prevent unauthorized access or use of the data available through the API Services.

1.4 Usage Limitations. RapidRatings may set and enforce limits on Customer’s use of the API Services (e.g. limiting the number of API requests that Customer may make in a given interval or the data that is returned), in RapidRatings sole discretion. Customer agrees to not circumvent or disable any such limitations. If Customer intends to use the API Service beyond the limitations, Customer must obtain RapidRatings’ express written consent. RapidRatings may decline such request or condition acceptance on Customer’s agreement to additional terms and/or charges for that use.

RapidRatings may request reasonable information regarding any third-party contractor of Customer performing integration services or other services related to the API Services. When using the API Services, Customer will not (and will not allow others acting on Customer’s behalf to): a) sublicense the API Services for use by a third party, b) create an API Application that functions substantially the same as the API Services and offer it for use by third parties, c) perform an action or inaction with the intent of introducing any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature, d) use the API Services to defame, abuse, harass, stalk, or threaten others, in violation of the law or industry self-regulatory rules or principles, e) interfere with or disrupt the API Services or the servers or networks providing the API Services, f) promote or facilitate online gambling, equities or derivatives trading of any kind, g) reverse engineer or attempt to extract the source code of the API Services, h) copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party any of the API Services content therefrom; i) use the API Services for any activities where the use or failure of the API Services could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems), or i) remove, obscure, or alter any RapidRatings terms of service or any communications or links to notices of those terms.

Section 2. Customer Applications
2.1 API Applications and Monitoring. Customer may use the API Services content obtained through access or use of the API Services in Customer applications/user interfaces, where such applications may be created by Customer, Rapid Ratings, or a third party, as applicable (“API Applications”). Customer agrees that RapidRatings may, subject to applicable Government security requirements, monitor use of the API Services and API Applications, for reasons including to ensure quality, improve RapidRatings products and services, and verify Customer’s compliance with the API Services Terms.
Customer agrees to not interfere with this monitoring. RapidRatings may use any technical means to overcome any interference RapidRatings may encounter. For clarity, any provisions from the Customer Agreement regarding monitoring and audit rights expressly apply to the API Services.

2.3 Ownership. By using RapidRatings API Services, Customer does not acquire ownership of any rights to the API Services or the content that is accessed through the API Services. RapidRatings, including RapidRatings’ licensors, own all intellectual property rights in and to the API Services and content. Customer acknowledges that RapidRatings may develop products or services that may compete with the API Applications or any other products or services. Some of the software required by or included in RapidRatings’ API Services, or provided in a good-faith effort to assist Customer (e.g., code stubs, configuration tools), may be offered under an open source license or other license. These licenses constitute separate written agreements, and Customer should consult the appropriate Documentation. RapidRatings makes no representation or warranty for any third-party tools. If Customer provides feedback regarding the API Services, then RapidRatings may use such information without obligation to Customer, per the Customer Agreement. Customer agrees to not misrepresent the source or ownership of the API Services. When the API Services or data or document content are displayed through any end point device, whether web-based, mobile, print or audio, this content must have the attribution, “All data and analysis provided by Rapid Ratings International.” and, if the display is visual, the RapidRatings logo as provided by RapidRatings. RapidRatings will work with Customer to provide logos appropriate for Customer’s delivery endpoint format and user experience. All use by Customer of RapidRatings trademarks (including any goodwill associated therewith) will inure to the benefit of RapidRatings. Customer shall not remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsely or delete any author attributions, legal notices, or other labels of the origin or source of material. Except as expressly stated, these API Services Terms do not grant either party any right, title, or interest in or to the other party’s trademarks.

2.4 Linking. The API Services data must be displayed per the API Services Documentation, which RapidRatings reserves the right to update, modify, or change from time to time. Any third-party company name or data point displayed in the API Application using the API Services must be linked to a RapidRatings client portal. For example, if a link is provided with the RapidRatings FHR® data point, Customer will hyperlink the FHR data to the discrete URL provided.

Section 3. Communications

3.1 Communication of Changes. RapidRatings may send Customer notices in connection with use of the API Services. These may contain important API Services changes that RapidRatings may make at its sole discretion that require action by Customer for uninterrupted API Services or Subscription Services access. While RapidRatings will work to ensure Customer is notified in advance of any such changes, Customer is responsible for evaluating whether a change affects the API Application. Customer is solely responsible for evaluating and reacting to these notices. RapidRatings makes no representation that API Services changes will not affect or disrupt the API Application. Any updates to this agreement or the API Services Terms or Documentation shall be presented to Customer for review and will not be effective unless and until both parties sign a written agreement updating the terms. If RapidRatings issues a new version of the API Services, Customer must update their API Services and RapidRatings will continue to support and maintain the previous version for no more than six (6) months. If Customer does not agree to the changes or updates, Customer should discontinue use of the API Services.

3.2 Confidential Communications. Customer credentials (such as passwords, keys, and client IDs) are intended to be used by Customer and to identify Customer’s organization (entity), API Application, and other potentially unique or personally identifying information. Customer will use industry best practices and efforts to keep credentials confidential and to prevent and discourage other API clients from using Customer’s credentials. RapidRatings’ communications to Customer and RapidRatings’ API Services contain RapidRatings Confidential Information, pursuant to the Customer Agreement. Customer acknowledges and agrees that Customer and RapidRatings may share information related to the API Services. Customer and RapidRatings agree to consult with each other to determine whether specific information is Confidential Information. Customer acknowledges that any Confidential Information is provided “as is” and that Customer is responsible for its use.

Section 4. Warranties, Limitation of Liability

IN ADDITION TO THE WARRANTIES AS PER THE CUSTOMER AGREEMENT ABOVE, NEITHER RAPIDRATINGS NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE API SERVICES OR ANY CONTENT ACCESSED THROUGH OR TRANSMITTED TO THE API SERVICES, THE SPECIFIC FUNCTIONS OF THE API SERVICES, OR THEIR RELIABILITY, AVAILABILITY, OR SECURITY OR ABILITY TO MEET CUSTOMER’S NEEDS. THE API SERVICES AND CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". Customer represents and warrants that Customer will not violate the API Services Terms. The limitations on liability in the GSA Schedule Contract expressly apply to these API Services Terms.

Section 5. Indemnity

The indemnity obligations in the GSA Schedule Contract expressly apply to these API Services Terms.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Red Hat, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et.seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14; but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

RED HAT, INC.

RED HAT, INC. LICENSE, WARRANTY AND SUPPORT TERMS

RED HAT
ENTERPRISE AGREEMENT
U.S. GOVERNMENT SUPPLEMENT
This U.S. Government Supplement ("Supplement"), the attached Red Hat Enterprise Agreement (extracted from www.redhat.com/licenses/us.html on January 3, 2018), with the applicable product appendix ("Enterprise Agreement"), establish the terms and conditions enabling Red Hat, Inc. ("Red Hat") to provide Red Hat products to U.S. Government agencies, including an "Ordering Activity," defined as an entity authorized to order under GSA contracts as set forth in GSA Order 4800.21 ADM, as amended (the "Client"). The applicable product appendices are listed below:

Red Hat Learning Subscriptions ("RHLS"): Section 1.5 of Appendix 2 (extracted from https://www.redhat.com/cms/managed-files/Appendix_2_Global_English_20171108.pdf on January 3, 2018)

The Enterprise Agreement and this Supplement cover the use of Software or Services by any Ordering Activity. Notwithstanding anything to the contrary, the use of Software or Services from Red Hat by an Ordering Activity does not constitute that Ordering Activity's assent or acceptance of the Enterprise Agreement. Red Hat agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; and 41 U.S.C. 423 relating to procurement integrity. This Supplement modifies the terms and conditions of the Enterprise Agreement for U.S. Government agencies as follows:

1.0 Enterprise Agreement Section 2.2, Changes to Work and Delays, is replaced with the following: "2.2 Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties consistent with GSAR Clause 552.238-81 Modification (Federal Supply Schedule) (APR 2014) (Alternate I – JUN 2016) or GSAR 552.238-81 Modification (Federal Supply Schedule) (APR 2014) (Alternate II – JUN 2016). In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services subject to GSAR Clause 552.238-81, as applicable, and GSAR 552.212-4(f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

2.0 Enterprise Agreement Section 3.0 Fees:
The following is deleted from Section 3.1, Fees and Expenses; "Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services." Section 3.2.1 is replaced with the following: If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order in accordance with GSAR 552.212-4(g) and GSAR 552.212-4(i). Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice. Except as otherwise provided in this Agreement, any and all payments made by Client pursuant to this Agreement are non-refundable.

Section 3.3, Taxes, is deleted in its entirety.

3.0 Enterprise Agreement Section 5.0, Reporting and Inspection:
The following is deleted from Enterprise Agreement Section 5.1, Reporting; "no later than thirty (30) days from the date of the invoice"; and replaced with, "as provided in the Agreement". Enterprise Agreement Section 5.2, Inspection, is replaced with the following: "5.2 Inspection. During the term of this Agreement and for one (1) year thereafter: (a) If Client's security requirements are met, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice from Red Hat. Red Hat will give Client written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Client security requirements are not met and upon Red Hat's request, Client will run a self-assessment with tools provided by and at the direction of Red Hat ("Self-Assessment") to verify Client's compliance with this Agreement. Within thirty (30) days from Red Hat's request, Client will finalize the Self-Assessment and provide Red Hat with the results in the form of a written report certified by Client's authorized officer including the number of underreported Units of Software or Services (the "Report"). In either event, after providing Notice(s) or Report(s) and receipt of an invoice, Client will make payment to Red Hat or its authorized channel partner for the applicable Services provided with respect to the underreported Units. Notwithstanding the foregoing, nothing in this section prevents the Government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109)."

4.0 Enterprise Agreement Section 6.0, Term and Termination:
Enterprise Agreement Section 6.1 is replaced with the following: "6.1 Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of all Order Forms issued hereunder."

Enterprise Agreement Section 6.2.1: The following is deleted: "Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term."

Enterprise Agreement Section 6.2.2 is replaced with the following: "6.2.2 Termination shall be governed by the GSAR 552.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat and consistent with
GSAR 552.212-4 (l) Termination for the Government's Convenience, and (m) Termination for Cause, in the event an Order Form is terminated, Client will pay Red Hat (or the Business Partner from whom Client purchased such Software or Services) for all Services provided up to the effective date of termination."

5.0 Enterprise Agreement Section 8.1: The following is added to the end of Section 8.1, Limitation of Liability: "... EXCLUDING REPROCUREMENT COSTS. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31. U.S.C. §§ 3729-3733."

6.0 Enterprise Agreement Section 9.1: The following is added to Section 9.1, Obligations: “Confidential Information may be subject to full or partial disclosure under the Freedom of Information Act, 5 U.S.C. §552.”

7.0 Enterprise Agreement Section 11, Open Source Assurance Program, is deleted in its entirety.

8.0 Enterprise Agreement Section 12, Governing Law/Consent to Jurisdiction, is replaced with the following: “12. Governing Law/Consent to Jurisdiction. The validity, interpretation and enforcement of this Agreement, including end user license agreement for Software, will be governed by and construed in accordance with the laws of the United States without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Agreement shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.”

9.0 Enterprise Agreement Section 13 Miscellaneous

Enterprise Agreement Section 13.2, Assignment is replaced with the following: “13.2 Assignment. Assignments are subject to GSAR 552.212-4(w)(1)(xi) Non-assignment, FAR 52.232-23, Assignment of Claims and FAR 42.12 Novation and Change-of-Name Agreements.”

Enterprise Agreement Section 13.4, Force Majeure is replaced with the following: “13.4 Force Majeure. Except as may be otherwise provided herein, this Agreement is subject to GSAR 552.212-4 (f) Excusable delays.”

Enterprise Agreement Section 13.5, Non-solicitation, is replaced with the following: “13.5 Reserved.”

The third and fourth sentences of Section 13.6, Export and Privacy, are deleted in their entirety.

The following is deleted from Enterprise Agreement Section 13.7, Dispute Resolution, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.”, and replaced with, “No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than six (6) years after the cause of action has accrued.”

The following is deleted from Section 13.11, Complete Agreement, “of the State of New York and”.

10.0 Enterprise Agreement Section 14, Waiver of Jury Trial, is deleted in its entirety.

11.0 Red Hat Products purchased under the Enterprise Agreement and this Supplement may require access to certain Red Hat websites or portals covered by “terms of use” (e.g. https://access.redhat.com/site/help/terms_conditions.html) (“Red Hat Portal Terms of Use”). In the event of any conflict between this Red Hat Terms of Use and this Supplement, this Supplement will take precedence. In the event Red Hat Terms of Use include terms requiring Client to indemnification obligation of Client, such indemnification obligations shall be deleted and the remaining terms and conditions shall be interpreted so as to be consistent with U.S. federal law.

Red Hat Enterprise Agreement - US License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING SOFTWARE OR SERVICES FROM RED HAT. BY USING RED HAT SOFTWARE OR SERVICES, CLIENT SIGNSIFIES ITS ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS AGREEMENT. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CLIENT DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE RED HAT SOFTWARE OR SERVICES. This Agreement incorporates those appendices at the end of this Agreement.

This Red Hat Enterprise Agreement, including all referenced appendices and documents located at URLs (the "Agreement"), is between Red Hat, Inc. ("Red Hat") and the purchaser or user of Red Hat software and services who accepts the terms of this Agreement ("Client"). The effective date of this Agreement ("Effective Date") is the earlier of the date that Client signs or accepts this Agreement or the date that Client uses Red Hat's software or services.

Scope of Agreement

Framework. This Agreement establishes a framework that will enable Red Hat to provide Software and Services to Client. “Software” means Red Hat Enterprise Linux, JBoss Enterprise Middleware and other software programs branded by Red Hat, its Affiliates and/or third parties including all modifications, additions or further enhancements delivered by Red Hat. The specific services (the “Services”) and/or Software that Red Hat will provide to Client will be described in an Order Form, signed by the parties or otherwise accepted by Red Hat, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through Red Hat's online
store accessible from a Red Hat website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services and otherwise agreed by the parties in writing.

Affiliates. Red Hat and Client agree that Affiliates of Client (or a Red Hat Affiliate) that Affiliates of Client may acquire Software and Services from Red Hat or its Affiliates by entering an Order Form with Red Hat (or a Red Hat Affiliate) that incorporates the terms and conditions of this Agreement. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Form (for example, to address disparate tax and/or legal regimes in other geographic regions). “Affiliate” means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where “control” is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

Business Partners. Red Hat has entered into agreements with other organizations (“Business Partners”) to promote, market and support certain Software and Services. When Client purchases Software and Services through a Business Partner, Red Hat confirms that it is responsible for providing the Software and Services to Client under the terms of this Agreement. Red Hat is not responsible for (a) the actions of Business Partners, (b) any additional obligations Business Partners have to Client, or (c) any products or services that Business Partners supply to Client under any separate agreements between a Business Partner and Client.

Obligations of the Parties

On-Site Obligations. If Red Hat personnel are working on Client's premises (a) Client will provide a safe and secure working environment for Red Hat personnel, and (b) Red Hat will comply with all reasonable workplace safety and security standards and policies, applicable to Client's employees, of which Red Hat is notified in writing by Client in advance.

Changes to Work and Delays. Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Client fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Red Hat's ability to perform its obligations under an Order Form, Red Hat will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.

Assistance. Client may provide Red Hat access to Client information, systems, and software (“Client Information”), and resources such as workspaces, network access, and telephone connections as reasonably required by Red Hat in order to provide the Services. Client understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Client Information provided to Red Hat may affect Red Hat's ability to provide Services, and (b) if reasonable access to Client Information is not provided, Red Hat will be relieved from providing any Services dependent upon such access. Client will obtain any third party consents necessary to grant Red Hat access to the Client Information that is subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

Payment

Fees and Expenses. Fees for the Services (the “Fees”) will be identified in an Order Form and are (a) due upon Red Hat's acceptance of an Order Form or, for renewal of Services, at the start of the renewal term, and (b) payable in accordance with Section 3.2. Fees are stated in United States Dollars, must be paid in United States Dollars, and, unless otherwise specified in writing, do not include out-of-pocket expenses or shipping costs. Client will reimburse Red Hat for all reasonable expenses Red Hat incurs in connection with the performance of Services. Client agrees to pay Red Hat the applicable Fees for each Unit. “Unit” is the measurement of Software or Service usage defined in the applicable Order Form. Any renewal of Subscription Services will be at the same price per Unit listed in the applicable Order Form. “Subscription Services” mean fee-bearing subscriptions for a defined period of time for a certain scope of Services.

Invoices

If Client desires credit terms with respect to the payment of Fees, Client will reasonably cooperate with Red Hat in establishing and periodically re-confirming Client's credit-worthiness. If credit terms are provided to Client, Red Hat will invoice Client for the Fees upon Red Hat's acceptance of the applicable Order Form and upon acceptance of any future order. Unless otherwise specified in an Order Form and subject to Red Hat's approval of credit terms, Client will pay Fees and expenses, if any, no later than thirty (30) days from the date of each invoice; provided, however, that Fees for professional services, training, training credits and other service credits are due prior to delivery. Except as otherwise provided in this Agreement, all payments due by Client pursuant to this Agreement are non-refundable. Red Hat reserves the right to suspend or cancel performance of all or part of the Services and/or change its credit terms if actual payment has not been received within thirty (30) days of the invoice date.

If Client is paying by credit card, Client (a) authorizes Red Hat to charge Client's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to Red Hat for renewal purposes.

Taxes. All Fees are exclusive of Taxes. Client will pay Red Hat an amount equal to any Taxes arising from or relating to this Agreement or an applicable Order Form which are paid by or are payable by Red Hat. “Taxes” means any form of sales, use, value added or other form of taxation and any interest, penalties, or fines thereon or therefor, including all related costs and expenses.

License and Ownership

Software. Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.

Freedom to Use Ideas. Subject to Section 9 and Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, technologies, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Red Hat, without an obligation to account, in any way Red Hat deems appropriate, including by or for itself or its clients or customers.

Marks. Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any Red Hat, Red Hat Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Red Hat or Red Hat Affiliate trademarks.

Reporting and Inspection

Reporting. Client will notify Red Hat (or the Business Partner from whom Client purchased Software or Services) promptly if the actual number of Units of Software or Services utilized by Client exceeds the number of Units for which Client has paid the applicable Fees. In its notice, Client will include the number of additional Units and the date(s) on which such Units were first utilized. Red Hat (or the Business Partner) will invoice Client for the applicable Services for such Units and Client will pay for such Services no later than thirty (30) days from the date of the invoice.
Inspection. During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect Client's facilities and records to verify Client's compliance with this Agreement. Any such inspection will take place only during Client's normal business hours and upon no less than ten (10) days prior written notice to the Recipient of any noncompliance, including the number of underreported Units of Software or Services, and Client will have fifteen (15) days from the date of this notice to make payment to Red Hat for the applicable Services provided with respect to the underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay Red Hat for the cost of such inspection.

Term and Termination

Term and Termination of Agreement. The term of this Agreement will begin on the Effective Date and will terminate at the expiration of ninety (90) days following written notice of termination given by one party to the other. Termination of this Agreement will not operate to terminate any Order Forms and conditions of this Agreement will continue in full force and effect to the extent necessary to give effect to any Order Form in effect at the time of termination of this Agreement and until such time as the applicable Order Form expires or is terminated in accordance with Section 6.2 below.

Term and Termination of Order Form

The term of an Order Form begins on the date the Order Form is executed ("Order Form Effective Date") and continues for the term stated in the Order Form. Thereafter, the term for Subscription Services will automatically renew for successive terms of one (1) year each, unless either party gives written notice to the other of its intention not to renew at least sixty (60) days before the commencement of the next renewal term. Client must use any other Services set forth in an Order Form during the term specified in the Order Form or within one (1) year of the Order Form Effective Date, whichever is shorter; if unused, such Services will be forfeited.

If Client or Red Hat materially breaches the terms of an Order Form, and such breach is not cured within thirty (30) days after written notice of the breach is given to the breaching party, then the other party may, by giving written notice of termination of the breaching party, terminate the applicable Order Form and/or this Agreement; provided, however, that no cure period will be required for a breach of Section 9 of this Agreement. The termination of an individual Order Form will not terminate any other Order Form or this Agreement unless otherwise specified in the written notice of termination. Without prejudice to any other right or remedy of Red Hat, in the event either party terminates an Order Form, Client will (i) pay Red Hat for the applicable Services provided with respect to the underreported Units. If Client underreports the number of Units utilized by more than five percent (5%) of the number of Units for which Client paid, Client will also pay Red Hat for the cost of such inspection.

Survival. If this Agreement or an Order Form is terminated for any reason, Sections 3, 4, 5, 6, 7, 8, 9, 10.2, 12, 13.1, 13.5-13.14, and 14 of this Agreement (as the same are incorporated into each Order Form) will survive such termination.

Continuing Business

Nothing in this Agreement will preclude or limit Red Hat from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Client. The terms of confidentiality in Section 9 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

Limitation of Liability and Disclaimer of Damages

Limitation of Liability. FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDER FORMS, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNTS RECEIVED BY RED HAT DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR ITEMS (WHETHER SOFTWARE, SERVICES OR OTHERWISE) GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT.

8.2 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR AN ORDER FORM, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO CLIENT OR ITS AFFILIATES FOR DAMAGES OTHER THAN DIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES WHETHER IN CONTRACT, TORT OR OTHERWISE; OR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, REGULATORY NON-COMPLIANCE, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIABILITY FOR THESE DAMAGES WILL BE LIMITED AND EXCLUDED EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

Confidentiality

Obligations. During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Red Hat or Client ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential or (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure. Exclusions. Confidential Information will not include information which: (i) is later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under a source code license. The Recipient will not be compelled from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

Representations and Warranties

General Representations and Warranties. Red Hat represents and warrants that: (a) the Services will be performed in a professional and workmanlike manner by qualified personnel; (b) it has the authority to enter into this Agreement with Client; and (c) to Red Hat's knowledge, Red
Hat branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1 OR BY A THIRD PARTY VENDOR DIRECTLY TO CLIENT UNDER A SEPARATE AGREEMENT, THE SERVICES, SOFTWARE AND ANY HARDWARE ARE PROVIDED BY RED HAT “AS IS” AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES, SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE OR THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS. FOR THE BREACH OF THE WARRANTIES SET FORTH IN SECTION 10.1, CLIENT’S EXCLUSIVE REMEDY IS TO RETURN THE SOFTWARE AND/OR HARDWARE TO RED HAT’S ENTIRE LIABILITY WILL BE THE REPERFORMANCE OF DEFICIENT SERVICES, OR IF RED HAT CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALLY REASONABLE MANNER, CLIENT MAY TERMINATE THE RELEVANT SERVICES AND RECEIVE A PRO RATA REFUND OF THE FEES PAID FOR THE DEFICIENT SERVICES AS OF THE EFFECTIVE DATE OF TERMINATION. Without limiting the generality of the foregoing disclaimer, the Software, Services and any hardware provided are not specifically designed, manufactured or intended for use in (a) the planning, construction, maintenance, control, or direct operation of nuclear facilities, (b) aircraft navigation, control or communication systems, weapons systems, or (c) direct life support systems. Client agrees that it is solely responsible for the results obtained from the use of the Software and Services.

Open Source Assurance Program

For Software that is Red Hat branded, purchases under this Agreement may entitle Client to participate in Red Hat's Open Source Assurance Program which is described at www.redhat.com/rhel/details/assurance/. The terms for this optional program are subject to a separate agreement which can be viewed at www.redhat.com/legal/open_source_assurance_agreement.html.

Governing Law/Consent to Jurisdiction

The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Raleigh, North Carolina, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

Miscellaneous

Notices. Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent using a method that provides for positive confirmation of delivery to the respective addresses or facsimile numbers indicated in an Order Form; provided that any notice from Client to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: (919) 754-3704.

Assignment. This Agreement is binding on the parties to this Agreement, and other than the rights conferred on Business Partners in Sections 5.1 and 6.2.2, nothing in this Agreement or in any Order Form grants any other person or entity any right, benefit or remedy of any nature whatsoever, except for the parties’ Affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party’s prior written consent, which will not be unreasonably withheld, conditioned or delayed; provided, however, either party may, upon written notice and without the prior approval of the other party, (a) assign this Agreement to an Affiliate as long as the Affiliate has sufficient credit to satisfy its obligations under this Agreement and the scope of Service is not affected; and (b) assign this Agreement pursuant to a merger or a sale of all or substantially all of such party’s assets or stock.

Independent Contractor. Red Hat is an independent contractor and nothing in this Agreement or related to Red Hat's performance of any Order Form will be construed to create an employment or agency relationship between Client (or any Client personnel) and Red Hat (or any Red Hat personnel). Each party will be solely responsible for supervision, direction, control and payment of its personnel, including applicable taxes, deductions, other payments and benefits. Red Hat may subcontract Services under an Order Form to third parties or Affiliates without the approval, review, or consent of the other party, however, Red Hat agrees to protect Client Confidential Information, and (b) Red Hat remains responsible to Client for performance of its obligations hereunder.

Force Majeure. Neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, hurricanes, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

Non-solicitation. Client agrees not to solicit or hire any personnel of Red Hat involved with the delivery of Services in connection with any Order Form during the term of and for twelve (12) months after termination or expiration of such Order Form; provided that Client may hire an individual employed by Red Hat who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

Export and Privacy. Red Hat may supply Client with technical data that is subject to export control restrictions. Red Hat will not be responsible for compliance by Client with applicable export obligations or requirements for this technical data. Client agrees to comply with all applicable export control restrictions. If Client breaches this Section 13.6 or the export provisions of an applicable end user license agreement for the Software, or any provision referencing these sections, Red Hat may terminate this Agreement and/or the applicable Order Form and its obligations thereunder without liability to Client. Client acknowledges and agrees that to provide the Services, it may be necessary for Client Information to be transferred between Red Hat, its Affiliates, Business Partners, and/or subcontractors, which may be located worldwide.

Dispute Resolution. Each party agrees to give the other a written description of any problem(s) that may arise and to make a good faith effort to amicably resolve any such problem before commencing any proceeding. Notwithstanding the foregoing, either party may take any action reasonably required to protect such party’s rights. No claim or action, regardless of form, arising out of this Agreement or an Order Form may be brought by either party more than one (1) year after the cause of action has accrued.

Headings. All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

Severability. If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement.

Waiver. The delay or failure of either party to exercise any rights under this Agreement will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.
**Complete Agreement.** Each Order Form (a) is a separate agreement and is deemed to incorporate this Agreement, unless otherwise expressly provided in that Order Form; (b) constitutes the exclusive terms and conditions with respect to the subject matter of that Order Form, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Client to place orders or otherwise effect transactions under this Agreement; and (c) represents the final, complete and exclusive statement of the agreement between the parties with respect thereto, notwithstanding any prior written agreements or prior and contemporaneous oral agreements with respect to the subject matter of the Order Form. In the event of any conflict between this Agreement, any Order Form and any end user license agreement for Software, this Agreement will take precedence unless otherwise expressly provided in the Order Form. Notwithstanding any provision to the contrary in this Agreement, any applicable end user license agreement will be governed by the laws of the State of New York and of the United States, without regard to any conflict of laws provisions. Any claim relating to the provision of the Services by Red Hat, its Affiliates or their respective personnel will be made against Red Hat alone.

**Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

**Counterparts and Facsimile Signature.** In the event this Agreement is executed with signatures, this Agreement may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same document. The parties may exchange signature pages by facsimile and such signatures will be effective to bind the parties to all the terms contained in this Agreement.

**United States Government End Users.** The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

**Waiver of Jury Trial**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.
PRODUCT APPENDIX 1
SOFTWARE AND SUPPORT SUBSCRIPTIONS

This Product Appendix (which includes Exhibits applicable to specific Red Hat Products) contains terms that describe the parameters and govern your use of Software Subscriptions and Support Subscriptions. This Product Appendix does not apply to Red Hat hosted or online subscription offerings. When we use a capitalized term in this Product Appendix without defining it, the term has the meaning defined in the Agreement to which this Product Appendix applies, such as the Red Hat Enterprise Agreement. In the event of a conflict, inconsistency or difference between this Product Appendix and an Exhibit to this Product Appendix, the terms of the Exhibit control.

Red Hat may modify or update this Product Appendix either by posting a revised version of this Product Appendix at http://www.redhat.com/agreements, and/or by providing notice using other reasonable means. If you do not agree to the updated terms then, (a) the existing Product Appendix will continue to apply to Red Hat Products you have purchased as of the date of the update for the remainder of the then-current Subscription term(s); and (b) the updated or modified terms will apply to any new purchases or renewals of Red Hat Products made after the effective date of the updated terms.


1. SUBSCRIPTION SERVICES

1.1 Subscription Unit Definitions. Fees for Subscription Services are based on metrics that are referred to as “Units”. Table 1.1 below defines the various Units that are used to measure your use of Software Subscriptions. The specific Units that apply to the various Software Subscriptions are contained in the Order Form(s) applicable to your purchases and in the Exhibit(s).

Table 1.1

<table>
<thead>
<tr>
<th>Unit</th>
<th>Software Subscription Unit Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>API Call</td>
<td>is one inbound message to your API backend server and a response, if any, from the server.</td>
</tr>
<tr>
<td>Core</td>
<td>is (a) a physical processing core located in a CPU or (b) a virtual processing core within a virtual machine or supporting a container, in each case, that contains or executes the Software running for Production Purposes.</td>
</tr>
<tr>
<td>Core Band</td>
<td>a group of processing Cores (16 or 64).</td>
</tr>
<tr>
<td>Customer User</td>
<td>your and your Affiliates’ third party end users with access to the Software.</td>
</tr>
<tr>
<td>Employee User</td>
<td>your and your Affiliates’ employee users acting on your behalf (including your independent contractors and those of your Affiliates) who are able to access the Software.</td>
</tr>
<tr>
<td>Full Time Equivalent or FTE</td>
<td>the sum of (a) the total number of full time faculty plus one third of the part time staff and (b) the total number of full time staff plus one half of the part time staff.</td>
</tr>
<tr>
<td>GB of RAM</td>
<td>a gigabyte of processing memory that contains or executes the Software.</td>
</tr>
<tr>
<td>Managed Node</td>
<td>each Node managed by the Software. “Node” means a Virtual Node, Physical Node or other instance of software.</td>
</tr>
<tr>
<td>Module</td>
<td>use of the Software to manage one System, Virtual Node or Physical Node.</td>
</tr>
<tr>
<td>Physical Node</td>
<td>a physical system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, blade or other physical system, as applicable.</td>
</tr>
<tr>
<td>Power IFL (Integrated Facility for Linux)</td>
<td>a processor core on an IBM Power system that is activated and contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>Socket</td>
<td>a socket occupied by a CPU.</td>
</tr>
<tr>
<td>Socket-pair</td>
<td>up to two Sockets.</td>
</tr>
<tr>
<td>Storage Band</td>
<td>an amount of Storage (measured in terabytes “TB” and/or petabytes “PB”), where “Storage” is the total capacity of storage available to each instance of the Software.</td>
</tr>
<tr>
<td>System</td>
<td>a system which contains or executes all or a portion of the Software including, without limitation, a server, work station, laptop, virtual machine, container, blade, node, partition, appliance or engine, as applicable.</td>
</tr>
<tr>
<td>System on a Chip or SOC(s)</td>
<td>a single integrated circuit that includes the major components of a computer and is generally recognized as a system on a chip.</td>
</tr>
<tr>
<td>System z IFL (Integrated Facility for Linux)</td>
<td>a mainframe CPU that is activated and contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>vCPU</td>
<td>a physical CPU, in whole or in part, which is assigned to a virtual machine or container which contains or executes all or a portion of the Software.</td>
</tr>
<tr>
<td>Virtual Node or Virtual Guest</td>
<td>an instance of the Software executed, in whole or in part, on a virtual machine or in a container.</td>
</tr>
</tbody>
</table>

1.2 Use of Subscription Services.
Basis of the Fees. While you have Subscriptions entitling you to receive Subscription Services for a Red Hat Product, you are required to purchase the applicable Software Subscriptions and Support Subscriptions in a quantity equal to the total number and capacity of Units of that Red Hat Product. For purposes of counting Units, Units include (a) non-Red Hat Products if you are using Subscription Services to support or maintain such non-Red Hat Products and (b) versions or copies of the Software with the Red Hat trademark(s) and/or logo file(s) removed.

Supported Use Cases. Subscription Services are provided for Software only when used for Supported Use Cases as described in the Exhibits to this Product Appendix. The Supported Use Case(s) associated with a Red Hat Product also determine the type of Subscription that is required. If your use of any aspect of the Subscription Services is contrary to or conflicts with a Supported Use Case, you are responsible for purchasing the appropriate Subscription(s) to cover such usage. For example, if you are using a Red Hat Enterprise Linux Desktop Subscription on a System that is a server, you are obligated to purchase Red Hat Enterprise Linux Server Subscription Services.

Support Levels. You agree not to use Software Subscriptions with support service levels (e.g. Standard and/or Premium) higher than the support levels (e.g. Self-support and/or Standard) you have purchased.

Transferring Subscriptions. You may transfer, migrate or otherwise move Software Subscriptions provided you are accountable for the number and types of Units associated with the Software Subscriptions.

Scope of Use of Subscription Services. The Agreement (including pricing) is premised on the understanding that you will use Subscription Services only for your internal use (which may include Affiliates). Your internal use may include running a web site and/or offering your own software as a service, provided that such use (a) does not include a distribution, sale or resale of any of the Subscription Services and (b) provides as the primary component of the web site or service a material value added application other than the Subscription Services. However, providing the Subscription Services to, or using them for the benefit of, a third party (for example, using Subscription Services to provide hosting services, managed services, Internet service provider (ISP) services, or third party access to or use of the Subscription Services) is a material breach of the Agreement.

Use by Contractors. Subscription Services may be used by third parties acting on your behalf, such as contractors or outsourcing vendors provided (i) you remain fully responsible for all of your obligations under the Agreement and this Product Appendix and for the activities and omissions of the third parties and (ii) in the case of a migration to a third party cloud or hosting provider, you are qualified for and comply with the terms of the Red Hat Cloud Access program as set forth in Section 3 below.

Unauthorized Use of Subscription Services. Any unauthorized use of the Subscription Services is a material breach of the Agreement, such as (a) only purchasing or renewing Subscription Services based on some, but not all, of the total number of Units, (b) splitting or applying one Software Subscription to two or more Units, (c) providing Subscription Services (in whole or in part) to third parties, (d) using Subscription Services in connection with any redistribution of Software and/or (e) using Subscription Services to support or maintain any non-Red Hat Software products without purchasing Subscription Services for each such instance.

Subscription Start Date. Unless otherwise agreed in an Order Form, Subscription Services will begin on the earlier of the date you purchase or first use the Subscription Services.

End User and Open Source License Agreements. The Red Hat Products are governed by the EULAs set forth at www.redhat.com/licenses/eulas. Software Subscriptions and Subscription Services are term-based and will expire if not renewed. This Agreement establishes the rights and obligations associated with Subscription Services and is not intended to limit your rights to software code under the terms of an open source license.

Red Hat Software Subscription Bundles. Red Hat offers combinations of Software Subscriptions with complimentary feature sets and price discounts ("Bundle(s)"). The basis of the fees for these Bundles is the combined use of such Software Subscriptions on a single Unit. When any of the combined Software Subscriptions are used independently from the Bundle, the fees for such independent usage will be Red Hat’s standard fees associated with the Unit for the particular Software Subscription.

2. SUBSCRIPTION SERVICE SUPPORT TERMS

2.1 Evaluations. Red Hat may offer Evaluation Subscriptions for evaluation and not for Production Purposes. Evaluation Subscriptions may be provided with limited or no support and/or subject to other limitations. If you use the Evaluation Subscription(s) for any purpose other than evaluation, you are in violation of this Agreement and are required to pay the applicable subscription fees for such use in accordance with Section 1 above, in addition to any and all other remedies available to Red Hat.

2.2 Support from a Business Partner. If you purchase Software Subscriptions that include support provided by an authorized Red Hat Business Partner (not by Red Hat) then Section 2.3 does not apply to you and you should work with your Business Partner to obtain support services. Section 2.3 only applies if you have purchased Software Subscriptions with Support provided by Red Hat.

2.3 Support from Red Hat. Development Support. Certain Software Subscriptions include Development Support. “Development Support” consists of assistance with architecture, design, development, prototyping, installation, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Development Purposes. Requests for deployment and maintenance assistance and/or assistance for Production Purposes are not included within the scope of Development Support, but may be available on a consulting basis under the terms of a separate agreement.

Production Support. Certain Software Subscriptions include Production Support. “Production Support” consists of assistance with installation, application testing, usage, problem diagnosis and bug fixes, in each case, for the applicable Software when used for Production Purposes. Production Support does not include assistance with (i) code development, system design, network design, architectural design, optimizations, tuning recommendations, development or implementation of security rules or policies, (ii) third party software made available with Red Hat Software, (iii) software on the supplementary, optional or Extra Packages for Enterprise Linux ("EPEL") channels and/or (iv) preview technologies.
Support Coverage. Support is provided in the English language but may be available in other languages based on available resources. Red Hat does not provide support for (a) any underlying infrastructure or for any third party products; (b) Software that (i) you (or a third party) have modified or recompiled, (ii) is running on hardware or platforms that are not Supported Configurations or (iii) is not running in its Supported Use Case. You are responsible for testing the Software before deploying it in your environment, backing up your systems on a regular basis and having those backups available if needed for support purposes. Except as otherwise expressly stated, Support does not include data migration or data recovery support.

Service Level Guidelines. Red Hat will use commercially reasonable efforts to provide Support at one or more of the following support levels, depending on the Red Hat Product: Self-support, Standard or Premium, as set forth at https://access.redhat.com/support/offers/production/sla. After the initial responsibilities of a support request, Red Hat will provide status updates on the issue consistent with the update guidelines applicable to the Severity Level (which may be downgraded to a lower Severity Level during the course of resolving the support request) until the issue is resolved or the parties agree on an alternative update schedule.

Obtaining Support. To receive Support, you must provide Red Hat with sufficient information to validate your entitlement to the relevant Support. Certain Support is provided only during Red Hat’s local standard business hours. You may contact Red Hat through your designated Support Contacts. You may designate up to the number of contacts described at https://access.redhat.com/support/offers/production/contacts based on the number of Standard and Premium Software Subscriptions you have purchased (other than for Academic Edition Customers with Campus Wide Subscriptions which are based on the number of FTEs).

2.4 Software Subscription Lifecycle. During the life cycle of Software, the scope of Software Maintenance and Support evolves and, after a number of years, we discontinue Software Maintenance and Support for older versions of Software. The life cycle for Software Maintenance and Production is described at https://access.redhat.com/support/policy/update_policies.html and, in certain instances, in the Exhibit(s). For certain versions of Software, you may purchase Extended Update Support (“EUS”) and/or Extended Life Cycle Support (“ELS”) Add-On Subscription(s) to extend your Subscription Services as further described at https://access.redhat.com/support/policy/updates/errata provided EUS Subscriptions are included in certain Software Subscriptions.

3. CLOUD ACCESS: DEPLOYING SOFTWARE SUBSCRIPTIONS IN A PUBLIC CLOUD

3.1 Transferring Eligible Subscriptions to a Cloud. You may transfer Eligible Subscriptions for use in a Vendor’s Cloud under the Cloud Access program if you (a) complete the registration set forth at https://engage.redhat.com/forms/cloud-access-registration and (b) have a sufficient number of Eligible Subscriptions to transfer. For Eligible Subscriptions that you purchased for on-premises use and transfer to a Vendor’s Cloud, the Unit of measurement will be the Unit as set forth in the conversion table located at http://www.redhat.com/en/technologies/cloud-computing/cloud-access. For Eligible Subscriptions that were originally purchased for use in a Vendor’s Cloud, no conversion is required. The number of concurrent Units used under the Cloud Access program in the Vendor Cloud may not exceed the total number of Units transferred from Eligible Subscriptions and/or purchased for use in a Vendor Cloud. The transfer of Software Subscription(s) to a Vendor’s Cloud via Cloud Access does not change the start date or the duration of the original Software Subscription(s). This means that when your Software Subscription expires, your access to the Software Subscription in the Vendor’s Cloud will cease, unless renewed.

3.2 Cloud Usage Reporting. You consent to the Vendor reporting to Red Hat your usage of Red Hat Software Subscriptions in the Vendor’s Cloud.

3.3 Public Cloud Terms of Service. Through the Cloud Access program, you may obtain access to Software images and/or updates to the Software, if and when available, either (a) via new images obtained from the Vendor’s Cloud or (b) from a Red Hat Portal. Certain information (such as Software related notices) may only be available to you via the Red Hat Portal. Payments to Red Hat for Software Subscriptions do not include any fees that may be due to the Vendor for the Vendor’s Cloud services. Red Hat is not a party to your agreement with the Vendor and is not responsible for providing access to the Vendor’s Cloud or performing any other obligations of the Vendor. The Vendor is solely responsible and liable for the Vendor’s Cloud. Red Hat may have a support relationship with the Vendor that enables Red Hat and the Vendor to collaborate and you consent to (i) Red Hat discussing your Software Subscriptions and related notices with the Vendor and (ii) Red Hat and the Vendor sharing information for the purpose of providing Services. Red Hat will provide Support to you for each Eligible Subscription pursuant to this Agreement. Certain software components or functionality of the Software contained in the original Software Subscription (or Add-on Subscription) may not be available or supported when used in the Vendor’s Cloud.

3.4 Vendor Specific Services. Vendors may offer other services, offerings or commitments related to their Clouds, which may include the provision of services by US only personnel, compliance with various legal regimes or other Vendor Cloud specific obligations. Notwithstanding what may be offered by a Vendor, the Software Subscriptions are not provided subject to the terms of those Vendor offerings, and any Vendor offerings solely relate to the Cloud itself and not to the Software Subscriptions operated on the Cloud. As between Red Hat and you, you are solely responsible for complying with any applicable export laws or regulations related to your use of the Software Subscriptions and you agree not to transmit information, data or technology governed by the International Traffic in Arms Regulations to Red Hat in the course of your use of the Software Subscriptions.

3.5 Vendor Termination. Red Hat may terminate the availability of a particular Vendor that offers Cloud Access with sixty (60) day notice, provided you may continue to use any Software Subscription for the remainder of the term of the Software Subscription on another Vendor’s Cloud or on your premises under the terms of this Agreement.

4. DEFINITIONS

“Add-On Subscriptions” are optional Software Subscriptions that may be purchased in addition to the base Software Subscription (e.g. a Red Hat Enterprise Linux Software Subscription). “Cloud” means a vendor’s hosted computing infrastructure that provides systems, virtual machines or container hosts to end users. “Cloud Access” is the Red Hat program that allows you to use Eligible Subscriptions in a Vendor’s Cloud under the terms set forth in Section 3. “Development Purposes” means using the Software for development related tasks that are performed by a single-user acting in a standalone mode such as (a) an individual developer writing software code, (b) a single user performing prototyping or quality assurance testing, where neither involves
any form of automated testing, multi-user testing and/or multi-client testing and (c) a user demonstrating software or hardware that runs with or on the Software.


“Evaluation Subscriptions” means Red Hat Products offered without charge solely for evaluation and not for Production Purposes or Development Purposes, including offerings described as evaluation, preview or beta.

“Product Appendix(es)” means the specific terms applicable to the Red Hat Products posted at https://www.redhat.com/agreements or otherwise attached to or incorporated into an Order Form.

“Production Purposes” means using the Software (a) in a production environment, (b) generally using live data and/or applications for a purpose other than Development Purposes, (c) for any automated quality assurance or testing, multi-user quality assurance or testing, and/or multi-client quality assurance or testing and/or (d) for backup instances.

“Red Hat Portal” means the Red Hat hosted delivery portal, such as Red Hat Customer Portal, Red Hat Container Catalog and/or Red Hat Update Infrastructure (“RHUI”) that provides Software Access and Software Maintenance.

“Red Hat Products” means Software, Subscription Services, and other Red Hat branded offerings made available by Red Hat.

“Software” means Red Hat branded software that Red Hat provides as part of a Red Hat Product.

“Software Access” means access to various Software versions if and when available.

“Software Maintenance” means access to updates, upgrades, corrections, security advisories and bug fixes for Software, if and when available.

“Software Subscription” means a Subscription that contains Software Access, Software Maintenance and Support.

“Stacking” (or “Stacked” or “Stackable”) means the use of more than one Subscription to account for the capacity of a System or Physical Node.

“Standard Business Hours” are listed at https://access.redhat.com/support/contact/technicalSupport.html.

“Subscription” means a time bound Red Hat Product offering, other than professional services.

“Support” means access to Red Hat support for issues relating to Software as described in Product Appendix 1.

“Supported Configuration(s)” means the supported Red Hat Product hardware and platform configurations that are listed at https://access.redhat.com/supported-configurations.

“Support Contact(s)” is a person authorized by you to open support requests and/or contact Red Hat support personnel.

“Support Subscriptions” means a Subscription that contains a specialized Support offering that is supplemental to Support provided in a Software Subscription.

“Subscription Services” means Red Hat offerings consisting of Software Access, Software Maintenance, Support and/or any other services associated with and during the term of a Subscription.

“Supported Use Case” means the manner and/or environment in which a particular Subscription(s) is used and supported as further defined in an applicable Exhibit.

“Vendor” means the Red Hat authorized third party from whom you purchase Cloud services and who is authorized by Red Hat to participate in this Cloud Access program.

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**EXHIBIT 1.A
RED HAT ENTERPRISE LINUX AND RELATED SOFTWARE SUBSCRIPTIONS**

This Exhibit 1.A to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Enterprise Linux, Red Hat Virtualization, Red Hat OpenStack Platform product lines and related offerings.

1. **Unit of Measure and Purchasing Requirements for Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform**

Table 1 sets forth the support level, Units of measure, capacity limitations, and stacking capabilities for various Red Hat Enterprise Linux Server, Red Hat Virtualization and Red Hat OpenStack Platform Software Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below.

**Table 1**

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Support Level</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server (Physical or Virtual Nodes)</td>
<td>Standard or Premium</td>
<td>Physical Node or Virtual Node</td>
<td>Socket-pair for each Physical Node or 2 Virtual Nodes</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for SAP HANA (see Note 1 below)</td>
<td>Standard or Premium</td>
<td>Physical Node or Virtual Node</td>
<td>Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Virtual Datacenters (see Notes 2 and 3 below)</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Unlimited Virtual Nodes running on a Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (formerly known as Red Hat Enterprise Linux OpenStack Platform)</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Unlimited Virtual Nodes running on a Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform for Atom</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Physical Node: Yes</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Software</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server (see Note 1 below)</td>
<td>Supported only for server computing on Supported Configurations, including delivery of services to other logical or physical client or server systems and the execution of multiuser applications.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Power</td>
<td></td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for System z</td>
<td></td>
</tr>
</tbody>
</table>

**Note 1:** Each Physical Node supports a maximum number of four (4) virtual instances that may consist of Red Hat Enterprise Linux Virtual Nodes, Virtual Guests or any other guest operating system, provided containers do not count towards the maximum four (4) virtual instances.

**Note 2:** Please note that Red Hat Enterprise Linux for Virtual Datacenters Subscriptions do not include an entitlement for the host operating system.

**Note 3:** Please note a Red Hat Enterprise Linux for Virtual Datacenters Subscription is limited when deployed on Red Hat Enterprise Linux Servers to the four (4) virtual instances support limit per Note 1, provided that limitation does not apply when Red Hat Enterprise Linux for Virtual Datacenters is deployed on either Red Hat Virtualization or Red Hat OpenStack Platform.

**Note 4:** A Red Hat Virtualization Subscription comes with RHEV-Manager, which requires the purchase of an underlying Red Hat Enterprise Linux Subscription for each Unit (i.e., Physical Node or Virtual Node) running RHEV-Manager.
<table>
<thead>
<tr>
<th>Red Hat Enterprise Linux for Real Time</th>
<th>Supported only on systems running (a) operating environments identified at <a href="http://www.redhat.com/mrp/hardware">www.redhat.com/mrp/hardware</a> as Red Hat Enterprise Linux for Real Time compatible and (b) hardware systems identified as Red Hat Enterprise Linux for Real Time certified at <a href="https://hardware.redhat.com">https://hardware.redhat.com</a> will be supported.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux for PRIMEQUEST</td>
<td>Subscription Services are provided only on Fujitsu PRIMEQUEST systems.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for SAP HANA</td>
<td>Subscription Services are provided only on Supported Configuration certified by SAP to run SAP’s HANA platform.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Hyperscale</td>
<td>Subscriptions Services are provided only on Supported Configuration in the form of a desktop or server separately. You must purchase the operating system for each instance of an application across the nodes in the group of systems, (c) the workloads are sent to the group of systems by a job scheduler, (d) the workloads are managed to perform compute-intensive operations on sets of data (Systems running a database, web application, load balancing or file serving clusters are not considered HPC nodes), (e) the number of management or head nodes does not exceed one quarter of the total number of nodes in the cluster and (f) all compute nodes in the cluster have the same Red Hat Enterprise Linux configuration. When Red Hat Enterprise Linux for HPC Head Nodes (an optional Software Subscription for management of compute nodes) is combined with Red Hat Enterprise Linux for HPC Compute Nodes Software Subscriptions for the compute nodes in the same cluster, the compute node inherits the Service Level (as set forth in Section 2.3(d) of the Appendix) of the Head Node.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for HPC Compute Nodes</td>
<td>Supported only for high performance computing (“HPC”) that consists of a minimum set of four Systems that are networked and managed to perform compute-intensive workloads (“cluster”) with all of the following characteristics: (a) the cluster is used for compute-intensive distributed tasks sent to individual compute nodes within the cluster, (b) the cluster works as a single entity or system on specific tasks by performing compute-intensive operations on sets of data (Systems running a database, web application, load balancing or file serving clusters are not considered HPC nodes), (c) the number of management or head nodes does not exceed one quarter of the total number of nodes in the cluster and (d) all compute nodes in the cluster have the same Red Hat Enterprise Linux configuration. When Red Hat Enterprise Linux for HPC Head Nodes (an optional Software Subscription for management of compute nodes) is combined with Red Hat Enterprise Linux for HPC Compute Nodes Software Subscriptions for the compute nodes in the same cluster, the compute node inherits the Service Level (as set forth in Section 2.3(d) of the Product Appendix) of the Head Node.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Grid Nodes</td>
<td>Supported only in a compute Grid where a “Grid” means a minimum of fifty (50) Socketpairs that are networked and managed to solve workloads with the following characteristics: (a) all the nodes in the group of systems have the same Red Hat Enterprise Linux configuration, (b) the group of systems is running a single application or is controlled by a single job scheduler, (c) the workloads are sent to the group of systems by a job scheduler, (d) the workloads are maintained in a single distributed application across the nodes in the group of systems, (e) the workloads are noninteractive, and (f) the production outage of the complete group of systems is defined as 30% of the nodes in the group of systems being unable to run the workload. This Supported Use Case does not include nodes running databases, web applications, load balancing, or file services.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux with Smart Virtualization</td>
<td>Supported on physical hardware solely to support virtual guests. Red Hat Enterprise Linux with Smart Virtualization is designed to run and manage virtual instances. The included Red Hat Enterprise Linux Software Subscription is supported solely when used as the host operating system with the Red Hat Enterprise Virtualization Hypervisor or when used as the guest operating system with virtual machines.</td>
</tr>
<tr>
<td>Red Hat Virtualization</td>
<td>Virtual Guests may be pooled or shared on any other System that has a Software Subscription with the same (a) Support Level (Standard or Premium) and (b) number of Virtual Guests (1, 4 or unlimited Virtual Guests), provided that you do not exceed the total number of Virtual Guests associated with the underlying Software Subscriptions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Software</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Enterprise Linux Server used as a Virtual Guest</td>
<td>Supported only on Systems or Physical Nodes used intermittently for disaster recovery purposes such as systems receiving periodic backups of data from production servers, provided those disaster recovery systems have the same Service Levels (as set forth in the Subscription Appendix, Section 2.3(d)) and configurations (e.g. Socket-pairs, Virtual Guests, Cores).</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux for Disaster Recovery</td>
<td>Supported only on Systems used at retail store locations with the same application stack excluding any data center deployments.</td>
</tr>
<tr>
<td>Red Hat Virtualization</td>
<td>Supported on physical hardware solely to support virtual guests. Red Hat Virtualization is designed to run and manage virtual instances and does not support user-space applications. Red Hat Virtualization may be used as a virtual desktop infrastructure solution, however, the Subscription does not come with software or support for the desktop operating system. You must purchase the operating system for each instance of a desktop or server separately.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Desktop</td>
<td>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Red Hat Enterprise Linux Desktop does not include support for open source server applications (e.g., Apache, Samba, or NFS), testing and development purposes or to share data with peers. Each Red Hat Enterprise Linux Desktop Software Subscription includes one Smart Management Module, each to be used solely with a single Red Hat Enterprise Linux Desktop System.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Workstation</td>
<td>Supported only on personal computing systems with a primary purpose of executing applications and/or services for a single user who is typically working from a directly connected keyboard and display. Each Red Hat Enterprise Linux Workstation Software Subscription includes one Smart Management Module to be used solely with a single Red Hat Enterprise Linux Workstation System.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (Physical Node)</td>
<td>Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform or when used as the guest operating system with virtual machines created and managed with Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform (without guest OS)</td>
<td>Supported only when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat OpenStack Platform for Atom</td>
<td>Supported only when used on a Physical Node that is a server running an Intel Atom processor. Red Hat Enterprise Linux is supported solely when used as the host operating system for running Red Hat OpenStack Platform. Red Hat Enterprise Linux is currently the only supported operating system for Red Hat OpenStack Platform.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux – Academic Server</td>
<td>Supported only for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Enterprise Linux – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>).</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Desktop</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Workstation</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Academic Site Subscription</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Infrastructure for Academic Institutions - Site Subscription</td>
<td>Supported only for use by qualified academic institutions. Qualified academic institutions must (a) be accredited by a national accreditation agency (e.g. the United States accreditation is located at <a href="http://ope.ed.gov/accreditation/Search.aspx">http://ope.ed.gov/accreditation/Search.aspx</a>) and (b) have at least one thousand (1,000) FTEs.</td>
</tr>
<tr>
<td>Red Hat Enterprise Linux Developer Suite</td>
<td>Supported only for Red Hat Enterprise Linux Developer Suite for Development Purposes.</td>
</tr>
</tbody>
</table>

Note 1: The Red Hat Enterprise Linux Server Use Case applies to the Red Hat Enterprise Linux Server variants in this Table 3.

3.1 Red Hat Enterprise Linux Server – Atomic Host. Red Hat Enterprise Linux Server may be deployed using RPM package manager or in Atomic Host mode. Atomic Host mode is an optional image based delivery, deployment and updating mechanism designed to support container based environments. Each deployment of Red Hat Enterprise Linux, regardless of the method, constitutes a Unit.

3.2 Red Hat Enterprise Linux Desktop and Workstation Software Subscriptions

Production Support for Red Hat Enterprise Linux Desktop subscriptions is limited to Support Contacts that are helpdesk support personnel and not end users.

3.3 Red Hat Enterprise Linux Extended Life Cycle Support Software Subscriptions

Limited Maintenance and Production Support. Red Hat Enterprise Linux ELS entitles you to receive Software Maintenance and Production Support for Severity 1 and 2 problems on x86 architectures, but only for a limited set of software components excluding those listed at http://www.redhat.com/rhel/server/extended_lifecycle_support/exclusions/. Red Hat Enterprise Linux ELS Software Maintenance is limited to those Software updates that Red Hat considers, in the exercise of its sole judgment, to be (a) critical impact security fixes independent of customer support requests and (b) selected urgent priority defect fixes that are available and qualified for a subset of the packages in specific major releases of Red Hat Enterprise Linux beyond the end of its regular production cycles. The Red Hat Enterprise Linux ELS stream will be maintained for an additional period of time immediately after the end-date of the regular production cycles of the relevant release as set forth at https://access.redhat.com/support/policy/updates/errata/. Red Hat will only provide one code base for Red Hat Enterprise Linux ELS and will not make functional enhancements to versions of Red Hat Enterprise Linux during the ELS cycle.
Red Hat Enterprise Linux ELS Unsupported Components. Red Hat Enterprise Linux ELS covers components supported prior to the end of the life cycle but does not cover the following (in addition to those noted in Section 3.3(a) above): (a) desktop applications, (b) Red Hat Cluster Suite, (c) content from the Extras channel (“Extras” is a set of content with a shorter life cycle) and (d) Independent layered or Add-on products such as Directory Server, Red Hat Satellite Server, or Scalable File System. Red Hat reserves the right to exclude additional packages.

Red Hat Enterprise Linux ELS Content Delivery. Red Hat Enterprise Linux ELS Software Maintenance is delivered through separate Red Hat Portal base channels for the specific release and corresponding child channels if applicable. You must install a modified redhat-release package downloaded from Red Hat Portal to subscribe a Unit to a Red Hat Enterprise Linux ELS channel.

4. Red Hat Enterprise Linux Developer Suite
Red Hat Enterprise Linux Developer Suite provides an open source development environment that consists of Red Hat Enterprise Linux with built-in development tools, certain Red Hat Enterprise Linux Add-Ons, Red Hat Enterprise Linux for Real Time, Smart Management and access to Software Maintenance, but no Support. If you use any of the Subscription Services or Software associated with Red Hat Enterprise Linux Developer Suite for Production Purposes, you agree to purchase the applicable number of Units of the applicable Software Subscription.

5. Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions
For each paid, active Red Hat Enterprise Developer Workstation and/or Red Hat Enterprise Linux Developer Support Subscription, Red Hat will provide you with (a) access to the supported versions of Red Hat Enterprise Linux and updates through a Red Hat Portal; and (b) assistance for: (i) installation, usage and configuration support, diagnosis of issues, and bug fixes for Red Hat Enterprise Linux, but only for issues related to your use of Red Hat Enterprise Linux for Development Purposes and (ii) advice concerning application architecture, application design, industry practices, tuning and application porting (collectively, “Developer Support”).

The Red Hat Enterprise Linux Developer Workstation and Red Hat Enterprise Linux Developer Support Subscriptions do not include support for (a) modified software packages, (b) wholesale application debugging or (c) software included in the Red Hat Extras repository, supplementary channels, preview technologies or software obtained from community sites.

5.1 Red Hat Enterprise Linux Developer Support Subscription Levels. You may purchase Professional (two (2) business day response time) or Enterprise (four (4) Standard Business Hours response time) with web and phone support for an unlimited number of requests for Red Hat Enterprise Developer Workstation (one (1) System) and/or Red Hat Enterprise Developer Support Subscriptions (twenty-five (25) Systems).
EXHIBIT 1.B
RED HAT MIDDLEWARE, OPENSHEET & APPLICATION PLATFORM
SOFTWARE SUBSCRIPTIONS

This Exhibit 1.B to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat JBoss Middleware, Red Hat OpenShift Container Platform and Red Hat Application Platform product lines.

Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware Software Subscriptions.
Table 1 sets forth the Units of measure, stacking capabilities and Supported Use Cases for various Red Hat JBoss Middleware Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 1.

Supplemental JBoss Software. During the term of a JBoss Middleware Software Subscription, you will receive access to certain additional Red Hat JBoss Middleware Software ("Supplemental JBoss Software"). The Software Access and Software Maintenance for Supplemental JBoss Software is for Development Purposes only and for up to twenty-five (25) users for each sixteen (16) Core Band or Socket-pair Subscription that you purchase. If you use the Supplemental JBoss Software for Production Purposes or for more than twenty-five (25) users, you agree to purchase the appropriate Software Subscriptions based on each such Unit that you use.

Supported JBoss Middleware Software. Using Red Hat JBoss Middleware Software Subscriptions, (or any portion thereof) to support software obtained from community sites without purchasing a corresponding Software Subscription for such community software, is a material breach of the Agreement.

Red Hat JBoss Core Services Collection. "Red Hat JBoss Core Services Collection" is a collection of components that provide common functionality (such as monitoring and management, load balancing, process control and single sign-on) across a majority of the JBoss Middleware portfolio and is subject to the following terms:
You will receive entitlements for Red Hat JBoss Core Services Collection in a quantity equal to the number of Cores of Red Hat JBoss Middleware Software Subscriptions you purchased (for Software Subscriptions where the Unit is a Core).
You will receive entitlements to Red Hat JBoss Core Services Collection equal to sixteen (16) Cores for each Red Hat JBoss Middleware Software Subscription you purchase on a per socket-pair basis.
Red Hat JBoss Web Server and Red Hat JBoss Web Server Plus Subscriptions (which only include the management components of the Core Services Collection) do not include Red Hat JBoss Core Services Collection.

JBoss Middleware for OpenShift Container Platform. Red Hat JBoss Middleware Software Subscriptions in Table 1 include access to the Red Hat JBoss Middleware Software enabled for Red Hat OpenShift Container Platform (i.e. the Software described in Table 3 below ("JBoss OpenShift Enabled Software"). The JBoss OpenShift Enabled Software is supported when deployed on Red Hat OpenShift Container Platform, which requires a separate active paid Software Subscription. The capacity restrictions in Table 3 below apply to the Red Hat JBoss OpenShift Enabled Software. Red Hat JBoss Middleware Software Subscriptions listed in Table 1 are not configured for use with Red Hat OpenShift Container Platform.

Red Hat's Open Source Assurance Program applies only to the JBoss Middleware Software Subscription that you purchased and does not apply to Supplemental JBoss Software or JBoss OpenShift Enabled Software that may be provided (for no additional fee) with the Red Hat JBoss Middleware Subscription that you purchased.

Table 1

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat JBoss Enterprise Application Platform</td>
<td>Core Band</td>
<td>No</td>
<td>These Red Hat Products are only supported on Supported Configurations.</td>
</tr>
<tr>
<td>Red Hat JBoss Web Server</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss Web Server Plus</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss Data Grid</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss Fuse</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss AMQ</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss Data Virtualization</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss BPM Suite</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss BRMS</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat JBoss Middleware</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Add On-Extended Life Cycle Support</td>
<td>Core Band</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

2. Unit of Measure and Purchasing Requirements for Red Hat OpenShift Container Platform

Table 2 sets forth the Units of measure, capacity limitations, stacking capabilities and Supported Use Cases for various Red Hat OpenShift Container Platform Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 2. Red Hat OpenShift Container Platform for RHEL and Container Platform for RHEL are layered products and require a separate paid and active Software Subscription to Red Hat Enterprise Linux for Virtual Datacenters with matching Support Levels for each Unit that deploys, installs, uses or executes such layered products.
## 3. Unit of Measure and Purchasing Requirements for Red Hat JBoss Middleware for OpenShift Container Platform

Table 3 sets forth the Units of measure, capacity limitations, and stacking capabilities for Red Hat JBoss Middleware for OpenShift Container Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in Table 3. Red Hat OpenShift Container Platform Subscriptions are sold separately.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat JBoss Middleware for OpenShift Container Platform</td>
<td>Virtual Guest</td>
<td>2 Cores</td>
<td>One Virtual</td>
<td>Cores: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss Data Grid for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss Fuse for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss AMQ for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss Data Virtualization for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss BPM Suite for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
<tr>
<td>Red Hat JBoss BRMS for OpenShift Container Platform</td>
<td>Physical Node</td>
<td>Socket-pair</td>
<td>Unlimited Virtual Guests</td>
<td>Physical Node: Yes</td>
</tr>
</tbody>
</table>

## 4. Unit of Measure and Purchasing Requirements for Application Platform Software Subscriptions

Tables 4.1 and 4.2 set forth the Units of measure, capacity limitations, and Supported Use Cases for various Red Hat Application Software Subscriptions. You must purchase the appropriate number and type of Software Subscription(s) for each Unit, based on the Unit and other parameters described in these Tables.

### 4.1 Red Hat 3Scale API Management Subscriptions
For purposes of calculating the total number of Units that you must purchase, you must include the number of API Calls generated in both Production Purposes and Development Purposes and during traffic spikes.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit of Measure</th>
<th>Capacity</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat 3Scale API Management Platform On Premise</td>
<td>API Calls per day</td>
<td>Up to 2,000,000</td>
<td>The Subscription is supported (a) when used on a server, (b) on Supported Configurations, and (c) when used for the purpose of API Management. The OpenShift Container Platform Subscription provided with the Subscription Services is supported only in connection with use of the Red Hat 3Scale API Management Platform, On Premise Subscription.</td>
</tr>
</tbody>
</table>

### 4.2 Red Hat Mobile Application Platform
In connection with your Red Hat Mobile Application Platform Subscription Service, you will have access to an optional online service called the Red Hat Mobile Application Build Farm. Use of this optional online service is subject to the terms and conditions set forth at www.redhat.com/licenses/buildfarm.
<table>
<thead>
<tr>
<th>Subscription Service</th>
<th>Unit Description</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Mobile Application Platform, Business to Employee, Unlimited</td>
<td>Employee User* Unlimited Applications***</td>
<td>Support is provided for Software (a) when used on a System that is a server, (b) on platforms that are Supported Configurations and (c) that is within the supported Red Hat Mobile Application Platform Life Cycle. The OpenShift Container Platform Subscription that may be provided with the Subscription Services is supported only in connection with use of the Red Hat Mobile Application Platform</td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Employee, Limited</td>
<td>Employee User* Up to 5 Applications***</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Customer, Limited</td>
<td>Customer User** Up to 5 Applications***</td>
<td></td>
</tr>
<tr>
<td>Red Hat Mobile Application Platform, Business to Customer, Single Use Application</td>
<td>Customer User** One Application***</td>
<td></td>
</tr>
</tbody>
</table>

*Note: The number of “Employee Users” is equal to the number of unique Employee Users who are able to access an Application(s), regardless of whether the Employee User(s) actually access or the frequency with which they access the Application(s).

**Note: The number of “Customer Users” is equal to the number of unique monthly active Customer Users who actually access an Application(s) in a calendar month regardless of the frequency with which they access the Application(s).

***Note: For purposes of counting “Applications”: (1) an Application is comprised of a project of various components dedicated to a single purpose regardless of the number of mobile operating systems on which it is provisioned or the number of other applications to which it may be connected and (2) only live production Applications are counted.
EXHIBIT 1.C
RED HAT STORAGE SUBSCRIPTIONS

This Exhibit 1.C to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Gluster Storage, Red Hat Ceph Storage product lines and related offerings. References to “Red Hat Storage Subscriptions” refer to both product lines.

1. Unit of Measure and Purchasing Requirements.

Table 1 sets forth the support level, Unit of measure, stacking capabilities and Supported Use Case for various Red Hat Storage Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and other parameters described in Table 1 below. In addition, the following terms apply:

Red Hat Gluster Storage includes management tools to manage one or more instances of Red Hat Gluster Storage.

Red Hat Ceph Storage Software Subscriptions are priced based on the total amount of storage capacity. Each Red Hat Ceph Storage Software Subscription supports up to a certain number of Physical Nodes or Virtual Nodes. Should the number of Physical or Virtual Nodes be consumed before the Storage Band capacity is reached, you may upgrade to the next Storage Band to receive additional Physical or Virtual Nodes.

Table 1

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Support Level</th>
<th>Unit of Measure</th>
<th>Stackable</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Gluster Storage</td>
<td>Standard or Premium</td>
<td></td>
<td>Yes</td>
<td>Red Hat Storage is intended to be used as a storage system and will be supported only when used as a storage node. These Subscriptions are not supported on non-server hardware such as desktops or workstations and are intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance of the Subscription. Each Subscription includes one Software Subscriptio...</td>
</tr>
<tr>
<td>Red Hat Gluster Storage Module</td>
<td>Standard or Premium</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Red Hat Ceph Storage</td>
<td>Standard or Premium</td>
<td>Physical Node or Storage Band</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Red Hat Gluster Storage Pre-Production</td>
<td>Standard</td>
<td></td>
<td>No</td>
<td>These Pre-Production Subscriptions are subject to the same Use Case as provided in the description for Red Hat Ceph Storage and Red Hat Gluster Storage, provided that Support is only provided for Pre-Production Purposes (defined below).*</td>
</tr>
<tr>
<td>Red Hat Ceph Storage Pre-Production</td>
<td>Standard</td>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Red Hat Gluster Storage for Public Cloud</td>
<td>Standard or Premium</td>
<td>Virtual Node</td>
<td>Yes</td>
<td>Red Hat Gluster Storage for Public Cloud is intended to be used as a storage system and will be supported only when used as a storage node. When running in Amazon Web Services, an EC2 M1 Large dedicated instance is required in order to be supported. Running other applications and/or programs of any type on the same instance can have a negative impact on the function and/or performance of the Red Hat Gluster Storage for Public Cloud and is not a Supported Use Case.</td>
</tr>
<tr>
<td>Red Hat Gluster Storage for Red Hat OpenStack Platform</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>No</td>
<td>This Subscription is intended to be used as a storage system with Red Hat OpenStack Platform and will be supported only when used as a storage node. It is not supported on non-server hardware such as desktops or workstations and is intended for use on a dedicated Physical Node; running other applications and/or programs of any type on the Physical Node can have a negative impact on the function and/or performance.</td>
</tr>
<tr>
<td>Red Hat Hyperconverged Infrastructure</td>
<td>Standard or Premium</td>
<td>Physical Node</td>
<td>No</td>
<td>Red Hat Hyperconverged Infrastructure is only supported when used as an integrated compute plus storage infrastructure. These Software Subscriptions are supported on server hardware but not on desktops or workstations. Support is provided for groups of 3 Nodes, which is the minimal deployment.</td>
</tr>
</tbody>
</table>
**Container Storage Add On for OpenShift Container Platform**

| Standard or Premium | Physical Node or Virtual Node | No | This Subscription is only supported when used as a (a) storage system with Red Hat OpenShift Container Platform, (b) container inside OpenShift Container Platform or (c) storage node outside OpenShift Container Platform. The Subscription is supported on server hardware but not on desktops or workstations and is intended for use on a dedicated Physical Node or as containers inside OpenShift Container Platform clusters. |

**Red Hat Gluster Storage – Academic Edition**

| Standard or Premium | FTE | n/a | Red Hat Storage – Academic Edition Subscriptions are supported for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Storage – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at http://ope.ed.gov/accreditation/Search.aspx). Note: When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply. |

**Red Hat Ceph Storage – Academic Edition**

| Standard or Premium | FTE | n/a | Red Hat Storage – Academic Edition Subscriptions are supported for use by qualified academic institutions for teaching and learning purposes that consist of (a) faculty, staff, or student laptops or desktops for personal and academic use, (b) computer labs available to faculty, staff, and students for general education use, (c) classroom desktops, (d) laboratories for technical and research use and/or (e) laboratories for software development use. Red Hat Storage – Academic Edition is not supported when used for any purpose other than as described in (a) – (e) above. Qualified academic institutions must be accredited by a national accreditation agency (e.g. the United States accreditation is located at http://ope.ed.gov/accreditation/Search.aspx). Note: When you use Red Hat Enterprise Linux – Academic Edition for non-qualified academic purposes as described above, standard Red Hat Enterprise Linux subscription rates apply. |

**RED HAT INTEGRATED SOLUTIONS**

This Exhibit 1.D. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Integrated Solutions product lines.

1. **Unit of Measure and Purchasing Requirements.** Table 1 sets forth the Unit of measure and Supported Use Cases for Red Hat Cloud Infrastructure Subscriptions. You must purchase the appropriate number and type of these Software Subscriptions based on the Unit and Supported Use Cases described in Table 1 below. A Red Hat Cloud Infrastructure Software Subscription comes with a Red Hat CloudForms Software Subscription but if you are managing any virtual machines with the Red Hat Cloud Infrastructure Subscription that are not running on the same Physical Node as the active Red Hat CloudForms Software Subscription, you must purchase additional Red Hat CloudForms Subscriptions for such use.

**Table 1**

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Cloud Infrastructure</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.</td>
</tr>
<tr>
<td>Red Hat Cloud Infrastructure (without guest OS)</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat OpenStack Platform. Red Hat Virtualization is supported solely when used to run and manage virtual guests for this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat OpenStack Platform. If the Red Hat Cloud Infrastructure product contains an entitlement for Satellite, Satellite is only supported for managing Physical Nodes within the Red Hat Cloud Infrastructure private cloud.</td>
</tr>
</tbody>
</table>
Red Hat Cloud Suite

System

Red Hat only provides Subscription Services for the Software when used on a Physical Node that is a server. Red Hat Enterprise Linux is supported solely when used as the host operating system for Red Hat Cloud Suite or when used as the guest operating system on virtual machines created and managed with this Subscription. Red Hat Enterprise Linux is the only supported operating system for Red Hat Cloud Suite.

MANAGEMENT SUBSCRIPTIONS

This Exhibit 1.E. to Product Appendix 1 contains terms that describe the parameters and govern your use of the Red Hat Satellite, Red Hat CloudForms, Red Hat Ansible product lines and related offerings.

1. Red Hat Satellite, Red Hat Capsule and Smart Management

1.1 Units of Measure and Purchasing Requirements. You must purchase the appropriate number and type of Red Hat Management Subscriptions based on the Unit and Supported Use Cases described in Table 1 below.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Satellite, Red Hat Satellite Core and Red Hat Satellite Proxy</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for Red Hat Satellite, Red Hat Satellite Core or Red Hat Satellite Proxy when used on a System or Physical Node that is a server.</td>
</tr>
<tr>
<td>Red Hat Satellite Capsule</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for Red Hat Satellite Capsule and Red Hat Satellite Proxy when deployed with Red Hat Satellite.</td>
</tr>
<tr>
<td>Red Hat Satellite Proxy</td>
<td>System</td>
<td>Red Hat only provides Subscription Services for Red Hat Satellite Proxy when deployed with Red Hat Satellite.</td>
</tr>
<tr>
<td>Red Hat Smart Management</td>
<td>Module</td>
<td>Red Hat Smart Management entitlements are required for each Unit of Red Hat Enterprise Linux that is managed by Red Hat Satellite Capsule, Red Hat Satellite Proxy and/or Red Hat Satellite. Red Hat Smart Management entitlements may be used with Red Hat Portal directly.</td>
</tr>
<tr>
<td>Red Hat Satellite Starter Pack</td>
<td>Module</td>
<td>Red Hat does not provide Subscription Services for Red Hat Satellite Starter Pack if at the time of renewal, more than 50 Units (whether Systems, Physical Nodes and/or Virtual Nodes) are managed.</td>
</tr>
</tbody>
</table>

2. Red Hat CloudForms

2.1 Units of Measure and Purchasing Requirements. Table 2 sets forth the Unit of measure, stacking capabilities and Supported Use Cases for various Red Hat Management Subscriptions. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 2. For Virtual Nodes managed by CloudForms in a CloudForms enabled public cloud, you need to purchase Units equal to either (at your option), (a) the actual number of Units or (b) the average daily maximum Virtual Nodes managed by CloudForms in the previous 365 days. If 365 days of usage history is not available, you may use the average usage history period that is available. If managing Virtual Nodes on a public cloud, you must confirm that a specific public cloud is Red Hat CloudForms enabled.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Capacity</th>
<th>Stackable</th>
<th>Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat CloudForms</td>
<td>Managed Node: (Physical Node or Virtual Node)</td>
<td>Socket-pair for each Physical Node or Sixteen (16) Virtual Nodes</td>
<td>Physical Node: Yes</td>
<td>Red Hat only provides Subscription Services for Red Hat CloudForms Software when deployed on (a) a System or Physical Node that is a server and (b) Virtual Nodes if they are running on-premise or on a Red Hat CloudForms enabled public cloud. Red Hat Enterprise Linux is the only supported operating system for Red Hat CloudForms Subscriptions.</td>
</tr>
</tbody>
</table>

3. Red Hat Ansible Tower and Red Hat Ansible Engine Subscriptions

The Red Hat Ansible Tower offering consists of the Red Hat branded graphical application and REST API, designed for use with (i) Red Hat Ansible Engine or Ansible Project Software, Red Hat Ansible Tower does not include the Ansible Project. “Ansible Engine” means the installed package, which consists of the connection plugins, inventory plugins, fact plugins, Ansible-playbook language and directives, core modules, and other miscellaneous core or plugins provided in the package. “Ansible Project Software” means the community version of the Ansible deployment and configuration management engine.

Red Hat Ansible Engine Subscriptions provide access to additional software components (Certified Components and Community Components) with varying levels or no support as set forth at https://access.redhat.com/articles/3166901 (“Ansible Support Matrix”), “Certified Components” means third party components listed on the Ansible Support Matrix and maintained by such third party. “Community Components” means components (e.g., modules, plugins, etc.) that are created and submitted by community members. Red Hat will provide limited assistance for Certified Components solely to the extent required to run Red Hat Ansible Engine and/or Red Hat Ansible Tower Software but otherwise does not provide Support or Software Maintenance for Certified Components or Community Components.

3.1 Units of Measure and Purchasing Requirements. Table 3 sets forth the Unit of measure and Supported Use Cases for Red Hat Ansible Engine and Red Hat Ansible Tower Software. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 3 below.

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
</table>

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Red Hat Ansible Tower Managed Node Red Hat only provides Subscription Services for this Software (a) when used on a system that is a server, (b) on platforms that are Supported Platforms (set forth at:  

<table>
<thead>
<tr>
<th>Software Subscription</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Hat Ansible Tower</td>
<td>System, Physical Node or Virtual Node</td>
<td>Red Hat Insights provides predictive analytics and remediation steps for Red Hat Enterprise Linux 6.4 and later versions, Red Hat OpenStack® Platform 7 and later versions, Red Hat Virtualization 3.6 and later versions and Red Hat OpenShift Container Platform.</td>
</tr>
</tbody>
</table>

3.2 Data Analytics. Red Hat Ansible Tower Software versions 2.4 or later may collect and transmit usability data (including information identifying the source of that data) to Red Hat. Red Hat intends to use the data to enhance future releases of the Red Hat Ansible Tower Software and help streamline customer experience and success. Usability data includes information such as dashboard items clicked in the Tower Software, amount of time spent on individual pages and paths taken throughout the Red Hat Ansible Tower Software. Usability data is collected and transmitted to Red Hat via a javascript file that is downloaded to a customer’s web-browser. The collection and transmission of such usability data is optional and you may (a) completely opt- out by editing the Red Hat Ansible Tower Software configuration and restarting the Red Hat Ansible Tower Software, or (b) choose between two opt-in scenarios: (i) "anonymous mode" that will provide usability data to Red Hat without any information identifying the source of that data, or (ii) "detail mode" that will provide usability data with the customer name to Red Hat. For Red Hat Ansible Tower Software (versions 2.4 or later) you may opt-out from usability data collection and transmission by following the directions found at: http://docs.ansible.com/ansiblehttp://docs.ansible.com/ansible-


4.  Red Hat Ansible Engine Networking Add-On
Red Hat Ansible Engine Networking Add-On provides Support to networking modules listed on the Ansible Support Matrix. You are required to purchase a Unit of Red Hat Ansible Engine Networking Add-On for each Red Hat Ansible Engine Software Subscription (regardless of the number of Managed Nodes). Red Hat Ansible Engine Networking Add-On Subscription is only supported on Red Hat Ansible Engine Subscriptions with Premium level support.

5. Red Hat Directory Server Software Subscriptions
Table 5 sets forth the Unit of measure and Supported Use Cases for Red Hat Directory Server. You must purchase the appropriate number and type of these Subscriptions based on the Unit and other parameters described in Table 5 below. The Service Level(s) for Directory Server is determined by the Service Level of the underlying Red Hat Enterprise Linux Subscription for the System, Physical Node or Virtual Node running Directory Server (for example, if the Service Level for the underlying Red Hat Enterprise Linux Software Subscription is Premium, then Directory Server would receive Premium level support).

Table 5

<table>
<thead>
<tr>
<th>Software</th>
<th>Unit</th>
<th>Supported Use Case</th>
</tr>
</thead>
</table>

EXHIBIT 1.F
SUPPORT SUBSCRIPTIONS

This Exhibit 1.F to Product Appendix 1 contains terms that describe the parameters and govern your use of TAM Services.
1. Technical Account Management ("TAM") Service

The TAM Service is a Support Subscription that you may purchase in addition to your underlying Standard or Premium Software Subscription in order to receive enhanced Support. The TAM Service does not include support for (1) Self-support Software Subscriptions, (2) any Unit of Software (such as a System, Physical Node, Core, etc.) for which you do not have an active paid Software Subscription or (3) any Software Subscription for which support is provided by a Business Partner. When you purchase a TAM Service, you receive access to a Red Hat support engineer to provide you with (a) access to Red Hat's technology and development plans, including beta testing and bug/feature escalation, (b) weekly review calls, (c) up to two (2) on-site technical review visits per year, (d) up to four Support Contacts, (e) quarterly service performance metrics via the TAM electronic dashboard, and (f) a subscription to Red Hat's TAM monthly newsletter.

<table>
<thead>
<tr>
<th>Support Subscription</th>
<th>Unit Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAM Service TAM</td>
<td><strong>Point of Contact:</strong> a Red Hat associate whom you are authorized to contact to request support for a particular team, geography or Red Hat product line.</td>
</tr>
<tr>
<td>Extension</td>
<td></td>
</tr>
</tbody>
</table>

1.1 TAM Service Coverage. Each TAM Service Subscription will be limited to certain parameters (that is, a region, a customer team and/or a product line) and will be listed in the Order Form and, if not listed, the TAM parameters will be established upon the initiation of the TAM Service.

**Regions:** North America, Latin America, EMEA, Asia-Pacific (excluding Japan, China and India), China, India or Japan.

**Customer Team:** The customer team supported by the TAM, such as your development team, your system administration team, your support team, etc.

**Red Hat Product Line:** The supported Red Hat product line, such as the Red Hat Enterprise Linux, Red Hat JBoss Middleware, Red Hat Mobile Application Platform, OpenShift, Red Hat Storage, Ansible or Red Hat Cloud product lines.

**TAM Service Level.** The TAM Service is offered during local Red Hat Support Standard Business Hours as set forth at [https://access.redhat.com/support/contact/technicalSupport.html](https://access.redhat.com/support/contact/technicalSupport.html) (based on the physical location of the TAM representative). If you have purchased Premium Red Hat Software Subscriptions, you will receive 24x7 Support for Severity 1 and 2 issues through Red Hat’s 24x7 Production Support teams and not necessarily from your assigned TAM representative. Red Hat’s 24x7 Production Support team will be responsible for addressing issues, but will consult with your TAM representative, as your TAM representative is available, for advice and to gain a better understanding of your infrastructure, environment and specific needs. If you have purchased multiple TAM Service Subscriptions in each of Red Hat’s primary Support Regions, you will receive the benefit of extended TAM Service coverage hours, but you should follow the same process and contact the Red Hat 24x7 support numbers at [https://access.redhat.com/support/contact/technicalSupport.html](https://access.redhat.com/support/contact/technicalSupport.html).

**TAM Extension Service.** The TAM Extension Service is an extension of a Red Hat Enterprise Linux TAM Service to provide additional technical knowledge such as SAP implementations on Red Hat Enterprise Linux. The TAM Extension Service requires a separate active and paid standard TAM Service Subscription.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Riverbed Technology, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Contractor and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer is added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.**Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14; but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
RIVERBED TECHNOLOGY, INC.

RIVERBED TECHNOLOGY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

These terms and conditions ("Attachment A") shall apply to the sale or license of Products or Services from Contractor to the customer on the applicable Order ("Ordering Activity"). This Attachment A constitutes the agreement between Contractor and Ordering Activity with respect to such Products and Services, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior discussions, understandings or representations between the parties. "Products" are Riverbed’s currently generally available products, including hardware, software and documentation, listed on Contractor’s GSA price list. "Services" means Riverbed’s currently generally available maintenance
and support services and any professional services listed on Contractor's GSA price list or that are otherwise sold to Ordering Activity hereunder. “Software” means machine readable software provided by Riverbed, whether incorporated into or provided for use in or with a hardware Product or provided as a Product separate from any hardware (whether initially, as part of maintenance or support or otherwise), and any related documentation.

Ordering Activity will purchase from Contractor the Products and/or Services by submitting a written purchase order to Contractor (an “Order”). The terms and conditions of this Attachment A will apply to the Order and supersede any different or additional terms on Ordering Activity’s purchase orders. The Products and Services are not for resale.

Contractor warrants to Ordering Activity that the Services will be provided in a professional manner in accordance with generally accepted industry standards. Contractor warrants to Ordering Activity that the Products, upon original shipment by Contractor, will conform in all material respects to the applicable published specifications for such Products for a period of one (1) year with respect to hardware and ninety (90) days with respect to Software from the date of original shipment by Contractor of the nonconforming Product (but not replacements). Products obtained from Contractor that do not comply with the warranty and are returned by Ordering Activity to Contractor during the warranty period (and for which a Contractor through Riverbed RMA has been issued) will be repaired or replaced at Contractor's option. Contractor will bear the cost of freight and insurance for return of goods to Ordering Activity. If Contractor cannot, or determines that it is not practical to, repair or replace the returned Product, the price paid by Ordering Activity therefor will be credited to Ordering Activity. Contractor MAKES NO OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS OR ANY SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR ALSO MAKES NO WARRANTY REGARDING NONINTERUPTION OF USE OR FREEDOM FROM BUGS. The above warranty does not extend to any Product that is modified or altered, is not maintained to Riverbed's maintenance recommendations, has its serial number removed or altered or is treated with abuse, negligence or other improper treatment (including, without limitation, use outside the recommended environment). Ordering Activity's remedy with respect to any nonconformity, deficiency, warranty or defect with respect to the Products and/or Services is as stated above.

Any Software is not sold, but rather is licensed pursuant to the applicable Riverbed license agreement, Exhibit A herein, that governs use of the Software solely for Ordering Activity’s internal use in or with that Product strictly in accordance with the accompanying documentation and any other use restrictions applicable for that Product. Such license is non-exclusive, non-transferable, non-sublicensable and does not include the right to (and Ordering Activity will not modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or use the software or Product for the benefit of any third party. If a Product is provided to any unit or agency of the United States Government (“U.S. Government”), the following provisions shall apply: All software and accompanying documentation are deemed to be commercial, including computer databases, related documentation, technical data and manuals as defined in FAR 2.101. Therefore, pursuant to FAR 12.212 and DFARS 227.7202, any use, modification, reproduction, release, performance, display or disclosure of the software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Attachment A and shall be prohibited except to the extent expressly permitted by the terms herein.

Subject to Ordering Activity's compliance with all terms of this Attachment A and payment of Contractor’s support and maintenance fees for the level of Riverbed support purchased (i.e., Silver Gold, or Platinum Level), Contractor through Riverbed will provide its then standard corresponding support and maintenance Services, the current version of which is located under Exhibit C herein (“Support Services”). Contractor through Riverbed will not provide, and Ordering Activity will not request, any Support Services for any Product with respect to which a Support contract is not then in effect and with respect to which Support fees have not been timely and fully paid to Contractor. Ordering Activity will not escalate calls to Contractor through Riverbed for Support Services nor install updates, upgrades, bug fixes or the like on any Product with respect to which a Support contract is not then in effect and in respect to which Support fees have not been timely and fully paid to Contractor. Contractor obligations under any Support plan with respect to any Product is subject to payment of applicable Support fee’s. The purchase or renewal of Support for any Product purchased by Ordering Activity requires the purchase or renewal of Support for all Products purchased by Ordering Activity. Riverbed retains ownership of any intellectual property resulting from Services. Ordering Activity may renew Support by submitting an Order for renewal of that Support. Ordering Activity may purchase annual Support for a Product that provides for one (1) to five (5) years of support subject to Riverbed’s end of sale policy at www.riverbed.com/supportpolicy. If Ordering Activity purchases Support for more than one (1) year of support in excess of one year may be cancelled by Ordering Activity at any time without cause by providing written notice to Contractor and any unused, prepaid amount (reduced by the amount of any additional discount provided because Ordering Activity purchased more than one (1) year of Support) will be refunded to Ordering Activity within 45 days of Contractor’s receipt of such written notice. For example, if Support is cancelled after one year of a three year period, Contractor will refund two years of prepaid, unaearned support. All obligations of Contractor to provide support services will be terminated on receipt of the cancellation notice.

EXHIBIT A – LICENSE AND PRODUCT WARRANTY TERMS

LICENSE GRANT. Subject to the terms of this Attachment A and provided Ordering Activity has paid the applicable fees, Contractor hereby grants Ordering Activity a limited, personal, non-sublicensable, non-transferable, nonexclusive license to use or access the Product solely for Ordering Activity's internal use in accordance with the Riverbed documentation that accompanies it and any other use restrictions applicable for that Product, including without limitation any additional use restrictions set forth as Exhibit B herein. Except as expressly set forth in Exhibit B herein, Ordering Activity may use each licensed copy of the Software only as embedded in or for execution on a specific unit (or replacement thereof) of Riverbed hardware (“Hardware”) owned or leased by Ordering Activity (including any units of replacement Hardware provided as part of warranty or support services). Ordering Activity may copy configurations of the Software solely for backup purposes. Without granting any additional licenses hereunder, Ordering Activity may authorize its contractors and outsourcers to use or operate the Products solely on Ordering Activity’s behalf and provided Ordering Activity obtains such third parties’ binding consent to abide by the terms of this Attachment A and provided Ordering Activity shall take such actions for such parties’ use and compliance. Such parties are not, and shall not be deemed to be, third party beneficiaries under this Attachment A for any purpose. See Exhibit B for any additional Product or service specific use rights or restrictions or limitations.

LICENSE RESTRICTIONS. Except as permitted by this Attachment A, Ordering Activity shall not, nor authorize anyone else to, directly or indirectly: (i) copy, modify, or distribute the Product; (ii) reverse engineer, disassemble, decompile or attempt to discover the source code or structure, sequence and organization of the Product (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited); (iii) rent, lease, or use the Product for timesharing or service bureau purposes for third parties, or otherwise use the Product on behalf of any third party; or (iv) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities. Notwithstanding anything to the contrary herein, Ordering Activity may utilize the Software pursuant to a leasing arrangement whereby the Ordering Activity leases the...
Product from a third party. Ordering Activity shall maintain and not remove or obscure any proprietary notices on the Product. As between the parties, title of and all ownership rights in the intellectual property rights in and to the Software, and any copies or portions thereof, shall remain in Riverbed and its suppliers or licensors. The Software is protected by the copyright laws of the United States and international copyright treaties. This Attachment A does not give Ordering Activity any rights not expressly granted herein.

GOVERNMENT USE. If Ordering Activity is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Product and documentation qualify as "commercial items" "commercial computer software" and "commercial computer software documentation." In accordance with such provisions and as such any use of the Product or documentation by the Government shall be governed solely by the terms of this Attachment A. All other use is prohibited.

SUPPORT AND UPGRADES. This Attachment A does not entitle Ordering Activity to any support, upgrades, patches, enhancements or fixes for the Product (collectively, "Support"). Ordering Activity must make separate arrangements for Support and pay any fees associated with such Support. Any software upgrades, patches, enhancements or fixes provided as part of Support for the Software that may be made available by Contractor through Riverbed shall become part of the Software and subject to this Attachment A. The terms of Riverbed's standard support services are located under Exhibit C herein.

**Product Warranty Statement**

STANDARD WARRANTY; WARRANTY DISCLAIMER. Contractor warrants only to Ordering Activity that the Products, when shipped by Contractor, will conform in all material respects to the applicable published specifications for such Products. Such warranty does not apply to units that have been damaged, mishandled, mistreated or used or maintained or stored other than in conformity with such specifications and Contractor's instructions. EXCEPT FOR BODILY INJURY, ORDERING ACTIVITY'S REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF OR (AT CONTRACTOR'S OPTION OR IF REPAIR OR REPLACEMENT IS IMPRACTICAL) REFUND OF THE FEES RECEIVED BY CONTRACTOR FOR RETURNED NON-CONFORMING UNITS OF PRODUCT FOR WHICH FULL DOCUMENTATION AND PROOF OF NON-CONFORMITY IS PROVIDED TO CONTRACTOR (AND FOR WHICH A SUPPLIER RMA HAS BEEN ISSUED) WITHIN ONE YEAR IN THE CASE OF HARDWARE COMPONENT, OR NINETY DAYS IN THE CASE OF SOFTWARE (WHETHER OR NOT EMBEDDED), AFTER THE ORIGINAL NON-CONFORMING UNITS (BUT NOT REPLACEMENTS) ARE SHIPPED BY CONTRACTOR. SUCH REFUND SHALL BE PAID TO THE ORDERING ACTIVITY MAKING THE WARRANTY CLAIM. EXCEPT FOR THE FOREGOING, CONTRACTOR PROVIDES THE PRODUCT "AS IS" AND WITHOUT WARRANTY OF ANY KIND, AND HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS ATTACHMENT A. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY. THE PRODUCT IS NOT DESIGNED FOR USE IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION OF THE PRODUCT WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON. THIS INCLUDES OPERATION OF NUCLEAR FACILITIES, LIFE-SUPPORT SYSTEMS, AIRCRAFT NAVIGATION OR EMERGENCY COMMUNICATION SYSTEMS AND AIR TRAFFIC CONTROL.

**EXHIBIT B – ADDITIONAL USE RIGHTS**

The following additional terms apply to any Riverbed products designated as a "spare" or "cold spare":

If a Riverbed product is being provided as a "spare" or "cold spare" as identified at the time of sale or on Contractor's GSA price list ("Spare"), then such Spare is provided solely as a replacement unit and is not supplied for independent productive use. Ordering Activity agrees to use any Spare solely for replacement of a fully licensed product that is no longer operational and has been disconnected from Ordering Activity's network and power supply. Ordering Activity must contact Riverbed Support to transfer any applicable support service plans from the fully licensed product to the Spare. Upon replacement, the Spare shall become a fully licensed product subject to this Attachment A terms, whereupon the product removed from production shall become a Spare. Any use by Ordering Activity contrary to the foregoing is prohibited.

The following additional terms apply to any Riverbed products designated as a "lab unit" or "lab product" or "development license":

If a Riverbed product is being provided as a "lab unit", "lab product" or "development license" as identified at the time of sale or on Contractor's GSA price list ("Lab Unit"), then such Lab Unit is provided solely for Ordering Activity's internal lab testing and not in a production environment. Lab Units may not be resold or transferred or used for the benefit of any third party. Any use by Ordering Activity contrary to the foregoing is prohibited.

Steelhead Mobile client software:

Steelhead Mobile client software may be copied onto Ordering Activity's laptops or other personal computers, provided that the total number of concurrent users does not exceed the number of concurrent user licenses acquired by Ordering Activity.

**CMC-VE software**: Each instance of CMC-VE software licensed by Ordering Activity may be (a) installed on a single server or cluster of servers operating as a single entity running a supported operating system or computing platform and used in production to manage Riverbed devices, and (b) installed on a single backup server or cluster of backup servers operating as a single entity running a supported operating system or computing platform and used only if the primary server or server cluster specified in (a) above fails. Only one copy of a single CMC-VE instance may be running or used at any time. Ordering Activity may use CMC-VE software instance(s) purchased by Ordering Activity to manage Riverbed devices only up to the total number of CMC-VE management licenses purchased by Ordering Activity, and CMC-VE management licenses can only be used with a single CMC-VE instance at a time. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes. For Ordering Activities who are using CMC-VE software to manage Riverbed devices used to deliver a managed or outsourced service to its end customers, such CMC-VE software may not be resold.
transferred, sublicensed or distributed to the end customer, and each instance of such CMC-VE software may be used to manage Riverbed devices for only one end customer.

Virtual Steelhead software:

Each instance of Virtual Steelhead software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Virtual Steelhead instance may be running or used at any time. Provided that the Virtual Steelhead software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Steelhead software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Steelhead software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Virtual Steelhead instance(s) purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

AirPcap, Pilot PE, Cascade Pilot, WiFi Pilot:

Each instance of Software may be installed on a single server or device and only one copy of a single software instance may be running or used at any time.

Whitewater:

Each instance of Virtual Whitewater software licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Virtual Whitewater instance may be running or used at any time. Provided that the Virtual Whitewater software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Virtual Whitewater software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Virtual Whitewater software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use the Whitewater appliance and Virtual Whitewater instance(s) purchased by Ordering Activity to transmit data to and from designated service provider cloud environments up to the number of terabytes licensed by Ordering Activity from Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Cloud Steelhead:

Each instance of Cloud Steelhead software licensed by Ordering Activity (a) may be installed in either a designated service provider cloud environment or at a Ordering Activity site, and may be used for the term of the license purchased by Ordering Activity to optimize the amount of bandwidth and number of TCP connections licensed by Ordering Activity for that instance, (b) includes access to Riverbed’s Cloud Portal and use of Riverbed’s Discovery Agent software, which may be used for the term of the license purchased by Ordering Activity, and (c) includes Riverbed’s then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. With respect to any instances of Cloud Steelhead software installed at a Ordering Activity site, such Cloud Steelhead software may only be used to optimize traffic between such Ordering Activity and the Ordering Activity’s designated service provider cloud environment and cannot be used solely to optimize traffic on such Ordering Activity’s network.

Stingray Aptimizer Software:

Each instance of the Stingray Aptimizer software licensed by Ordering Activity may be installed on a single server that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Use of each instance(s) purchased by Ordering Activity is limited to the type and scope of use licensed by Ordering Activity as specified in the applicable Product description as follows: (a) SharePoint Aptimizer software may be used to accelerate SharePoint, for the Ordering Activity’s internal intranet on a per seat basis, or the Ordering Activity’s external facing website up to a designed number of unique visitors per day, (b) Website Aptimizer software may be used to accelerate designated Ordering Activity websites, up to a designed number of unique visitors per day or on a per server basis. Provided that the software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Stingray Traffic Manager and Application Firewall Software:

Each instance of Stingray Traffic Manager or Application Firewall software (including software and virtual appliances) licensed by Ordering Activity may be installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”). Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed. Ordering Activity may use each Stingray instance(s) purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity for that instance. Ordering Activity may copy the software solely for backup and/or disaster recovery purposes.

Stingray Traffic Manager Software, Term License:

Each instance of Stingray Traffic Manager software licensed by Ordering Activity on a term basis may be installed in either a designated service provider cloud environment or at a Ordering Activity site installed on a single server or cluster of servers operating as a single entity that is identified to Riverbed at the time of purchase or download that is running a supported operating system or computing platform (the “Licensed Server”), and may be used for the term of the license purchased by Ordering Activity to manage, secure and accelerate application traffic in the manner licensed by Ordering Activity.
Activity for that instance. Each such instance includes Riverbed's then standard software maintenance and support services, as described in Exhibit C herein, for the term of the license purchased by Ordering Activity. Only one copy of a single Stingray instance may be running or used at any time. Provided that the Stingray software is covered by the then current Riverbed maintenance and support plan, Ordering Activity may transfer the Stingray software from the designated Licensed Server to another designated server, provided that the new designated server is identified to Riverbed at the time of transfer and, upon transfer, the Stingray software on the original Licensed Server may no longer be used and must be de-installed using any de-installation instructions provided by Riverbed.

**EXHIBIT C – MAINTENANCE AND SUPPORT SERVICES**

**Software Maintenance**

**Software Updates.** Ordering Activity shall be entitled to receive, and Contractor through Riverbed shall provide Ordering Activity e-mail notification of, all maintenance releases, updates and upgrades to Product software as Riverbed, in its sole discretion, makes them generally available without additional charge to Riverbed's Support Services Ordering Activities. The contents of all maintenance releases and updates shall be decided upon by Riverbed in its sole discretion. Ordering Activity may obtain updates by downloading the updates from Riverbed’s Support care website (support.riverbed.com). Product software maintenance releases and updates may only be installed on Products that are covered by then current support and maintenance services. Any such software provided by Riverbed shall be subject to this Attachment A.

**Supported Software.** Contractor through Riverbed supports the current major release of Product software, plus certain prior versions of software in accordance Riverbed’s support policy available at: www.riverbed.com/supportpolicy.

**Error Corrections.** Contractor through Riverbed shall use its reasonable efforts to correct any reproducible programming error in the Product software attributable to Riverbed with a level of effort commensurate with the severity of the error, provided that Riverbed shall have no obligation to correct all errors in the Product software. Upon identification of any programming error, Ordering Activity shall notify Riverbed of such error and shall provide Riverbed with enough information to reproduce the error. Riverbed shall only be responsible for correcting errors that are (1) attributable to Riverbed and (2) reproducible by Riverbed on unmodified Product software as delivered to Ordering Activity.

**Hardware Replacement**

**Return Material Authorization.** Before returning any Product, Ordering Activity must contact Riverbed Support and obtain a Return Material Authorization (RMA) number by calling the designated support telephone number or logging a request via the Support website. If Riverbed Support verifies that the Product is likely to be defective, Contractor through Riverbed will issue Ordering Activity an RMA number, which allows Ordering Activity to return the defective unit to Riverbed for repair or replacement.

**Shipping.** Contractor through Riverbed cannot accept any Product without an RMA number on the package. Ordering Activity must deliver the defective Product along with the RMA number to Riverbed. If Ordering Activity ships the Product on their own account, Ordering Activity assumes the risk of damage or loss in transit. Ordering Activity must use the original container (or the equivalent); Ordering Activity will be responsible for any damage in transit if Ordering Activity fails to use adequate packaging. Riverbed will provide Ordering Activity with the shipping address at the time of RMA issuance. Responsibility for shipping costs, both return shipping from the Customer to Riverbed and Riverbed’s shipment of replacement Products to Ordering Activity, shall be as set forth in Table 1 below.

**Table 1: Service Contract Shipping Cost Responsibilities**

<table>
<thead>
<tr>
<th>Region</th>
<th>Silver</th>
<th>Gold</th>
<th>Gold Plus</th>
<th>Platinum</th>
<th>Dead on Arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Riverbed</td>
<td>Customer</td>
<td>Riverbed</td>
<td>Customer</td>
<td>Riverbed</td>
</tr>
<tr>
<td>North America</td>
<td>To Customer</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Latin America</td>
<td>To Customer</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>EU States</td>
<td>To Customer</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Non EU States, MEA</td>
<td>To Customer</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>APJ</td>
<td>To Customer</td>
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<td>x</td>
<td>x</td>
</tr>
<tr>
<td>To Riverbed</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>

**Repair or Replace.** Contractor through Riverbed may replace or repair the Product with either a new or reconditioned Product.

**Dead on Arrival Products:** For RMAs that are issued by Contractor through Riverbed within the first thirty (30) days after original Product shipment, Riverbed will ship a new (not refurbished) advance replacement unit via express delivery; such Product may be shipped from Riverbed’s manufacturing facilities. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement requests confirmed by 2:00 pm PST USA by Riverbed will be shipped for next business day delivery, provided that special configurations may require additional time before a new replacement unit can be shipped; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.
Silver-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed within the first ninety (90) days after original Product shipment, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations. For RMAs that are issued by Riverbed after the first ninety (90) days after original Product shipment, at Ordering Activity’s request, Riverbed will ship a replacement unit within ten (10) business days via ground delivery once Riverbed confirms receipt of the defective unit at the shipping address designated by Riverbed at the time of RMA issuance.

Gold-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, Riverbed will ship an advance replacement unit via express delivery. In such circumstance, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

Gold-Plus-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity’s request, Riverbed will deliver replacement Product to the applicable installation location within 4 hours, 24 hours per day, 7 days per week, provided that the delivery time may be greater than 4 hours based on the location, and 4 hour coverage may only be available during business hours in some locations. Please contact Riverbed to determine if Gold Plus support is available in your area, and if it is, the applicable Product delivery time. Riverbed will use reasonable endeavors to establish service spares close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Ordering Activity from Silver or Gold to Gold Plus support; Product delivery times may be impacted until such service spares are established. Gold Plus may not be available at the new location or the delivery time may be impacted.

Platinum-level Ordering Activities: For RMAs that are issued by Contractor through Riverbed, at Ordering Activity’s request, Riverbed will either (a) ship an advance replacement unit via express delivery, or (b) provide on-site Product repair or replacement within 4 hours, provided that the on-site response time may be greater than 4 hours based on the location. Please contact Riverbed to determine if on-site support is available in your area, and if it is, the applicable on-site response time. Riverbed will use reasonable endeavors to establish service spares and trained local field engineers close to the installation location within thirty (30) days of (a) shipment of the applicable Product, (b) notice from Ordering Activity that the installation location has moved, or (c) upgrade by Customer from Silver or Gold to Platinum support; on-site response times may be impacted until such service spares and local field engineers are established. If the Product is shipped to Ordering Activity for next business day delivery, Ordering Activity has 30 days to return the defective unit after the replacement has been shipped. Advance replacement for requests confirmed by 2:00 pm local time (using the timezone of the location of the nearest replacement Product depot) by Riverbed will be shipped for next business day delivery; delivery time may depend on International customs clearing and export/import laws and regulations for non-US destinations.

Ordering Activity Support

Support: Contractor through Riverbed will provide Ordering Activity with technical support by the following methods: World Wide Web, email and telephone. Such support will include:
- Assistance related to questions on the installation and operational use of the Product;
- Assistance in identifying and verifying the causes of suspected errors in the Product; and
- Providing workarounds for identified Product errors or malfunctions, where reasonably available to Riverbed.

Ordering Activity will designate the contact information of two named individuals to act as support liaisons to utilize the support and will ensure that such persons will be properly trained in the operation and usage of the Product; Riverbed will not be obligated to provide support or maintenance services to any other individuals. Ordering Activity agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Ordering Activity regarding the Product. Ordering Activity also agrees to promptly implement all updates and error corrections provided by Riverbed under this Attachment A. Upon request, Ordering Activity will provide access for on-line diagnostics of the Product during error diagnosis.

Support Web Site: Contractor through Riverbed may provide Ordering Activity with an authorized account to access Riverbed’s Support website.

Riverbed may make available the following services through its Support web site:
- Product software releases that can be downloaded by Ordering Activity;
- Documentation for Product;
- Issuing trouble reports identified by Ordering Activity through Riverbed’s Support website;
- Issuing suggestions for enhancements through Riverbed’s Support website.

Telephone Support: Telephone support shall include Direct Hotline Support. Ordering Activity may contact Support directly 7x24 via telephone at 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381.

Special Services: Ordering Activity may request maintenance and support services not specifically provided for in this Attachment A.

Product Obsolescence

Riverbed’s End of Sale and End of Support policy is available at: www.riverbed.com/supportpolicy.

Support Service Levels

A problem is defined as a situation where the software does not function as intended. The detail below defines priority levels of each problem type. Contractor through Riverbed will use commercially reasonable efforts to provide the service level responses included below.

Priority 1
Definition: A catastrophic problem that severely impacts the Ordering Activity’s ability to conduct business. This may mean that the Ordering Activity’s systems and/or Product are down or not functioning and no procedural workaround exists.

Riverbed Response: Contractor through Riverbed to respond within one (1) hour. The objective is to get the Ordering Activity back on line within 24 hours and to downgrade the problem severity accordingly. Efforts to isolate, diagnose, and deliver a work-around or repair shall be continuous. When the severity level has been changed to “Priority 2” or “Priority 3,” the appropriate guidelines should be followed.

Priority 2
Definition: A high-impact problem in which the Ordering Activity’s operation is disrupted but there is capacity to remain productive and maintain necessary business-level operations. The problem may require a fix be installed on the Ordering Activity’s system prior to the next planned commercial release of the software.

Riverbed Response: Contractor through Riverbed to respond within four (4) hours following receipt of a call. Efforts to isolate, diagnose, and deliver a work-around or repair problems shall be continuous during business hours.
Priority 3
Definition: A medium-to-low impact problem that involves partial loss of non-critical functionality. The problem impairs some operations but allows the Ordering Activity to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Ordering Activity’s operation.
Riverbed Response: Contractor through Riverbed to respond within eight (8) hours following the receipt of a call. Action should be appropriate to the nature of the escalation.

Priority 4
Definition: Minor problems: all other errors. This includes documentation errors. The inconvenience is slight and can be tolerated.
Riverbed Response: Contractor through Riverbed to respond within the next business day following the receipt of a call during normal business hours. Riverbed’s support organization will respond in a manner appropriate to the nature of the call.

Escalation Procedures
If problems are not responded to as targeted above, Ordering Activity may escalate the issue to appropriate Riverbed management personnel. Contractor through Riverbed provides systematic escalation management to Ordering Activity with current service plans. The Riverbed escalation process notifies levels of management throughout the life cycle of the technical issue. This ensures that the appropriate resources resolve outstanding technical problems as efficiently as possible.

<table>
<thead>
<tr>
<th>SEVERITY</th>
<th>NOTIFICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Escalation Engineer</td>
</tr>
<tr>
<td>1. Critical</td>
<td>Within 1 Hour</td>
</tr>
<tr>
<td>2. High</td>
<td>Within 4 Hours</td>
</tr>
<tr>
<td>3. Minor</td>
<td>Within 8 Hours</td>
</tr>
<tr>
<td>4. Informational</td>
<td>Within 24 Hours</td>
</tr>
</tbody>
</table>

To escalate a case, email support@riverbed.com or call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381. A case follows this escalation path: Support Engineer to Local TAC Manager to Regional Support Director to Director of Support Operations to VP Support.

Continuous Support Coverage
Regardless of where the case originates, Riverbed Support endeavors to solve the case when it is opened. The Support team uses a “follow the sun” process to hand-off cases between different Support Centers.

For example, between Monday and Friday, 8 AM - 5 PM GMT, a case from Europe will be routed to the Amsterdam Support Center. After regular business hours in Europe, the case may be routed to the New York or San Francisco Support Center, when the Amsterdam office is closed. If the case remains open, it is passed back to the Amsterdam Support Center for the beginning of their next business day.

Case Handling
Contractor through Riverbed is committed to ensuring Ordering Activity success and satisfaction. All support services professionals are rigorously trained on Riverbed products, their underlying technologies, and industry leading technical problem-solving methodologies. Case handling follows these steps:

An Ordering Activity can open a case in one of the following ways:
call 1-888-RVBD-TAC (1-888-782-3822) or 1-415-247-7381
send an email to support@riverbed.com
generate a ticket directly from the Riverbed Support web site support.riverbed.com

When Ordering Activities open a case, they should be prepared to provide the following:

Serial number of hardware component with issue
Detailed description of the problem
Priority level and impact of the problem
Indication of the activity that was being performed when the problem occurred
Software version
Configuration data

Once a case is submitted, the issue is assigned to an escalation engineer (“EE”). Every EE is trained to perform extensive troubleshooting to quickly resolve the issue. All opened cases are tracked in Riverbed’s online support tracking system. While working to resolve an issue, the EE may need to access information on the Ordering Activity system relative to the failure, or may need to recreate the failure to get additional information. If the problem is related to the system configuration, the Ordering Activity may be asked to provide a network diagram and configuration information. If the Ordering Activity and the EE agree, the Ordering Activity may send log files or trace files to Riverbed through email or upload them to the Riverbed Support FTP site for further review.

Note: Any information sent to Riverbed to help resolve Ordering Activity problems is treated as confidential.

A case is closed when all parties agree the reported issue has been resolved. If the Ordering Activity issue is determined to be an enhancement, a Feature Request is entered into the Riverbed defect tracking system. A Feature Request is handled and processed by Product Management and Engineering.
Consistently improving quality of service is a very high priority within Riverbed. After closing a case, a survey is sent to the Ordering Activity asking for feedback as to how the case was handled and where Riverbed can improve. Ordering Activity Support managers and executives review the survey responses, and take action where appropriate. Individual entries in this survey may be shared on the Support website anonymously, but identifiable submitter details are not shared. Individual entries will not be used for marketing purposes. The sole purpose of these survey results is to evaluate and improve Riverbed services.

Restrictions
Ordering Activity is entitled to receive Support Services only on Products for which Ordering Activity has purchased Support Services; Support Services commence upon sale of the applicable Product by Riverbed. Contractor through Riverbed will not be obligated to provide any Support Services: (1) on Products that: (a) have been altered, modified, mishandled, or damaged, (b) have not been installed, operated, repaired, or maintained in accordance with Riverbed’s specifications, documentation and instructions, or (c) have been misused or operated outside of the environmental specifications for that Product; (2) where the problem relates to Ordering Activity’s or a third party’s network, systems, hardware, software, or other problem beyond the reasonable control of Riverbed; or (3) to any geographic location or to any customers in violation of applicable laws or regulations. Ordering Activity acknowledges and agrees that Riverbed’s ability to provide Support Services is dependent on Ordering Activity providing accurate Product installation location information, and any failure to do so may impact Riverbed’s ability to provide the Support Services. Remote access to the Products on Ordering Activity’s network may be required to diagnose or resolve a support problem, and Ordering Activity’s failure to provide such access may impact Riverbed’s ability to resolve the support problem. Riverbed will not be responsible for any Product replacement or repair delays caused by Riverbed’s compliance with export/import laws and regulations. Riverbed’s obligations under any Support Service plan with respect to any Product is subject to Riverbed’s receipt of the applicable annual Support Services fee. Riverbed retains ownership of any intellectual property resulting from Support Services.
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached RSA Security ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that incorporate the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14; but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

RSA SECURITY

RSA SECURITY LICENSE, WARRANTY AND SUPPORT TERMS

End User Software License Agreement
For Use with GSA Schedule 70
RSA Security LLC, located at 174 Middlesex Turnpike, Bedford, MA 01730 ("Licensor"), and
__________________________, with a principal place of business at

GS-35F-0511T
www.ecamerica.com
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1. DEFINITIONS.

A. “Documentation” means the then-current, generally available, written user manuals and online help and guides for Products provided by LICENSOR.

B. “Products” mean “Equipment” (which is the hardware delivered by LICENSOR to Customer) and/or “Software” (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).

C. “Products Notice” means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at http://www.ecamerica.com/products/warranty_maintenance/index.jsp

D. “Software Release” means any subsequent version of Software provided by LICENSOR after initial Delivery of Software, but does not mean a new Product.

E. “Eligible Ordering Activities” are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a “Customer”. Eligible Ordering Activities that are executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as “Executive Customers”. All other Eligible Ordering Activities are referred to as “Other Customers”.

2. LICENSE TERMS.

A. General License Grant. LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer's internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer’s use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.

B. Licensing Models. Software is licensed for use only in accordance with the commercial terms and restrictions of the Software’s relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

C. License Restrictions. All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer’s use of the Software. Customer shall not, without LICENSOR's prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer’s employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. Software Releases. Software Releases shall be subject to the license terms applicable to Software.

E. Audit Rights. LICENSOR shall have the right to audit Customer’s usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer’s business activities. Customer will provide LICENSOR with the required support to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

F. Disputes. For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULAs with Other Customers are not subject FAR 52.212-4 (d) Disputes.

G. Reserve Rights. All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer's prior written consent, nor shall Customer permit any third party to do the same.

H. Other License Terms. If a particular Product is provided with a “clickwrap” agreement included as part of the installation and/or download process, or a “shrinkwrap” agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

3. PRODUCT WARRANTY.

A. Software Warranty. LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer’s requirements, except as expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

B. Warranty Duration. Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

C. Customer Remedies. LICENSOR’s entire liability and Customer’s exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of
LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR’s then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-retumed Products are subject to paragraph 2.F. Disputes.

LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

D. Warranty Exclusions. Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR’s control; (iii) installation, operation or use not in accordance with LICENSOR’s instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without LICENSOR’s consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment’s remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR’s then current standard rates.

E. No Further Warranties. Except for the warranty set forth in this EULA, LICENSOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, WRITTEN OR ORAL. INSOFAIR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES ARISING BY STATUTE, COURSE OF DEALING OR USAGE OF TRADE.

4. INDEMNITY. LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or RSA Security LLC, and LICENSOR and/or RSA Security LLC shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR’s opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof; refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer’s specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND LICENSOR’S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

5. LIMITATION OF LIABILITY

A. Limitation on Direct Damages. EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR’S TOTAL LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR’S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US$1,000,000.00, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR’S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before LICENSOR performs any remedial, upgrade or other works on Customer’s production systems. To the extent LICENSOR’s liability for loss of data is not anyway excluded under this EULA, LICENSOR shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

D. Limitation Period. Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

E. Suppliers. The foregoing limitations shall also apply in favor of LICENSOR’s suppliers.

6. EXPORT CONTROL. The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, “Export Laws”). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

7. TERM AND TERMINATION. This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

A. EULAs with Executive Customers may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4(i).

B. For EULAs with Other Customers LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR’s written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

8. MISCELLANEOUS.
A. References. LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

B. Notices. Any notices hereunder shall be in writing.

C. Entire Agreement. This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

D. Force Majeure. Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

E. Assignment. Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR’s prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

F. Governing Law. To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

G. Waiver. No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

Licensor: Licensee:
By: By:
Name (Print): Name (Print):
Title: Title:
Date: Date:
RSA SOFTWARE USE RIGHTS

RSA software products ("Software") are licensed by RSA to customers who order 1) directly from RSA ("Direct End-Users") under a signature-bearing agreement between RSA or the applicable EMC affiliate and the Direct End-User, 2) under the terms of an End-User License Agreement ("EULA") that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software, or 3) through channel partners under the terms of a EULA that is between RSA or the applicable EMC affiliate and the entity making productive use of the Software. The information in this Software Use Rights ("SUR") document is provided to further define the license rights and limitations for Software products.

RSA Software is licensed via a Unit of Measure used to quantify the scope of license rights based on a particular licensing model for such RSA Software. Some Agreements, schedules, or quotes refer to the UOM as a “license unit” or such other similar term. Use of the RSA Software beyond the scope of the rights granted requires additional or modified license grants, and additional payment of applicable license and maintenance fees.

- **Appliance (APP).** An appliance is the Hardware provided to Customer which has been loaded with the RSA Software.

- **Central Processing Unit (CPU).** RSA Software licensed on a “per CPU” basis means the maximum number of CPUs upon which you may install and use this RSA Software. A CPU is a single central processing unit within a computer system.

- **Collector Device (CD).** RSA Software licensed on a “collector device” basis means the number of source devices and applications from which events are collected within the Customer environment. The Server is licensed to run a single instance on the RSA® enVision® Appliance.

- **Concurrent (CNC).** RSA Software licensed on a “per concurrent User” or “per concurrent client connection” basis means the maximum number of Users or client connections that may concurrently use or access the RSA Software.

- **Database (DB).** RSA Software licensed on a “per Database” basis means the maximum number of Databases with which you may use the RSA Software. A “Database” is a data repository managed by a Server.

- **Events per Second (EPS).** RSA Software licensed on an “Events per Second” basis is defined as the number of events collected per second within the customer environment.

- **Field of Use (FOU).** RSA Software licensed on a “Field of Use” basis is licensed with a license restriction on a field of use, number of users, servers, platforms, or other restrictions. A “Field of Use” is defined as a license restriction as outlined in a Schedule, Quote, or Purchase Order subject to the terms and conditions of the Agreement.

- **File System (FS).** RSA Software licensed on a “per file system” basis means each file server to be encrypted. Separate licenses for production and development systems are required.

- **Instance (INST).** RSA Software licensed on a “per Instance” basis means the maximum number of individual installations of an RSA Software application, or “Instances,” you may use at the same time in a production environment. For each Instance of the RSA Software license hereunder for production use, the Customer will receive the right to use two (2) additional Instances in non-production use (including standby/development/disaster recovery). License fees for additional Instances (both production and non-production) will be quoted on request.

- **Number of Connections.** RSA Software licensed on a “Number of Connections” basis means the RSA Software is licensed per connection between each computer FIM connects to.
• **Server (SVR/SRVR).** RSA Software licensed on a “per server” basis means the maximum number of physical servers on which you may install and use the RSA Software.

• **User (USR).** RSA Software licensed on a “per User” basis (sometimes referred to as a per “seat”) basis means the maximum number of Users that may be authorized to use or access the RSA Software, regardless of whether such Users are actively using or accessing the RSA Software at any given time. Except as otherwise agreed in an applicable Agreement, Schedule, or Quote, “User” means your agents, employees, consultants, or independent contractors authorized by you to use the RSA Software on your behalf. RSA Archer® Software Specific USR qualifiers: Different categories of Users (USR) will apply for RSA Archer Software licensed on a per User basis (these do not apply where the RSA Archer Software is licensed on a per Instance (INST) basis).

• **Full Access User (USR-FAU).** Means a User with unrestricted access, with authority to create, update, and/or delete system entries, to all nine (9) core solutions of the RSA Archer Software including: Policy Management, Risk Management, Compliance Management, Incident Management, Vendor Management, Threat Management, Enterprise Management, Business Continuity, and Audit Management. This further includes unlimited User access to On-Demand applications, the Training and Awareness solution, Questionnaires, and Exchange Applications.*

• **Assessment User (USR-AU).** Assessment Users are authorized to use the RSA Archer Software for the purpose of conducting up to four (4) assessments each year using the following core solutions of the RSA Archer Software only: (i) Risk Management, (ii) Vendor Management, and/or (iii) Compliance Management Solutions. Assessment Users have authority to create, update, and delete system entries (subject to the foregoing limitations on accessible core solutions of the RSA Archer Software and frequency).*

• **Read-Only User (USR-ROU).** Read-Only Users may only access the following core solutions of the RSA Archer Software: (i) Policy Management, (ii) Training & Awareness, and/or (iii) Business Continuity Management Solutions. Read-Only Users are not permitted to create, update, and/or delete any system entries.*

*Please refer to the generally available product documentation for descriptions of the foregoing core solution components.

**ADDITIONAL INFORMATION**

Additional disclaimer applicable to RSA Archer Software: “RSA Security LLC and its affiliates explicitly disclaim any warranty or guarantee of the accuracy, currency, completeness, or adequacy, of the content provided herein, and shall in no event be liable for any loss, damage, liability, or expense suffered by any person in connection with reliance by that person on any such material or otherwise. In no event shall the inclusion of any of the content provided herein be construed as legal advice. INFORMATION PROVIDED AT THIS SITE IS PROVIDED ‘AS IS’ WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.”

Additional copyright information applicable to RSA Archer Software: “ Portions Copyright © 2002 to 2010 Corporate Web Solutions Ltd./WebAvail Productions Inc.”

Additional terms applicable to RSA Archer Software: RSA may identify Customer for reference purposes and use Customer’s logo in its marketing material unless and until Customer expressly objects in writing.
Restrictions on use of RSA SecurID solution: For all purposes under the Agreement, token records to RSA SecurID authenticators shall be deemed RSA Software and be subject to the restrictions on transferability set forth in Section 4(c) of the Agreement.

Restrictions on use of RSA enVision Software:

(1) RSA enVision Software identified in an order as a test system may be used in non-production environments only;

(2) enVision Software identified in an order as a standby system may be used with cold-standby deployments only. The foregoing is subject to the following exception: In the event the production system that the standby system has been purchased with is unavailable due to failure or maintenance, the standby system may be used in a production environment. In no event may redundant system pairs operate concurrently beyond the use required due to failure or maintenance. Use of the standby system in a production environment shall be subject to the license restrictions of the production environment it is replacing;

(3) Customer may receive the enVision Software in more than one medium. Customer may not use or install the other medium on another computer and may not loan, rent, lease, or otherwise transfer the other medium to another user; and


Restriction on Use of RSA Authenticators: Customer shall use the RSA authenticators only to authenticate to RSA Software. Customer shall not use any hardware cards, tokens, or other devices not provided by RSA to authenticate to the RSA Software, unless otherwise authorized by RSA in writing.

Restriction on Use of RSA Archer Software:

If Customer is licensing RSA Archer software on a term basis, the following provisions shall apply:

Software License Term: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, no perpetual licenses are granted to Customer for the use of the RSA Archer Software and the following provisions shall apply:

The initial term of the license granted by RSA to Customer to use the such RSA Archer Software (the "Initial Term") shall commence on the effective date of this Quotation and remain in effect for (i) the period stated on the first page of this Quotation; or (ii) where no such period is so stated for three (3) years, unless sooner terminated in accordance with the Governing Agreement(s). The Initial Term shall automatically renew for consecutive additional one (1) year periods (each a “Renewal Term”) provided that (1) Customer pays the applicable license fee (as specified in this Quotation or as otherwise quoted by an RSA representative or channel partner) prior to expiration of the then current term, and (2) neither party has sent the other party written notice of termination at least sixty (60) days prior to the end of the then current term.

No rights of termination for convenience will apply during the Initial Term or any Renewal Term and any provisions to the contrary in the applicable Governing Agreement(s) will be deemed amended to give effect to this provision. The license rights granted hereunder shall not survive termination of the Governing Agreement(s) and such Agreement(s) are deemed amended to give effect to this provision.
Pricing and Payment: The "Net Price" listed on the first page of this Quotation in the applicable row of the "Products" table shows the total amount that Customer shall pay for the license of RSA Archer Software for the Initial Term. RSA shall invoice Customer annually in advance for one (1) year's worth of license and maintenance fees for each year of the Initial Term and any Renewal Term. For example, if the Initial Term is three (3) years RSA will send Customer an invoice for 1/3 of the "Net Price" after the RSA Archer Software is made available to Customer through electronic file transfer or shipment of media containing such Software. In certain instances, RSA may invoice term licenses for RSA Archer software in a different manner. In such a case, the amount due for each year of the term license shall be set forth in the row entitled "Miscellaneous" on the first page of this Quotation.

If Customer is licensing RSA Archer Software bundled with other RSA software (SKU: BLP-P Solution Platform-perpetual license), the following provision shall apply:

Software License: Notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), whether stated in a section entitled "Grant of License" or elsewhere, Customer shall only be able to utilize the RSA Archer Software for internal purposes with other RSA software which Customer has licensed.

Restriction on Use of RSA NetWitness Products:

If Customer is purchasing RSA NetWitness Products, the following provisions shall apply:

RSA may use all or any portion of information and knowledge gained by RSA in connection with such products, including, without limitation, such information and knowledge regarding attacker and beacon activity, to improve hardware, software, and/or services. RSA may also share it with others, such as hardware and software vendors who may use it to improve how their products interoperate with or support RSA products or services. To the extent that any services specified in any contract resulting from this Quotation, including without limitation installation, configuration, and/or maintenance services, constitute "defense services" as defined under the U.S. International Traffic in Arms Regulations ("ITAR"), 22 CFR 120.9, then RSA's commitment to provide such services shall be subject to the receipt of any required authorization from the U.S. Department of State, and the delivery schedule and pricing for such services shall be reasonably adjusted as appropriate to reflect such requirements. RSA shall not be liable for any delay in performing or failure to perform defense services due to delays or refusal by the U.S. Department of State to grant any such required authorization.

If Customer is licensing RSA NetWitness products or services on a term basis, the following provisions shall apply:

To the extent the first page of a Quotation offers a NetWitness product or service on a term or subscription basis, notwithstanding anything to the contrary in this Quotation or the Governing Agreement(s), no perpetual licenses are granted to Customer for the use of such product or service. The term license to such product or service shall commence on the effective date of this Quotation and remain in effect for the period stated on the first page of this Quotation.

Restriction on Use of RSA Adaptive Authentication On-Premise Product:

If Customer licenses the RSA Adaptive Authentication On-Premise Product, the provisions set forth on Schedule 1 hereto shall apply.
SCHEDULE 1

ADAPTIVE AUTHENTICATION PRODUCT SPECIFIC TERMS & CONDITIONS

1. Definitions.

The following terms shall have the definitions below or set forth elsewhere herein. All references to “Section” shall refer to sections of this Schedule, unless otherwise specified herein.

“Active End User” means an account holder or other client of the Customer (an “End User”) whose identity has been processed or profiled or scored or authenticated or otherwise verified by the Product at least once in the course of the six (6) months immediately preceding the then current date.

“Active End User Ceiling” means the maximum number of Active End Users which Customer is licensed to store at any given time using the Product and as set out in applicable Quote.

RSA “eFraud Network™” database means a database owned and operated by RSA which contains information aggregated by RSA, discovered by the parties as part of the performance of their obligations under this Schedule, obtained, and/or procured from third parties and/or resulting from risk and fraud assessments carried out by RSA and includes without limitation IP addresses, Phishing website URLs, and any other related data.

“Exhibit” means Exhibits A, B, and/or C attached hereto, the terms of which are incorporated herein by reference;

“Product” means (a) the RSA consumer software suite described in Exhibit A and developed by RSA together with any Software releases, fixes, or patches delivered pursuant to the Maintenance Services, known as the RSA Adaptive Authentication Web Protection System.

2. License, Ownership.

A. RSA hereby grants Customer a perpetual, non-exclusive, nontransferable license to run and use those components of the Product as selected an RSA issued Quote, for Customer’s own use for the purpose of processing Active End User authentication information on its web portals, online services, and/or its electronic transaction clearing systems. Such license shall be subject always to the Active End User Ceiling as further detailed in this Schedule.

B. Additional Software License Restrictions. Customer will not directly or indirectly use the Product for its internal enterprise authentication purposes. For the purpose of the Schedule, “internal enterprise authentication” means authenticating a login request (which request may originate either remotely or from Customer or an Affiliate’s premises) of an employee, consultant, or an agent of Customer (or an Affiliate) for the purpose of granting the requestor access to Customer (or an Affiliate’s) computer networks for the purpose of performing their assigned work.

C. Ownership and/or License of the eFraud Network database information. RSA shall retain and own all right, title, and interest and all intellectual property rights (including but not limited to copyrights, trade secrets, trademarks, and patent rights) to all information which is collected, submitted to, and made available on the eFraud Network in the course of the performance by either party of their obligations under this Schedule (or where such title cannot be granted or otherwise transferred to RSA, then Customer agrees to grant RSA an unconditional, unlimited, unrestricted, royalty free license to use, distribute, and/or otherwise make available such information).

D. RSA Trademark License. For so long as this Schedule remains in force, RSA grants Customer the right to use the “Secured by RSA” trademarks described in Exhibit C (the “RSA Mark”) solely for the purpose of displaying the RSA Mark on the End User facing web-based log in pages of its online services in compliance with Section 3 (on next page). Customer’s use of the RSA Mark will conform at all times with RSA’s quality and usage requirements and will be subject to prior review and approval by RSA. Customer will not seek to register any trademarks of RSA in any country in the world. Any use of the RSA Mark shall be in accordance with RSA’s reasonable policies regarding advertising and
3. **RSA Branding of the Active End User interface to the Licensed Software.**

For so long as Customer is subscribing for the Maintenance Services, Customer will (unless it is a U.S. governmental entity) place the following words: “Secured by RSA”, in the form of the trademark logo attached hereto under Exhibit C, on (i) the client facing web-based user interface which is deployed by Customer for the purpose of allowing Active End Users access to the Product; and (ii) whenever the personal security image of the site-to-user authentication module (as described in Exhibit A) is shown. Nothing else herein shall prevent Licensee from separately branding its security processes which may use the Licensed Software and other security processes.

4. **Billing Files.**

Customer will provide RSA with the billing files as generated by the billing utility component of the Product (as further detailed in the Documentation) at the end of each calendar month for the purpose of evidencing its ongoing compliance with the Active User Ceiling from time to time and subject to RSA’s audit rights under the Agreement.

5. **Product Delivery.**

RSA Software shall be delivered to the Customer at the email address specified in Exhibit A.

6. **Authorized Active End Users; Active End User Ceiling Increases.**

Customer may increase the authorized Active End User Ceiling from time to time by way of a purchase order referencing this Schedule. Where Customer has exceeded its then authorized Active End User Ceiling, Customer will promptly (and in any event in not less than thirty (30) days from the date the Active End User Ceiling is first exceeded) procure an increase to its then licensed authorized Active End User Ceiling, for the fees and in the minimum increments set out in a Quote so as to meet or exceed its actual use of the Product. Such increases will be procured by way of a purchase order referencing the Quote. Where Customer has upgraded the authorized Active End User Ceiling, RSA will invoice Customer the adjusted Maintenance Services fees on a pro-rata basis for the Maintenance Services year then in progress on the date of such upgrade in a Quote.

7. **Maintenance Services.**

Customer hereby purchases the Enhanced Support and Data Services as further described in Exhibit B for the Products ordered under this Schedule for a term of one (1) year (the “Initial Maintenance Term”) commencing on the date the Product is first made electronically available for download. Thereafter, Maintenance Services shall renew on an annual basis, subject to Customer's payment of RSA's invoice for the applicable Maintenance Services fees. RSA may increase the Maintenance Services fee, to be effective at the commencement of any future annual period, provided that RSA notifies Customer, in writing, of such fee increase at least thirty (30) days prior to the end of the previous annual period.
Base Product Description:

The Product without Additional Features is available for the license fees detailed in a signed Quote.

<table>
<thead>
<tr>
<th>Product—RSA Adaptive Authentication Components—Login</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Based Authentication at Login (web-channel device identification using secure cookies, Flash Shared Objects, device forensics and network forensics including IP geolocation. This can be applied only during account login).</td>
</tr>
<tr>
<td>Baseline Policy Manager and Risk Models. (One set of policies per institution and generic risk models.)</td>
</tr>
<tr>
<td>Secondary Authentication: Challenge Questions. (Challenge Questions, including enrollment to collect challenge questions and answers.)</td>
</tr>
<tr>
<td>RSA eFraud Network Access. (Shared fraud data.) It is understood by the parties that Customer’s access to the eFraud Network shall be contingent on Customer’s agreement to submit non-identifiable fraud data via log files for inclusion in RSA eFraud Network’s aggregated database and subject to Customer’s ongoing subscription to the Enhanced Support and Data Services.</td>
</tr>
<tr>
<td>Case Management Module. Provides the Client functionality to track and update Active End User activities that were flagged for follow-up or authentication.</td>
</tr>
<tr>
<td>Site to User Authentication Module. (Enrollment and maintenance of image assignments, and image pool of 38,000 images.)</td>
</tr>
</tbody>
</table>

Description of Additional Features:
These components of the Product are available for extra license fees as detailed in a signed Quote.

<table>
<thead>
<tr>
<th>Product—Transaction Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment, analysis, and scoring of post-login transactions activities by a Bayesian, self-learning risk engine that leverages both device and behavioral profiling. A case management application allows investigating high risk transactions, marking the fraudulent ones, and feeding feedback into the risk engine. A partial list of such post-login transaction activities includes but is not limited to: transferring funds, making online payments, establishing payees, viewing check images, changing personal information, etc.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Product—Mobile Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>The RSA Adaptive Authentication Mobile Protection Module provides strong authentication to End Users who access online banking applications via a mobile device (i.e., mobile phone, smart phone, iPhone, PDA, Blackberry, etc.). This module complements RSA Adaptive Authentication's web channel protection module. It is powered by the same risk-based authentication technology and provides the Customer with a unique risk model designed to address specific mobile transaction characteristics. By using the Mobile Protection Module, the Customer benefits from multi-channel fraud protection.</td>
</tr>
<tr>
<td>Service—Authentication Methods</td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td><strong>OneTime Password</strong> (&quot;OTP&quot;). OTP generated by Adaptive Authentication and sent by Customer to the End User.</td>
</tr>
<tr>
<td><strong>Out of band (&quot;OOB&quot;) Phone Call.</strong> OOB phone call (telephone confirmation, using RSA's service and infrastructure and telephone numbers stored in Customer's systems. Depending on the selected integration method, the OOB phone feature requires additional telephony infrastructure and involves set up costs and fees to make the phone calls.</td>
</tr>
<tr>
<td><strong>OOB SMS.</strong> One Time Password generated by Adaptive Authentication and sent by RSA to End User via OOB SMS using phone numbers stored in Customer's system (only for phones that support SMS). The OOB SMS feature involves set up costs and fees to send the SMS. Delivery of SMS messages (or timing of delivery) is not guaranteed.</td>
</tr>
</tbody>
</table>
B

Enhanced Support and Data Services

Customer acknowledges that the Basic Support Services (as described on the Support Website) are not available for the Product licensed under this Schedule.

In addition to then current Enhanced Support Services which will be provided as detailed on the Support Website, the Customer will also receive the Data Services described hereunder.

1. Definitions.
   In addition to those defined terms of the Agreement and the Schedule, the following definitions shall be used for purposes of this Exhibit B.
   A. “Data Services” means, the delivery by RSA on an ongoing basis of (i) the Information; and (ii) updates to the eFraud Network; and RSA making available the online statistical analysis tools for the use of the Customer. The Information and any other data delivered pursuant to the Data Services will be deemed to form part of the Product under the Schedule.
   B. “Geo-Location Service” means the geo-location component made available with the Product.
   C. “Information” means the data and information derived from the Geo-Location Service.

2. RSA Data Feeds for Adaptive Authentication.
   Customer will receive the following Data Services:
   A. Delivery of eFraud Network database updates. Updates to the eFraud Network database will be made available to Customer by RSA via Internet protocol from RSA hosted servers. Where configured in accordance with the Documentation, the Product will automatically download the updates on a periodic basis and load them into a local data store, which is used for run-time analysis of inbound transactions.
   B. Delivery of Information. Information updates will be made available by RSA to Customer via Internet protocol from RSA hosted servers. Customer will download the updates on a periodic basis and load the Information into the Product for run-time analysis of inbound transactions.
   C. Online Statistical Analysis Tools. RSA will make available to Customer a set of reports or tools for generating reports, which will be hosted on RSA web servers, to allow Customer to understand Product system usage levels and patterns.

   Customer may purchase enhancements to the Maintenance Services, including the Personalized Support options Services, as described on the Support Website.

4. Additional Customer Obligations.
   A. Network and Device Forensics. In addition to those obligations set out on the Support Website, Customer shall provide to RSA daily scrubbed data activity logs, the case log file and the forensic data logs as further described in the Documentation. RSA will review these logs in order to provide the Maintenance Services hereunder and to improve forensic analysis of future Software Releases of the Product. Customer shall not transmit, send, or otherwise provide, directly or indirectly, to EMC any data that is considered personally identifiable under the laws of the jurisdictions applicable to Customer’s installation and use of the Product and Customer’s operations, and shall indemnify EMC for all third-party claims arising as a result of Customer’s breach of this obligation.
Trademark and Usage Guide

SECURED BY RSA—Logo Designator for RSA Adaptive Authentication Customers

The SECURED BY RSA logo has been designed as an indicator that the customer is using the RSA Adaptive Authentication solution. It is designed for web and print use and is not intended to be a substitute for the corporate logo or for use in locations other than the web pages or promotional material of companies that have purchased Adaptive Authentication. Nor is the SECURED BY RSA mark to be used as a substitute for the corporate logo in places where the Customer corporate logo is appropriate. This logo is not posted. Logo files may be obtained by contacting the Identity Protection and Verification solutions group at RSA corporate headquarters. It is to be used at the size indicated below. The logo consists of the RSA brick and the words SECURED BY. These two components should not be separated or changed; SECURED BY should always appear in the same proportions and relationship to the RSA notched rectangle.

Correct size and layout

Incorrect: altered layout

Incorrect: altered proportions

Incorrect: combination with corporate logo

The words “The Security Division of EMC” are not part of the SECURED BY RSA logo. The corporate logo, which includes the words “The Security Division of EMC”, is a separate mark; the two logos may not be combined.

In customer applications, the logo is to be seen only as a third-party mark that indicates the security features of the customer’s website. Therefore the following restrictions apply to use:

(i) The logo may not be enclosed by the Customer’s logo or other artwork so as to appear to be part of the Customer’s logo.

Correct Usage

Incorrect Usage

(ii) The logo may be placed adjacent to the customer’s logo or other artwork as long as there is sufficient empty (white) space between the two logos. Sufficient space online is defined as 20 pixels in any direction from the outer edges of the SECURED BY RSA logo. Sufficient space in print is defined as .5 inches in any direction from the outer edges of the logo.
RSA Warranty and Replacement Parts Maintenance Table

B. Restrictions on use of the GeoLocation Service and Information. Customer will not (a) reproduce or distribute the Geo-Location Service in a manner that allows its users to access the Geo-Location Service in any way other than through aggregate reports generated by the Product (as described in the Documentation); or (b) use the Information to create or otherwise support the transmission of unsolicited commercial email.

<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty Period and Support Option</th>
<th>Support Option Upgrade during Warranty Period</th>
<th>Initial Product Installation</th>
<th>Support Options during Maintenance Period</th>
<th>RMA-Parts Replacement</th>
<th>Customer Performed Tasks (*1)</th>
<th>Designated Customer Replaceable Units (CRU’s) (⋆2)</th>
<th>Designated Customer Replaceable Units (CRU’s) (⋆2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RSA Software</td>
<td>90 days: defective media replacement</td>
<td>N/A</td>
<td>Installation not included. Performed by Customer or may be available for separate purchase</td>
<td>Basic, (⋆6) Enhanced</td>
<td>N/A</td>
<td>Customer Installation of subsequent Software Releases</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>RSA Tokens</td>
<td>Full Lifecycle of Token up to 6 months from expiration</td>
<td>N/A</td>
<td>Installation not included. Performed by Customer or may be available for separate purchase</td>
<td>Basic, Enhanced</td>
<td>Standard Token Replacement (⋆3)</td>
<td>Advanced Token Replacement (⋆4)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>RSA Appliance</td>
<td>90 Days</td>
<td>N/A</td>
<td>Installation not included. Performed by Customer or may be available for separate purchase</td>
<td>Enhanced</td>
<td>Advanced Replacement (⋆5) - Next Business Day (Requests must be in by 2pm EST or 4pm Western Europe Time). 1st Year Advanced Replacement Maintenance for years 2 through 5</td>
<td>Customer(⋆7) Installation of subsequent Software Releases</td>
<td>Appliance</td>
<td>N/A</td>
</tr>
<tr>
<td>Saas</td>
<td>N/A Hosted Solution(⋆8)</td>
<td>N/A</td>
<td>Performed by RSA</td>
<td>Basic, Enhanced</td>
<td>N/A</td>
<td>RSA Operation responsible for installation and maintenance of Hosted environment</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
1. Customer-Performed Tasks:
Customer-performed tasks are product support tasks that Customer is authorized by RSA to perform. RSA will provide diagnostic tools and documentation to enable customers to perform replacement of designated Equipment and other service tasks.

2. Customer Replaceable Units (CRUs):
CRUs are specific assemblies, components or individual parts of designated RSA Equipment that Customer is authorized by RSA to self replace. In the event of a Failure or technical issue, a customer may remove and replace a CRU by using RSA provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs, must be serviced and/or replaced by RSA or an RSA authorized service partner.
**Authentication Manager and Authentication Manager Express CRU parts limited to complete Appliance**

3. Standard Token Replacement:
The System/Security Administrator at your company will return any non-expired tokens that no longer function properly to RSA. Replacements will be shipped within 5 days after the defective token is received. A printable form will be e-mailed back to the customer containing a pre-filled return form with RMA numbers and ship-to information. More details can be found here: https://selfservice.rsasecurity.com/TWR/

4. Advanced Token Replacement:
After filling out the appropriate information, RSA will ship out replacements for each valid token within 2 or 3 days. It is the customer's responsibility to ship the defective tokens back within 60 days of the receipt of the replacement tokens. If not, RSA will invoice for the amount of the replacement tokens shipped. More details can be found here: https://selfservice.rsasecurity.com/TWR/

5. Advanced Replacement:
Appliances are shipped out same day or next business day. Secure ID Appliances must be returned within 15 days of receiving replacement or full value of Replacement Appliance will be incurred by Customer. For all other Appliances, Customer has 10 days to return faulty appliances.

6. Basic support not available for AA on Prem, Access Manager, DPM, or Authentication Manager

7. DPM Appliance installation performed by RSA/EMC Professional Services

8. Saas
90 day defective media replacement. For both Archer and Adaptive Authentication for the Web on Premise

Archer On Premise: Installation not included. Performed by Customer or may be available for separate purchase
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SDL Government (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2l, as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract, and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the
Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable Federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes, your use of the Software shall be limited to such purposes), and only for your internal use; and (b) to copy the Software as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for internal archival purposes, so long as no more than one such copy is used at any time. All copies of the Software made pursuant to subsection (b) shall be true and complete copies, and shall include all copyright, trademark and other proprietary notices as are contained on or in the original. Licensor reserves all rights in the Software not expressly granted to Customer in this Agreement.

2. Restrictions. Except as may be expressly authorized in this Agreement, Customer shall not: (a) copy or modify the Software, in whole or in part; (b) transfer, sublicense or otherwise distribute the Software to any third party; (c) lease, lend or rent the Software, use the Software to provide service bureau, time sharing, application services provider, hosting, language translation or other computer services to third parties, or otherwise make the functionality of the Software available to third parties with or without consideration; or (d) disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

3. Ownership. You expressly acknowledge that, as between Licensor and Customer, Licensor owns all worldwide right, title and interest in and to the Software and all improvements thereto, including all worldwide intellectual property rights therein. You will not delete or in any manner alter the copyright, trademark and other proprietary rights notices appearing on the Software as delivered to you. You will reproduce such notices on all copies you make of the Software. In the event Licensor has provided Customer with the Software for evaluation purposes, you will be issued an Evaluation Agreement and will be asked to provide feedback to Licensor regarding the Software (including comments, questions, suggestions and the like) ("Feedback") in accordance with that Evaluation Agreement. You agree that any Feedback can be used by Licensor for purposes of Improving the Software. In the event the end user of this license is a U.S. government agency, you will obtain written permission from the U.S. government agency to release any Feedback to Licensor, and for Licensor to use the Feedback for purposes of improving the Software. Any licenses for test and development purposes will be sold under separate terms and conditions. Test and development licenses are only to be used for internal assessment or testing purposes, and software provided for test and development purposes will not be installed, used or incorporated into any production environment.

4. Term. This Agreement will begin on the date Customer accepts this Agreement and will remain in effect for the term for which you have paid a license fee as set forth in the applicable ordering document, unless terminated earlier in accordance with the terms of this Agreement. Upon expiration or termination of this Agreement, you shall discontinue all use of the Software, and provide Licensor with a written certification stating that you have uninstalled and ceased using the Software.

5. Support. If Customer issues an order for support, Licensor will provide you with technical support services for the Software. All technical support services will be subject to and performed in accordance with Licensor's Support and Maintenance Agreement issued at time of license delivery. Licensor reserves the right to change its technical support practices at any time, but will not reduce the level of technical support practices for which fees have been paid.

6. Limited Warranty. Licensor warrants that, for a period of sixty (60) days after the shipment date of the Software, the Software will be capable of performing in all material respects in accordance with the functional specifications set forth in the applicable documentation for the Software that has been provided with installation. As your sole and exclusive remedy and Licensor's entire liability for any breach of the warranty set forth in this Section 6, Licensor will, at its option: (a) promptly correct any Software that fails to meet this warranty; (b) provide you with a reasonable procedure to circumvent the nonconformity; or (c) refund the license fees paid by you for the non-conforming Software upon your return of such Software to Licensor. The warranty set forth in this Section 6 does not apply in the event Licensor has provided you with the Software on a no fee basis for beta, evaluation, testing or demonstration purposes.

7. Disclaimer. Licensor does not warrant that the Software will meet Customer's requirements, that the operation of the Software will be error-free or uninterrupted or that all Software errors will be corrected. EXCEPT AS PROVIDED IN SECTION 6, THE SOFTWARE PROVIDED HEREUNDER IS PROVIDED "AS IS" AND LICENSOR MAKES NO WARRANTY OF ANY KIND WITH REGARD TO THE SOFTWARE. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. No advice or information, whether oral or written, obtained from Licensor or elsewhere will create any warranty not expressly stated in this Agreement.

8. Reserved.

9. Reserved.

10. Proprietary Information.

10.1 Restrictions. Customer acknowledges that, in the course of this Agreement you may obtain certain confidential or proprietary information of Licensor ("Proprietary Information"). "Proprietary Information" includes (a) Licensor's technical, engineering, manufacturing, product, marketing, servicing, financial, personnel and other information, (b) the licensed software, and (c) documentation such as manuals and other supporting materials related to the software. As between Customer and Licensor, the Proprietary Information shall belong solely to Licensor. You agree: (i) to protect Proprietary Information from unauthorized dissemination and use, (ii) to use Proprietary Information only for the performance of this Agreement and the exercise of any rights granted to you under this Agreement, (iii) not to disclose any Proprietary Information to any of your employees, contractors, agents or any other individuals, except to those who are under confidentiality obligations no less restrictive than the requirements of this Section 10, and (iv) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Proprietary Information.

10.2 Equitable Relief. Customer agrees that, due to the unique nature of the Proprietary Information, the unauthorized disclosure or use of Proprietary Information or any other breach of any provision of Section 10.1 will cause irreparable harm and significant injury to Licensor, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, you agree that Licensor, in addition to any other available remedies, shall have the right to obtain an immediate injunction and other equitable relief enjoining any breach or threatened breach of Section 10.1 without the necessity of posting any bond or other security. You shall notify Licensor in writing immediately upon becoming aware of any such breach or threatened breach.

11. U.S. Government End User Rights

11.1. Applicability. The U.S. Government end user terms and conditions set forth in this Section 11 shall apply to all instances where Customer is the U.S. Government, or a Prime Contractor or Subcontractor that is using the Software to provide services to or for the U.S. Government (each, a "U.S. Government End User"). In the event that Customer is a U.S. Government End User, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any associated documentation and technical data is restricted in accordance with 48 C.F.R. §12.211; 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. A third party may resell the Software to a U.S. Government End User, if and only if, the Software is licensed to the U.S. Government End User subject to the terms of this Agreement.

(a) The Software and any derivatives are "commercial items" as defined in 48 C.F.R. 2.101 ("Commercial Items"). If Customer is a U.S. Government End User, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any associated documentation and technical data is restricted in accordance with 48 C.F.R. §12.211; 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. A third party may resell the Software to a U.S. Government End User, if and only if, the Software is licensed to the U.S. Government End User subject to the terms of this Agreement.

(b) Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Software is provided to U.S. Government End Users: (i) only as Commercial Items, (ii) with only those rights
as are granted to all other users pursuant to this Agreement (except as otherwise noted in Section 11.1), and (iii) the terms of this Agreement are incorporated into any Reseller, Prime Contractor, or Subcontractor’s contract with the U.S. Government or otherwise agreed to by Customer in a way that legally binds the U.S. Government to these terms. This U.S. Government Rights clause is in lieu of, and supersedes, any Federal Acquisition Regulations (“FAR”), the Defense FAR Supplement (“DFARS”), or other clause or provision that addresses U.S. Government rights in computer software or technical data.

12. General

12.1 Independent Contractor and Subcontractors. Licensor is an independent contractor and not an agent or representative of Customer or any Reseller. No employee of Licensor shall be deemed an employee of Customer or any Reseller. Customer will have no direct control over Licensor or its employees. Licensor may engage subcontractors without notice to or consent of Customer.

12.2 No Third-Party Beneficiaries. Licensor and Customer mutually agree that this Agreement is intended to be solely for the benefit of the Parties and that no third parties shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

12.3 Third-Party Hardware and Software. The Software provided under this Agreement may necessitate use of certain third party hardware, software and/or data products by Customer. Customer shall be solely responsible for obtaining licenses to such third party hardware, software or data for its own use. Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt, Licensor has no liability for such third party hardware, software or data, whether in warranty, indemnity, or otherwise.

12.4 Publicity. Licensor may make reference to the existence of this Agreement and disclose that Customer is a customer of Licensor, including, without limitation, that Customer is a customer of Licensor with respect to the Software, without Customer’s further consent. Customer may not make any reference to this Agreement, including the existence of this Agreement, in any prospectus, proxy statement, offering memorandum, or similar document without Licensor’s prior written consent, which Licensor may grant or withhold, in its reasonable discretion.

12.5 Severability. If the application of any provision of this Agreement to any particular facts or circumstances shall be held to be invalid or unenforceable by a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity and enforceability of this Agreement shall not in any way be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

12.6 Reserved.

12.7 Reserved.

12.8 No Waiver. No course of dealing, course of performance or failure of either Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any other term, right or condition. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

12.9 Relationship of the Parties. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the Parties, and the Parties shall at all times be and remain independent contractors. Except as expressly agreed by the Parties in writing, neither Party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other Party or to bind the other Party in any respect whatsoever.

12.10 Notices. Licensor shall deliver all notices and communications concerning the Software or this Agreement to the attention of the individual or group designated by the Parties in writing on the signature page of this Agreement. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed given upon receipt when: (a) delivered personally; (b) sent by registered or certified mail, return receipt requested, postage prepaid; (c) sent via express courier, with written confirmation of receipt; or (d) delivered via email with read receipt or reply confirming recipient viewed the message.

12.11 Compliance with Laws. Customer agrees that it shall comply with all laws and regulations of the United States and other applicable jurisdictions in access and using the Software. Without limiting the generality of the foregoing, Customer shall not make the Software available to any person or entity that: (a) is located in a country that is subject to a U.S. Government embargo; (b) is listed on any U.S. Government list of prohibited or restricted parties; or (c) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

12.12 Export Laws. The Software and related documentation are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations and acknowledges that Customer is responsible for obtaining such licenses or approvals, re-export, or import as may be required.

12.13 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

12.14 Complete Agreement. This Agreement, any exhibits and schedules attached to it, any other terms and conditions incorporated by reference herein, and the terms and conditions of the underlying GSA Schedule Contract, contain the entire understanding of the Parties with respect to the subject matter hereof, and supersede any and all related prior understandings, agreements, representations, negotiations and discussions, whether oral or written. This Agreement cannot be modified or amended except in a writing signed by both Parties.


13.1 "Affiliate" of a Party means (i) an entity that owns directly or indirectly, a controlling interest in such Party, (ii) an entity in which such Party owns a controlling interest, by stock ownership or otherwise, or (iii) an entity under common control with such Party, directly or indirectly. As used in this Agreement, the terms “controlling interest” and “common control” mean the ownership, directly or indirectly through the stockholders, interest holders or members of an entity, of more than fifty percent (50%) of the voting securities or other ownership interest of the other entity, or the possession, directly or indirectly, of the power to direct the management or policies of the other entity, whether through the ownership of voting securities, by contract, or otherwise.

13.2 "Party" when used in the singular refers to either Licensor or Customer. “Parties” refers to both Licensor and Customer.

13.3 "Prime Contractor(s)" means one or more non-Government Agency third party(ies) that has entered into a prime contract with the U.S. Government authorizing such third party(ies) to, on behalf of, or as an agent to the U.S. Government, obtain software and services similar to those authorized for resale by Licensor under this Agreement. Designation as a “Prime Contractor” will immediately expire upon expiration or termination of the prime contract between the Prime Contractor and the authorizing U.S. Government agency.

13.4 "Reseller" means an entity authorized by Licensor to resell or make available the Software on Licensor’s behalf.

13.5 "Software" means SDL Government’s Enterprise Translation software.

13.6 "Subcontractor(s)" means one or more non-U.S. Government third party(ies) at any tier that has entered into a subcontract with a Prime Contractor or a higher-tier Subcontractor authorizing such third party(ies) to obtain software and services similar to those authorized for resale by Licensor under the Agreement, but who shall not resell, distribute or sublicense the Software to any other party. Designation as a “Subcontractor” will immediately expire upon expiration or termination of the subcontract between the Subcontractor and the Prime Contractor or higher-tier Subcontractors.

13.7 "U.S. Government" means an agency, department or instrumentality of the United States Government, international agencies of which the U.S. Government is or becomes a member, and any other U.S. Federal Government entity authorized to purchase off of Government contracts on behalf of the United States Government.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Secon Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the
Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded.

This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SECEON INC.

SECEON INC. WARRANTY AND SUPPORT TERMS
Attachment A – Secon

End User License Agreement

1) Definitions.

“Authorized Partner” means any of Secon’s distributors, resellers or other business partners.
“Grant Letter” means a confirmation notice letter issued electronically by Seceon to you, confirming Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and also containing download details.

“Documentation” means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.

“Seceon” means (a) Seceon, Inc., a Massachusetts corporation, with an office located at 238 Littleton Rd., Suite 202, Westford, MA 01886 USA) “Node” means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, worker/teleworker homebased systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers or portable workstations connected or connecting to the server(s) or network.

“Software” means each Seceon software program in object code format licensed by Seceon and purchased from Seceon or its Authorized Partners, including Upgrades.

“Subsidiary” refers to any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.

“Support” or “Technical Support” means the support services offered by Seceon for the support and maintenance of the Software and Seceon brand hardware further specified in the Seceon Technical Support and Maintenance Terms. i) “Updates” are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Software which are made generally available to Seceon’s customer base as a part of purchased Support and which are not separately priced or marketed by Seceon.

“Upgrade” means any and all improvements in the Software which are made generally available to Seceon’s customer base as part of purchased Support and which are not separately priced or marketed by Seceon.

License Grant. Subject to the terms and conditions of this Agreement and the applicable ordering document, Seceon hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) for your own internal business operations. You acknowledge that the Software and all related information are proprietary to Seceon and its suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.

Copy and Use terms.

Product entitlement: The use of the Software depends on the licenses purchased (e.g. Nodes). Software is installed may not exceed your product entitlement. Certain Software licensed as part of a suite-based Seceon product may also require the purchase of a separate Seceon server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.

Term: The license is effective for a limited period of time (“Term”) in the event that such Term is set forth in the Grant Letter and the applicable ordering document, otherwise the licenses shall be perpetual.

Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.

Managing Party: If you enter into a contract with a third party in which the third party manages your information technology resources (“Managing Party”), you may transfer all your rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and (c) you provide Seceon with written notice that a Managing Party will be using the Software on your behalf.

Subsidiaries: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You shall be responsible and fully liable for each Subsidiary’s compliance with or breach of the terms of this Agreement.

General Restrictions: You may not, nor allow any third party to:
- decompile, disassemble or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without Seceon’s prior written consent;
- remove any product identification or proprietary rights notices of the Software or Documentation;
- lease, lend or use the Software for timesharing or service bureau purposes;
- modify or create derivative works of the Software, except with Seceon’s prior written permission, publish any performance or benchmark tests or analysis relating to the Software or otherwise use or copy the Software except as expressly provided herein.

Technical Support and Maintenance. The Seceon Technical Support and Maintenance Terms apply if you have purchased Support. The Seceon Technical Support and Maintenance Terms are incorporated by reference. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support.

Limited Warranty and Disclaimer.

Limited Warranty: Seceon warrants that, for a period of 1 year from the purchase date (“Warranty Period”), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.

Exclusive Remedy: In case of any breach of the above limited warranty, Seceon will (a) repair or replace the Software or (b) if such repair or replacement would in Seceon’s opinion be commercially unreasonable, refund the price paid by you for the applicable Software.
Exclusion of Warranty: The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation, (ii) the Software or any part thereof has been modified by any entity other than Seceon or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by Seceon.

Disclaimer: THE ABOVE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED “AS IS” AND SECEON MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Reserved.

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“Free” or “Open-Source” Software: The product may include programs or code that are licensed under an OpenSource Software (“OSS”) license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

Notice to United States Government End Users. The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

Privacy and Collection of Personal or System Information.

The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Seceon products installed, Seceon components, processes and services information, frequency and details of update of Seceon components, information about third party products installed, extracts of logs created by Seceon, usage patterns of Seceon products and specific features, etc.) (collectively, “Data”).

The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users’ computer network), enable Seceon to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

You are solely responsible for securing any privacy-related rights and permissions from your users as may be required by local law or by your internal policies. Seceon will only collect, process, copy, backup, store, transfer and use personally identifiable information.

Audit. Subject to your security requirements, Seceon may, at its expense, upon reasonable prior written notice to you and during standard business hours, audit you with respect to your compliance with the terms of this Agreement no more than once per year.
You understand and acknowledge that Seceon utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your Software deployment, such request to occur no more than two (2) times per year. Seceon will not unreasonably interfere with the conduct of your business.

Export Controls. You acknowledge that the Software is subject to US export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see http://Seceon.com/us/about/export_compliance/index.html (then click on US Export Compliance. Seceon reserves the right to update this website from time to time, at its sole discretion.)

Reserved.

Reserved.

Reserved.
Secure Channels Inc. | 16400 Bake Parkway | Suite 100 | Irvine, CA 92618

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached Secure Channels Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibits such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the
Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third-party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SECURE CHANNELS

SECURE CHANNELS. WARRANTY AND SUPPORT TERMS

Secure Channels Inc.

All references to Secure Channels, Inc. ("SCI") in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, SCI.”

SECURE CHANNELS, INC.’S END USER LICENSE AND TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

This End User License and Technical Support and Maintenance Agreement ("EULA") is a legal agreement between the Customer ("you") either a Government agency or instrumentality and Secure Channels, Inc. and its subsidiaries (collectively, "SCI") for SCI’s Software, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (collectively "Licensed Software") as well as technical support and maintenance services for the Licensed Software ("Technical Support and Maintenance") if acquired from SCI. The Licensed Software also includes any updates and supplements to the original Licensed Software which may be provided to you by SCI.
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Grant of License; License Keys.

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Inspection/Acceptance. The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s ("SCI") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights - (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

5. Warranties, Disclaimers and Remedies.

If you have acquired a Perpetual License for the Licensed Software, SCI warrants for 90 days after acceptance in accordance with the FAR and the underlying ordering document, (the “Warranty Period”) that the Licensed Software will function in all material respects as described in the documentation for the Licensed Software, subject to compliance with the License Configuration.

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**Transfer Restrictions.** You shall not assign or otherwise transfer this EULA or any portion of the Licensed Software, or any copies thereof or any of your interests in any of the foregoing, without SCI’s prior written consent. Assignment by SCI is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). This EULA will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs and permitted assigns.

Reserved.

Reserved.

Reserved.

Reserved.

Reserved.

Reserved.

Reserved.
SECURITY FIRST CORP. WARRANTY AND SUPPORT TERMS

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Product Warranty. For the applicable warranty term, SecurityFirst warrants that each product will substantially conform to the applicable accompanying documentation for such Product. Hardware products may be newly manufactured, (ii) may be assembled from new or serviceable used parts™ that are equivalent to new parts in performance, or (iii) may have been previously installed. No warranty shall apply to any product which has been altered, except by SecurityFirst or under SecurityFirst’s direction, or which has been handled, installed, misused (including static discharge), maintained, or operated not in accordance with SecurityFirst’s instructions. SecurityFirst’s entire liability and your exclusive remedy for warranty claims shall be for SecurityFirst, at its option, to use reasonable efforts to remedy the product defects or replace the affected product. If SecurityFirst is unable to make an affected product operate as warranted within a reasonable time, then SecurityFirst shall refund the amount received by SecurityFirst for the affected product upon its return to SecurityFirst or its Distributor. The foregoing shall not void any supplementary remedies made available to you by a Distributor, with respect to which SecurityFirst shall have no liability or obligation.

Warranty Exclusions. Except as expressly stated in the applicable warranty set forth in this Agreement, and to the maximum extent permitted by law, SecurityFirst (including its suppliers) provides all Software and hardware on an “AS IS” basis and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

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THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND SECURITYFIRST’S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

LIMITATION OF LIABILITY.

Limitation on Direct Damages. To maximum extent permitted by applicable law, SecurityFirst’s (including SecurityFirst’s Distributors) total liability and your sole and exclusive remedy for any claim of any type whatsoever, arising out of product or service provided hereunder, shall be limited to proven direct damages in an amount not to exceed the contract price paid to SecurityFirst by you for the specific item or service (calculated on an annual basis, when applicable) from which such claim arises.

No Indirect Damages. To maximum extent permitted by applicable law, SecurityFirst (including SecurityFirst’s Distributors) shall not have any liability for special, punitive, consequential, exemplary, incidental, or indirect damages (including, but not limited to, loss of profits, revenues, data and use), even if advised of the possibility thereof. You may not bring any claim based on products or services provided hereunder more than six (6) years after the cause of action accrues. The foregoing exclusion/limitation of liability shall not apply (1) to personal injury or death caused by contractor’s negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law.

Class Actions. [Reserved]

GOVERNMENT REGULATIONS AND RIGHTS.

Export. Items provided under this Agreement are subject to governmental restrictions on exports from the U.S. and from disclosures of technology to foreign persons. Diversion contrary to U.S. law is expressly prohibited. You shall, at your sole expense, comply with all export laws. You represent that you are not a restricted person, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (2) on any restricted person or entity list.
maintained by any U.S. governmental agency. Certain information, products or technology may be subject to the International Traffic in Arms Regulations ("ITAR"). This information, products or technology shall only be exported, transferred or released to foreign nationals inside or outside the United States in compliance with ITAR as applicable.

**Rights.** All Software licensed hereunder shall be considered "commercial computer software" or "commercial computer software documentation" which has been developed entirely at private expense. They are delivered and licensed as commercial computer software and commercial computer software documentation within the meaning of all applicable acquisition regulation(s). With respect to the federal or state governments, their departments, offices or agencies, either directly or through a prime contractor or subcontractor at any tier ("Government Customer"), all Software and documentation provided hereunder are "commercial item[s]" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software," commercial "computer software documentation" and/or commercial "technical data" as such terms are used in 48 C.F.R. §§ 12.212, 252.227-7014(a) and 252.227-7015(a)(5), respectively. Consistent with C.F.R. §§ 12.212, Government Customers acquire only those rights set forth herein, except that in no event shall any Government Customer have greater rights in any computer software or technical data than as set forth in 52.227-14252.227-7015, Technical Data – Commercial Items (NOV 1995), respectively. For U.S. Government Customers, FAR 52.227-3 shall apply. SecurityFirst retains all intellectual property rights in and to such items.

**TERMINATION.** With respect to evaluation products only, this Agreement shall automatically expire and terminate upon the conclusion of sixty (60) days from the initial installation of an evaluation product unless another term (not to exceed one (1) year) is otherwise provided for in an applicable Quote. For non-evaluation products, this Agreement will terminate at the end of the applicable license terms. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SecurityFirst shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, you shall cease all use and return or certify destruction of the applicable Software (including copies) to SecurityFirst. Upon termination of the Agreement, the following Sections hereof shall survive in accordance with their terms: 1, 2 (only if fees are due and owing at termination), 4.C, 5, 7, 8, 9, 10 and 11.

**NOTICES.** Any notices permitted or required under this Agreement shall be in writing, and shall be deemed given upon receipt when delivered (i) in person, (ii) by a recognized overnight courier, with proof of receipt, or (iii) by U.S. certified or registered mail, with proof of delivery. Routine business communications (e.g., SecurityFirst's Product Notices) may be communicated or exchanged in the ordinary course of business without formal notification. Notices to SecurityFirst shall be sent to: Security First Corp., Attn: Legal Department, 29811 Santa Margarita Parkway Suite 600, Rancho Santa Margarita, CA 92688, USA.

**MISCELLANEOUS.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and applicable Purchase Order(s), is the complete statement of the agreement of the parties with regard to the subject matter hereof, and may be modified only by a writing signed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). You or SecurityFirst shall not assign this Agreement or any right or delegate any performance without the other party’s prior written consent. No waiver shall be deemed a waiver of any prior or subsequent default hereunder. If any part of this Agreement is held unenforceable or invalid, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. This Agreement is governed by the federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as well any version thereof adopted by any state in any form) shall not apply. For U.S. Government Customers, this Agreement will be governed by and construed in accordance with U.S. Federal law, including without limitation, for matters arising out of contract disputes, the mechanism for redress permitted by the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations (DFAR) and their Supplements, as applicable.

Agreed and Accepted by:

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<tr>
<th>(Customer)</th>
<th>(Date)</th>
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<tr>
<td>(Mailing Address)</td>
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LICENSE AGREEMENT ADDENDUM ("DataKeep™ Addendum")

This DataKeep Addendum represents additional terms applying only to DataKeep licensing agreements.

Terms for the license of SecurityFirst™ Software are in the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE. If there is a conflict in terms between the LICENSE AGREEMENT FOR SECURITYFIRST SOFTWARE and this DataKeep Addendum, the terms of this Addendum will govern.

Additional Product Terms:

The DataKeep PPM software component is licensed under this Agreement at no additional cost and is included in the software distribution of the DataKeep agents licensed hereunder and may used only to support these and other properly licensed DataKeep agents.

Installation of DataKeep PPM at the server level is supported as an OVA using CentOS as one or more VM's as the Customer finds necessary to adequately support the licensed DataKeep agents (inclusive of high availability clustered management environments). Customer is permitted to install and use the licensed number and type (model) of DataKeep agent Software instances with each instance limited to one, and only one server (either bare metal or VM).

The Software will be delivered to the Customer from SecurityFirst via digital download or some other mutually agreeable method. The Software download should then be installed on the desired server and by performing installation, Customer accepts the responsibility of remaining within the number of agent instances as licensed by this Agreement.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Siemens Industry, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) ( Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.232-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the
Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SIEMENS INDUSTRY, INC.

SIEMENS INDUSTRY, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. Buyer’s Requirements. Timely performance by Contractor through Siemens is contingent upon Ordering Activity’s supplying to Siemens all required technical information and data, including drawing approvals, and all required commercial documentation.

2. Limited Warranty. (a.) Limited Product Warranty Statements. For each Product purchased from Contractor or an authorized reseller, Contractor makes the following limited warranties: (i) the Product is free from defects in material and workmanship. (ii) the Product materially conforms to Siemens’ specifications that are attached to, or expressly incorporated by reference into, these terms, and (iii) at the time of delivery, Siemens has title to the Product free and clear of liens and encumbrances (collectively, the "Limited Warranties"). Warranties with respect to software which may be furnished by Contractor as part of the Product, if any, are expressly set forth elsewhere in these terms. The Limited Warranties set forth herein do not apply to any software furnished by Contractor. If software is furnished by Contractor, then the attached Software License/Warranty Addendum shall apply.
(b.) Conditions to the Limited Warranties. The Limited Warranties are conditioned on (i) Ordering Activity storing, installing, operating and maintaining the Product in accordance with Siemens’ instructions, (ii) no repairs, modifications or alterations being made to the Product other than by Contractor through Siemens or its authorized representatives, (iii) using the Product with any configurations or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms, (iv) Ordering Activity discontinuing use of the Product after it has, or should have had, knowledge of any defect in the Product, (v) Ordering Activity providing prompt written notice of any warranty claims within the warranty period described below, (vi) at Contractor's discretion, Ordering Activity either removing and shipping the Product or non-conforming part thereof to Contractor through Siemens, at Ordering Activity's expense, or Ordering Activity granting Contractor through Siemens access to the Products at all reasonable times and locations to assess the warranty claims, and (vii) Ordering Activity not being in default of any payment obligation to Contractor under these terms.

(c.) Exclusions from Limited Warranty Coverage. The Limited Warranties specifically exclude any equipment comprising part of the Product that is not manufactured by Siemens or not bearing its nameplate. To the extent permitted, Contractor hereby assigns any warranties made to Siemens for such non-Siemens equipment. Contractor shall have no liability to Ordering Activity under any legal theory for such non-Siemens equipment or any related assignment of warranties. Additionally, any Product that is described as being experimental, developmental, prototype, or pilot is specifically excluded from the Limited Warranties and is provided to Ordering Activity “as is” with no warranties of any kind. Also excluded from the Limited Warranties are normal wear and tear items including any expendable items that comprise part of the Product, such as fuses and light bulbs and lamps.

(d.) Limited Warranty Period. Ordering Activity shall have 12 months from initial operation of the Product or 18 months from shipment, whichever occurs first, to provide Contractor with prompt, written notice of any claims of breach of the Limited Warranties. Continued use or possession of the Product after expiration of the warranty period shall be conclusive evidence that the Limited Warranties have been fulfilled to the full satisfaction of Ordering Activity, unless Ordering Activity has previously provided Contractor with notice of a breach of the Limited Warranties.

(e.) Remedies for Breach of Limited Warranty. Buyer's sole and exclusive remedies for any breach of the Limited Warranties are limited to Siemens' replaced parts of the Product shall be limited to the remainder of the original warranty period. Unless otherwise agreed to in writing by Siemens, (i) Contractor shall be responsible for all labor required to gain access to the Product so that Siemens can assess the available remedies and (ii) Contractor shall be responsible for all costs of installation of repaired or replaced Products. All exchanged Products replaced under this Limited Warranty will become the property of Siemens.

(f.) Transferability. The Limited Warranties shall be transferable during the warranty period to the initial end-user of the Product. THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SIEMENS' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 8 BELOW. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

3. Patent and Copyright Infringement. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer in so far as it is based on an allegation that any Product (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if Siemens is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding to the extent permitted by 28 U.S.C. 516. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Product, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Buyer is enjoined, Siemens will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Product; (b) replace it with substantially equivalent non-infringing Product; or (c) modify the Product so it becomes noninfringing.

Siemens will have no duty or obligation to Buyer under this Article to the extent that the Product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, (c) combined by Buyer or its contractors with devices, methods, systems or processes not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Buyer shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Buyer under the provisions of the Section above.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached Siren Data Intelligence, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable Remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.2293.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
SOFTWARE LICENCE AGREEMENT

THIS AGREEMENT is entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the "Effective Date") by:

<table>
<thead>
<tr>
<th>Name</th>
<th>The GSA Multiple Award Schedule Contractor acting on behalf of Siren Data Intelligence, Inc. (&quot;Siren&quot;)</th>
<th>The eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (&quot;Customer&quot; or &quot;Ordering Activity&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-U-N-S Number</td>
<td>11-693-5195</td>
<td></td>
</tr>
</tbody>
</table>
| Registered Address | 22 Mourar Dr  
Spring City, PA 19475  
UNITED STATES                                                                 |                                                                                                 |
| Contact | Account Manager                                                                                 |                                                                                                 |
| Telephone | +353 91 704885                                                                                   |                                                                                                 |
| Fax |                                                                                                  |                                                                                                 |
| Email | accounts@siren.io                                                                               |                                                                                                 |

BACKGROUND

Siren has developed or sublicensed the Products and provides certain maintenance and support services in relation to the Products.

The Customer wishes to use the Products and avail of maintenance and support services provided by Siren as detailed in this Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Siren and the Customer agree as follows:

1. LICENSE

1.1 Subject to the terms and conditions of this Agreement, including, without limitation, Customer’s payment of Fees, Siren grants to the Customer a personal, non-exclusive, non-sublicensable, non-transferable, royalty-free worldwide right and licence to use the Products for the purpose of complying with its obligations and exercising its rights under the Agreement, during the Term.

1.2 The Customer will not sell, lease, assign or otherwise transfer the rights to use the Products under this Agreement in whole or in part. In particular but without limitation the Customer will not: (i) permit any timesharing or subscription use of the Products; or (ii) permit the Products to be used for any unlawful purpose.

1.3 Except as otherwise provided by applicable law, the Customer may not copy, alter, merge, modify, adapt or make error corrections to the Products in whole or in part, including reverse engineering, disassembling or decompiling or otherwise reduce to a human-perceivable form. The Customer may not sell, loan, rent, lease, licence, sublicense, distribute, create derivative work or otherwise transfer the Products without the prior written consent of Siren. The Customer will not remove any copyright or proprietary notices from the Products; create any derivative works based on the Products or show or demonstrate the Products to any competitor of Siren. The Customer acknowledges that the Products (and any concepts, methodologies, techniques, ideas or other information contained therein or related thereto) constitutes Confidential Information of Siren and the provisions of Clause 4 shall apply to it. Siren will have no obligations or responsibilities whatsoever with respect to the Products, including, without limitation, any obligation to provide updates or support, unless otherwise stated in this Agreement.

1.4 The licence set out in this Agreement is restricted to the maximum node usage and/or the number of named user seats that is set out in Schedule A.

1.5 The Customer and/or the Customer’s outsourced service providers shall host the Products.

1.6 The Customer shall record the location of any copy of the Products and ensure there is no un-authorised copying.

2. NEW VERSIONS, MAINTENANCE AND SUPPORT

2.1 Siren may, at its discretion, prepare new versions, updates or other amendments to the Products and make these available for commercial licensing. Siren may provide such new versions and related documentation to the Customer and where required by Siren the Customer will be obligated to install Major Releases during the Term hereof under the provisions of this Agreement.

2.2 Siren will support the Customer’s use of the Products in accordance with Schedule B.
3. **PAYMENT TERMS**

3.1 The GSA Multiple Award Schedule contractor on behalf of Siren will issue an invoice for the Fees annually, unless otherwise stated in Schedule A. The Customer will pay each invoice within 30 days of receipt. The Customer will make payment in United States dollars unless otherwise stated in Schedule A. Interest will be payable on any overdue amounts on the amount of any such overdue amounts together with interest thereon at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Siren shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

4. **CONFIDENTIALITY**

4.1 **“Confidential Information”** means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) whether before or after the date of this Agreement which ought reasonably to be regarded as confidential including, without limitation, information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, product information, knowhow, design rights, trade secrets, market opportunities and business affairs.

4.2 During the term of this Agreement and after termination or expiration of this Agreement for any reason the Receiving Party:

- will not use Confidential Information for a purpose other than the performance of its obligations or exercise of its rights under this Agreement;
- shall make every effort to prevent the use or disclosure of Confidential Information.

During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its Affiliates, directors, other officers, employees or agents, (a “Recipient”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement provided that the Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

Each party may disclose Confidential Information if and to the extent that:

- this is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;
- this is required by any securities exchange or regulatory or governmental body to which that party is subject to, wherever situated, whether or not the requirement for information has the force of law;
- the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;
- the information has come into the public domain through no fault of that party;
- the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid; and/or
- the information was obtained by the Receiving Party from a third party who was free to divulge same PROVIDED THAT any such information disclosed pursuant to paragraphs (a) and (b) shall be disclosed only after notice to the other party.

Siren recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

4.5 The obligations of both parties as to confidentiality shall continue in force notwithstanding the termination or expiration of this Agreement.

5. **PERSONAL DATA**

5.1 Each party will comply with Data Protection Law of the United States. Each party will not use any personal data of the other party in any manner, except that each party may process personal data, for the purposes of (i) this Agreement, (ii) maintaining their administrative or customer relationship management systems, including the use of IT outsource providers, (iii) quality and risk management reviews.

5.2 The Customer acknowledges and agrees that, to the extent that it acts as a data controller, it is responsible for ensuring that it procures consent from data subjects for the processing of their personal data through the Products.

6. **INTELLECTUAL PROPERTY RIGHTS**

6.1 The Customer acknowledges that all Intellectual Property Rights and any other proprietary rights in the Products shall at all times vest in and be the absolute property of Siren or its licensors, as appropriate. Save as expressly stated nothing in this Agreement shall be deemed to give either party any rights of any kind in any Intellectual Property Right belonging to the other party. The Products contain open source software licensed under the Apache license.
6.2 Siren hereby indemnifies and agrees to have the right to intervene to defend the Customer from and against all damages, losses, claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any and all third party claims that the Products infringe any third party Intellectual Property Rights subject to the following conditions:
the Customer shall promptly notify the Siren in writing if any third party action, claim, or other proceeding is made or threatened such as to activate any indemnity granted hereunder;
the Customer must make no admissions without the indemnifying party's prior written consent; and
the Customer, at the indemnifying party's request and expense, shall allow Siren to conduct any negotiations or litigation and/or settle any claim. The Customer shall give Siren all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for Siren's account. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

6.3 If at any time an allegation of infringement of Intellectual Property Rights is made in respect of the Products or, if in Siren's reasonable opinion such an allegation is likely to be made, Siren may at its own expense modify or replace the Products so as to avoid the infringement making good to the Customer any loss arising from such modification or replacement. If the Products cannot be replaced or modified within thirty (30) days then the Customer may terminate this Agreement without liability and Siren shall promptly refund to the Customer the proportionate amount of any fees paid under this Agreement.

7. WARRANTY

7.1 Each party represents and warrants to the other party that:
- it has full power and authority to execute and deliver this Agreement and to comply with the provisions of, and perform all its obligations and exercise all of its rights under this Agreement;
- it has taken all necessary action to authorise the execution and delivery of this Agreement and this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforcement may be limited by any relevant bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally;
- the entry into and performance of this Agreement does not and will not violate: (i) any law or regulation of any governmental or official authority or body; (ii) its constitutional documents; or (iii) any agreement, contract or other undertaking to which it or any of its Affiliates is a party or which is binding on it or any of its Affiliates or any of their respective property or assets;
- all consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Agreement have been obtained and are in full force and effect;
- it is not necessary for the legality, validity, enforceability or admissibility in evidence of this Agreement that this Agreement or any document relating to it be registered, filed, recorded or enrolled with any court, registry or public authority in any relevant jurisdiction or that any stamp, registration or similar taxes be paid on or in relation to this Agreement or any document relating to it;
- it will comply with all applicable laws in respect of the performance of its obligations and exercise of its rights under this Agreement.

In the event of any failure of the Products to function in accordance with the documentation supporting the Products, Siren will attempt through reasonable endeavours to correct or cure any reproducible non-compliance notified to it in writing, provided always that the Products have not been misused or damaged by the Customer in any respect, and that the existence and nature of any such nonconformity or defect is promptly notified to the Customer in writing upon Siren discovering it.

Siren does not warrant that the Products will meet the Customers’ requirements. Except as expressly set forth in this Agreement, all warranties, conditions, representations, statements, terms and provisions express or implied by statute, common law or otherwise are excluded to the greatest extent permitted by law. Save as otherwise set out in the Agreement, and to the fullest extent permissible by law, Siren disclaims and excludes all warranties, conditions, representations, indemnities and guarantees with regard to the Products and any related services provided or to be provided hereunder, whether express or implied, including but not limited to warranties of noninfringement, merchantability, fitness for a particular purpose and that use of the Products will be uninterrupted or error free.

8. LIABILITY

8.1 Subject to Clause 8.3, Siren shall in no event be liable to the Customer in contract, or tort, under any law or otherwise howsoever arising for indirect, special, incidental or consequential damages, including but not limited to damages and costs incurred as a result of loss or corruption of data or other equipment or property, loss of business revenue, loss of profits (whether direct or indirect), loss of time, loss of savings, failure to realise expected profits or savings and any other economic loss of any kind.
8.2 Subject to Clause 8.3, Siren's total liability for loss or damage of any kind not excluded by this Clause 8, however caused (whether in contract, tort, under any law or otherwise howsoever) arising from or in relation to the Agreement is limited in aggregate to the Fees paid by the Customer to Siren under the applicable Purchase Order(s).
8.3 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by that party's negligence, fraud, fraudulent misrepresentation or wilful default.

9. TERM AND TERMINATION

9.1 The Agreement shall commence on the Effective Date and shall continue for the length of term set out in the information table in Schedule A ("Initial Term") unless terminated earlier pursuant to the terms of the Agreement. After expiry of the Initial Term, the term may...
be renewed each year for further fixed terms of one (1) year by both parties executing an option, or new purchase order in writing (each a “Renewal Term”).

9.2 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Siren shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

9.3 Upon any termination or expiry of the Agreement: the licence to use the Products will terminate. The Customer will cease use of the Products, and on Siren’s written request, immediately delete the Products. The Customer’s directors will certify in writing that the Products have been deleted from the Customer’s systems.

Each party shall within seven (7) days after the Termination Date return to the other party or (at the other party’s election) destroy all data, Confidential Information and all other materials of that other party in its possession, along with all copies of same and documents, memoranda, notes and other writings whatsoever prepared by it or any of its directors, officers, agents, employees, representatives or advisers for it or in its possession which incorporate any of the Confidential Information. Save that, either party may retain such materials: (i) to the extent required by law or any applicable governmental or regulatory authority; and (ii) to the extent reasonably required to permit the relevant party to keep evidence that it has performed, or the other party has failed to perform, its obligations under this Agreement.

10. Dispute Resolution

Reserved.

This Agreement and any dispute arising from it, will be governed by the Federal laws of the United States.

11. GENERAL

11.1 Matters beyond reasonable control - Excusable delays shall be governed by FAR 52.212-4(f):

(a) .

11.2 Reserved.

11.3 Reserved.

11.4 Entire agreement - This Agreement (including the Schedules), together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), forms the entire agreement between the parties in relation to the Products. In the event of any conflict between the main body of this Agreement and the Schedule attached at the end of it, the terms of the Schedule will prevail. This Agreement replaces any earlier agreements, representations and discussions.

11.5 Assignment –

Subject to Clause 11.5(b), neither party shall be entitled to assign or sub-contract any of its rights or obligations or the licenses granted hereunder without the prior written approval of the other party (not to be unreasonably withheld).

Reserved.

This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each party.

Waiver – No failure or delay by a party to exercise any right will constitute a waiver of that right nor restrict the further exercise of that right. No single or partial exercise of any right will restrict the further exercise of that or any other rights.

Changes – A change to this Agreement will be effective only when agreed in writing by both parties.

Survival - The termination of the Agreement shall be without prejudice to: (a) any rights and/or liabilities which shall have accrued before termination, including any remedy available in respect of a breach of this Agreement or (b) any provision of this Agreement which is expressed to survive termination.

Notices - Notices shall be deemed to have been received: (a) if delivered by hand, on the day of delivery if it is a Working Day in the place of receipt and otherwise on the first (1st) Working Day in the place of receipt immediately following the day of delivery; (b) if sent by pre-paid airmail, on the fourth (4th) Working Day Working Day in the place of receipt after the day of posting; (c) if sent by facsimile or email: (i) (if transmitted between 09:00 and 17:00 hours (GMT) on a Working Day in the place of receipt) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or (ii) (if transmitted at any other time) at 09:00 (GMT) on the first (1st) Working Day in the place of receipt following completion of receipt by the sender of verification of the transmission from the receiving instrument.

Counterparts - The Agreement may be executed in any number of counterparts and on separate counterparts, each of which, when executed and delivered, will be an original, and all such counterparts together will constitute one and the same instrument. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax (b) e-mail (in PDF, JPEG or other agreed format) or (c) an electronic signature service agreed between the parties, will take effect as delivery of an executed counterpart of this Agreement.

Definitions - In the Agreement the following words and expressions shall have the following respective meanings, except where the context requires a different meaning:
(a) “Affiliate” means in respect of any party, any company that controls, is controlled by, or is under common control with such party. An entity will be regarded as in control of another company or entity if it owns directly or indirectly more than 50 percent of the voting rights of that company.

(B) “DATA PROTECTION LAW” means the DATA Protection Federal laws of the United States.

“Fees” means the fees to use the Products and receive the maintenance and support as set out in the final row of the information table in Schedule A in accordance with the GSA Schedule Pricelist.

“Force Majeure” has the meaning set forth in FAR 52.212-4(f).

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

“Major Version” means an enhancement of a prior version of the Products that would be considered by the software industry community (of which Siren is a part) as the next generation of a Product, which is usually evidenced by an increment in the version number of the Product. By way of illustration, versions 2.0 and 3.0 are incremental major versions, whereas versions 2.0 and 2.2 are not.

“Products” means the software product(s) detailed in Schedule A and any accompanying documentation.

“Termination Date” means the date of termination (howsoever caused) or expiry of the Agreement.

“Term” means the Initial Term and/or a Renewal Term.

Reserved.

“Working Day” means in respect of an obligation hereunder any day other than: a Saturday or a Sunday or a day on which commercial banks in Ireland are not open for business.
SCHEDULE A LICENCE AND PRODUCT INFORMATION
SCHEDULE B

SERVICE LEVEL AGREEMENT

This service level agreement is a part of, and is governed by, the Software Licence Agreement entered into between Siren and the Customer. The parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings.

“Call Ticket” means a request for support services submitted to Siren hereunder, each being uniquely identifiable.

“Error” means a problem that has occurred with the Products.

“Error Correction” shall mean the completion of all activities, including, but not limited to Fixes and Problem Resolution, necessary to diagnose, resolve and/or provide a solution for a reported Error, problem or defect occurrence in the Products.

“Error Severity Level(s)” means:

“Level 1/Critical” - Any Error that causes or results in: (i) System or sub-System unavailability; (ii) the System, a System module, or major System function to be rendered inoperable, disabled or inaccessible; (iii) data corruption; and/or (iv) the prevention of critical business functions from being performed.

“Level 2/Severe” - Any Error that causes or results in: (i) functional inconsistency across the System; and/or (ii) degradation of System performance.

“Level 3/Important” - Any Error that causes or results in (i) incorrect functioning of navigation or validation operations with respect to the System; (ii) disabling or degradation of non-essential functions and/or (iii) Product aesthetics to be inconsistent or incorrect with respect to positioning, spelling and/or color.

“Enhancement(s)” means changes or additions, other than Maintenance Modifications, to the Products and related documentation, including all new releases that improve functions, add new functions, screens or data sources or significantly improve performance by virtue of changes in System design or coding. Notwithstanding the foregoing, Enhancements shall not include new Major Versions of Products.

“Fix” means a temporary bypass/workaround and/or patch of an Error performed and/or implemented so as to cause the Products to continue performing functionally in material conformance with the Documentation, operating manuals and/or the Specifications governing the Products.

“Maintenance Modification(s)” means any modifications or revisions, other than Enhancements, to the Products and/or documentation that correct Errors, support new releases to the operating systems with which the Product is designed to operate, support new input/output devices, or provide other incidental changes, updates and corrections.

“Problem Resolution” shall mean identification of the root cause of the Error and object code fix or new Release and supporting Documentation necessary to effectuate Error Correction.

“Release(s)” shall mean new versions of the Products, including, without limitation, Error Corrections, Maintenance Modifications and Enhancements. Notwithstanding the foregoing, Releases shall not include new Major Versions of Products; and

“System” shall mean the Product as configured and installed by the Customer.

2. SERVICE LEVEL - TECHNICAL SERVICE REQUESTS

2.1. Siren’s response to specific issues reported shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Production Support</th>
<th>Non-Production Support</th>
<th>24 x 7 Support</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Support Hours</strong></td>
<td>0900-1700 GMT</td>
<td>0900-1700 GMT</td>
<td>24 / 7 / 365</td>
</tr>
<tr>
<td><strong>Response Times</strong></td>
<td>Level 1: 4 Hours</td>
<td>Level 1: N/A</td>
<td>Level 1: 1 Hour</td>
</tr>
<tr>
<td></td>
<td>Level 2: 1 day</td>
<td>Level 2: 1 day</td>
<td>Level 2: 4 Hours Level 3: 1 day</td>
</tr>
<tr>
<td></td>
<td>Level 3: 2 days</td>
<td>Level 3: 2 days</td>
<td>Level 3: 1 day</td>
</tr>
</tbody>
</table>
### 3. Error Correction

Siren shall use its commercially reasonable efforts to complete Error Correction(s) as follows:

<table>
<thead>
<tr>
<th>Error Severity Level</th>
<th>Error Correction</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Level 1/Critical</strong></td>
<td>Fix: Fix completed or a mutually agreed upon date for such Fix established within one (1) Working Day of acknowledgment of receipt of Error notification.</td>
</tr>
<tr>
<td></td>
<td>Problem Resolution: Problem Resolution completed within five (5) Working Days of completion of Fix.</td>
</tr>
<tr>
<td><strong>Level 2/Severe</strong></td>
<td>Fix: Fix completed or a mutually agreed upon date for such Fix established within three (3) Working Days of acknowledgment of receipt of Error notification.</td>
</tr>
<tr>
<td></td>
<td>Problem Resolution: Problem Resolution completed within five (5) Working Days of completion of Fix.</td>
</tr>
<tr>
<td><strong>Level 3/Important</strong></td>
<td>Fix: A Fix completed or a mutually agreed upon date for such Fix established within five (5) Working Days of acknowledgment of receipt of Error notification.</td>
</tr>
</tbody>
</table>

#### 3.1. When reporting an issue, the Customer shall provide the following information:

a) date of problem occurrence;

b) location of problem occurrence;

C) detailed problem description;

d) any steps taken by the Customer to resolve the problem; and

e) description of the Error Severity Level of the problem.

Siren and the Customer will act in good faith to determine the Error Severity Level of each issue, however, Siren’s determination of the Error Severity Level of each issue shall be final.

In all cases, Siren will use commercially reasonable efforts to correct such Error in a future Release.

Technical and maintenance support will only be made available in English.

### 4. TECHNICAL SUPPORT CONTACT INFORMATION

For issues regarding our products or services, use the user name and password provided for the Siren Customer Portal to access: [http://support.siren.solutions](http://support.siren.solutions)
SMARTBEAR SOFTWARE, INC.
450 ARTISAN WAY
SOMERVILLE MA 02145

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

Scope. This Rider and the attached SmartBear Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 et. seq. Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 et. seq.). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23,
Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party contractor shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SMARTBEAR SOFTWARE, INC.

SMARTBEAR SOFTWARE, INC. LICENSE, WARRANTY AND SUPPORT TERMS

SmartBear On-Premise License Terms of Use
You may not access the Software if You are a direct competitor of SmartBear, except with Our prior written consent.

1. Definitions.

“Documentation” means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Software, including on-line help, as updated from time to time.

“Maintenance and Support” mean those services provided by SmartBear as set forth in Exhibit A.

“Maintenance Period” means (i) for all Perpetual licenses of the Software, that number of years set forth in the applicable Order for which You have purchased Maintenance and Support or (ii) for all Subscription licenses of the Software, the number of years of such Subscription set forth in the applicable Order.

“On-Premise” means the Software must be installed on a server, desktop, virtual machine or container on site at Your facility; all Software licensed under the terms of this Agreement is for On-Premise deployments only.

“Order” means the purchase order entered into between You and SmartBear and identifies the Software (including the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

“User” means an individual who is authorized by You to use the Software in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

“You” means the Ordering Activity accepting this Agreement.

Who We Are.
If You acquired Software in the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquired Software outside of the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear (Ireland) Limited with its principal place of business at , Galway, Ireland, together with its licensors.

Reserved.

On-Premise License Grants.

Perpetual – Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Perpetual basis, as indicated on the applicable Order, SmartBear grants You a non-exclusive, nontransferable, non-sublicensable, perpetual, limited license to install and use the Software on compatible devices without any end date. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

Subscription - Subject to the terms of this Agreement, the underlying GSA Schedule contract, the Schedule pricelist, and the Order, for all licenses of the Software that are granted on a Subscription basis, as indicated on the applicable Order SmartBear grants You a non-exclusive, non-transferable, non-sublicensable, limited license to install and use the Software on compatible devices during the applicable Subscription Term. You may install and use the Software solely as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant Software product.

License Types.
The licenses granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):
Fixed (Named) License: all Software licensed under these terms are single instance, meaning it can be activated by only one User, with a unique username and password, on a single computer, computing device, or virtual machine and has a fixed license key. You must acquire and dedicate a license for each separate User that You wish to access the Software. A separate license is required for each User and may not be shared. The Software may not be reassigned other than for the permanent transfer of the Software license to another User if the eligible User is no longer employed by You. An eligible User may access the Software with a unique username and password on one device at a time.

Floating (Concurrent) License: all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

Node-Locked License: all Software licensed under these terms is for use on a specified computer or computing device. This license will be “bound” to the designated computer or computing device and will only function on this computer or computing device. This license permits the use of a single instance of the Software, which functions on a single computer or computing device.

Server Application License: all Software application licensed under these terms can be installed on one server machine and may be accessed by many Users. The license key is dedicated to the designated computer or computing device and will only function on this computer or computing device.

Usage-Based License: all Software licensed under these terms is (i) licensed on a unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and ViritServer products.

Freeware or Free Version License: all Software licensed under these terms is licensed to an individual User who is specifically named in the Software registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at https://community.smartbear.com.

Software Delivery: Delivery of the Software to You shall be made by electronic means and deemed to have occurred when the Software has been made available to You for download or by providing You with a key for such usage. SmartBear is expressly authorized by You to ship the Software upon completion of the applicable Order.

License Restrictions: Your use of the Software is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Software. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Software or create or prepare derivative works based upon the Software or any part thereof; (ii) use the Software in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) decompile, disassemble or otherwise reverse engineer the Software; (iv) use the Software in contravention of any applicable laws or government regulations; (v) use the Software in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Software; (vii) use the Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.. If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software.

Export: You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. You acknowledge that the export of any Software is subject to export or import control and You agree that any Software or the direct or indirect product thereof will not be imported or exported (or re-exported from a country of installation) directly or indirectly, unless You obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law. Without limiting the generality of the foregoing, You agree that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time. Further, you may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

Term: The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order.
Perpetual License - This term of this Agreement shall commence upon delivery of the Software; for Maintenance and Support the term of this Agreement shall continue for the one-year period following delivery and, thereafter, may be renewed at Your option for subsequent one-year periods if You issue an Order for such subsequent periods.

Subscription License – This term of this Agreement shall commence upon delivery of the Software and shall end on the last day of the Subscription Term as set forth in an Order.

Usage-Based License – The term of this Agreement is based upon the designated units of consumption as set forth in an Order. Effect of Termination.

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the applicable Software and certify in writing to SmartBear within ten (10) days after termination that such Software and all copies thereof have been destroyed, purged or returned to SmartBear. Termination of this Agreement, an Order or a license granted hereunder shall not limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

Your Responsibilities.

You shall (i) be responsible for each User’s compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your data and of the means by which You acquired Your data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Us promptly of any such unauthorized access or use, and (iv) use the Software in accordance with the Documentation and applicable laws and government regulations.

Backup of Software.

Notwithstanding anything to the contrary herein, You may make a copy(ies) of the Software for the sole purpose of backing-up and archiving the Software. Any copy of the Software is subject to all terms and conditions of this Agreement and must contain the same titles, trademarks, and copyrights as the original.

Virtualization Technology.

Unless otherwise restricted herein, the Software may be installed within a virtual (or otherwise emulated) hardware system as long as the use of the Software meets the terms of the license type and the virtual machines are run on hardware owned or leased by You. Virtualization technology may not be used to circumvent other licensing terms or restrictions.

Non-Human Devices.

Non-human devices that use the Software, whether or not without interaction, are counted as Users. Each such device that runs the Software must be properly licensed to use the Software pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

Usage Verification.

At SmartBear’s written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Software in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Software to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and pay all applicable fees in accordance herewith.

Maintenance and Support.

For Perpetual licenses, SmartBear will maintain and support licensed Software during the Maintenance Period for which You purchased Maintenance and Support. For the first year of a Perpetual license, You must purchase Maintenance and Support. After such first year, You may purchase Maintenance and Support in order to receive those services. The Maintenance Period for all Perpetual licenses shall be twelve months unless otherwise agreed upon in an Order.

For Subscription licenses You receive Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. In the case of both Perpetual and Subscription licenses, the term of the Maintenance Period shall commence upon the initial delivery of the Software.

During a Maintenance Period, SmartBear will provide you with technical support services (“Support Services”), including Updates, to the extent such Support Services are provided for in the applicable Order, all in accordance with SmartBear’s Product Support Manual attached hereto as Exhibit A. In addition, as part of the Support Services, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

Reserved.

Data Privacy.

Data Privacy: The terms and conditions of SmartBear’s Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or use of the Software, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, SmartBear's Software may transmit license and/or product usage data at the time of installation, registration, use or update in order to activate your license and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Software, and improve customer service and the product itself. We are permitted to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. This process does not collect or communicate any proprietary application data. A User may disable the collection of certain license and/or product usage data through the Software's settings menu.

Feedback. You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Software and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and
corrections to problems in the Software and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to, Us and that we may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

Ownership
Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.

SmartBear and other trademarks contained in the Software are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software.

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, "open source" or "freeware" software ("Third Party Components"). You acknowledge Third Party Components may have additional or other license terms. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear’s modifications to such Third Party Component as required, available by written request to SmartBear at the following address: support@smartbear.com.

The provision of source code, if included with the Software, does not constitute transfer of any legal rights to such code, and resale or distribution of all or any portion of all source code and intellectual property is strictly prohibited hereunder. All Software and other files remain SmartBear’s exclusive property. If source code or modifiable files are provided, regardless of any modifications that You make, You may not redistribute any such source code or modifiable files unless SmartBear has expressly designated these as re-distributable in writing.

19. Limited Warranty; Remedies
SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Software and the medium on which it was originally provided to You is free from any virus at the time of delivery; (c) for a period of thirty (30) days following the initial delivery of the Software to You (the "Warranty Period"), the Software will perform in substantial conformity with the Documentation; and (d) any Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear’s sole obligation for SmartBear’s breach of 19(c), is that SmartBear will, at its option, and at no cost to (a) provide remedial services necessary to enable the Software to conform to the warranty, or (b) replace any defective Software or media to enable the Software to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Software. SmartBear’s warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects if the Services are not performed as warranted in this Section 20(d) then, upon your written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of delivery. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not
apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this Attachment shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located.

Reserved.  
Reserved.  
Reserved.  

Government Matters  
This Section applies to all acquisitions of the Software by or for the United States Federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Federal Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Federal Government’s rights to use, duplicate or disclose the Software are limited to “Restricted Rights” as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Federal Government’s needs or is inconsistent in any respect with Federal law, the Federal Government agrees to return the Software, unused, to SmartBear. Manufacture is SmartBear Software Inc., 450 Artisan Way, Somerville, MA 02145.

Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate Federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

SMARTBEAR HOSTED SERVICES TERMS OF USE  
You may not access the Services if You are a direct competitor of SmartBear, except with Our prior written consent.

1. Definitions.  
"Data" means (i) content You post or otherwise submit to the Services and (ii) SmartBear’s license and/or product usage data transmitted to SmartBear, at the time of registration, use or update, in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services.

"Documentation" means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Services, including on-line help, as updated from time to time.

"Hosted Services” means the services provided by SmartBear through which it makes the Software available to you as a service (SaaS) and hosted by SmartBear or its authorized third party provider(s).

"Maintenance and Support” mean those technical support and related services provided by SmartBear as set forth at Exhibit A.

"Order” means the purchase order entered into between You and SmartBear, which identifies the Services (including the applicable SmartBear product(s), license type, license model (duration or usage-based), quantity/term) ordered by You and any required access information. Any Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller” means an authorized reseller or distributor who may sell the Services to You.

"Software” means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, in each case, access to which is provided by SmartBear.

"Services” means the Hosted Services, together with Maintenance and Support, as provided to you during the Subscription Term based on the applicable Order.

"Subscription” means Our grant of the right to access and use the Software through the Services for the period of time or usage-based limit set forth in the Order (the “Subscription Term”).

"Update” means any subsequent release of the Software that SmartBear generally makes available to its SaaS customers as part of the Services; Updates do not include any Software that is marketed and priced separately by SmartBear as part of the Services.

"User” means an individual who is authorized by You to use the Services in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

"You” means the Ordering Party accepting this Agreement.

Who We Are.  
If You acquire access to, and use, the Services from in the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquire access to, and use, the Services from outside of the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear (Ireland) Limited with its principal place of business at 3rd Floor Dockgate, Unit 19, Merchants Rd., Galway, Ireland, together with its licensors.
Services Grants.

Subject to the terms of this Agreement, the underlying GSA Schedule contract, Schedule pricelist, and the Order, and during the Subscription Term, SmartBear grants You a nonexclusive, non-transferable, non-sublicensable, limited license to access and use the Services, Documentation, and, if any, associated media and materials, and, if applicable, third party software programs supplied by SmartBear solely (i) to access and use the Services as listed in the applicable Order and (ii) for Your internal business purposes. You may access and use the Services as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant product.

License Types.

The license granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):

Single (Named) License: all Services licensed under these terms are single licensee, meaning it can be activated by only one User, with a unique username and password. Access to the Services may not be reassigned other than for the permanent transfer of the access license to the Services to another User if the eligible User is no longer employed by You. An eligible User may access the Services with a unique username and password on one device at a time.

Floating (Concurrent) License: all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key. The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

Usage-Based License: access to the Services licensed under these terms is (i) licensed on a time-based or unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

Freeware or Free Version License: all Services licensed under these terms are licensed to an individual User who is specifically named in the Services registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at https://community.smartbear.com.


Your use of the Services is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Services. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Services or create or prepare derivative works based upon the Services or any part thereof; (ii) use the Services in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) attempt to decompile, disassemble or otherwise reverse engineer the Services or any part thereof; (iv) use the Services in contravention of any applicable laws or government regulations; (v) access the Services in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Services; (vii) create duplicate accounts or make the Services available to anyone other than Users, or (viii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. To the extent the Services are used to monitor web sites or devices You do not own, then You shall not publish or otherwise disclose data acquired about such web sites or devices unless express consent is given to You by the web site or device owner; further you shall not (1) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (2) attempt to gain unauthorized access to the Services or their related systems or networks.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Services and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Services.

Export.

You may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any Software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, You acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embroged Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

Term.

The Term of this Agreement shall be determined based on the License Model and License Type as described herein and set forth in the Order.

The Subscription Term begins on the date that SmartBear grants You access to the Services and continues for twelve (12) months thereafter, unless either (i) the Subscription is usage-based (see below) or (ii) a multi-year, or other, agreement is otherwise agreed upon in an Order ("Initial Term"). In the event that the Subscription is usage-based, the term of this Agreement is based upon the designated units of consumption as set forth in an Order.

Effect of Termination.

Upon any termination of this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the Services. Termination of this Agreement, an Order or a license granted hereunder shall not
limit either party from pursuing any remedies available to it or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

Your Responsibilities; Login Credentials.
You shall (i) be responsible for each User’s compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) use the Services in accordance with the Documentation and applicable laws and government regulations, (v) be responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use the Services and all costs and fees associated therewith.

Data Responsibility. You are solely responsible for (a) Your Data, (b) the accuracy, quality, and legality of Your Data, (c) the means by which You acquired Your Data, including ensuring that Your Data does not infringe upon or violate the rights of any person or entity, (d) third party claims relating to Your Data, and (e) responding to any person claiming Your Data violates such persons rights, including notices pursuant to the Digital Millennium Copyright Act.

Login Credentials. SmartBear will provide You with credentials to assign usernames and passwords to each User ("Login Credentials") in order to access and use the Services. In connection with the foregoing, You agree to (i) maintain as confidential all Login Credentials and not distribute or disclose any such Login Credentials and (ii) use the administrator account to assign the authorized number of Login Credentials to each User. Further, You shall be responsible for the Login Credentials, which shall be maintained confidentially and not be distributed or disclosed. You shall immediately terminate Login Credentials upon knowledge or belief that any User is or may be subject to a breach of this Agreement and, at your own expense, provide all equipment, operating systems, web browser and internet access, etc. needed to access and use the Services in accordance with the Documentation.

Non-Human Devices.
Non-human devices that access or use the Services, whether or not without interaction, are counted as Users. Each such device that accesses or uses the Services must be properly licensed to use the Services pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

Usage Verification.
At SmartBear’s written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Services in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, shall be subject to Government security requirements, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Services to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and SmartBear shall invoice You for all applicable fees in accordance herewith.

Maintenance and Support.
Your Subscription to the Services includes Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. During the Subscription Term, SmartBear will provide you with Maintenance and Support, including Updates, all in accordance with SmartBear’s Product Support Manual attached hereto as Exhibit A. In addition, as part of Maintenance and Support, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

Reserved.

Data Privacy.
Data Privacy: The terms and conditions of SmartBear’s Privacy Policy is attached hereto as Exhibit B. By your acceptance of the terms of this Agreement or access or use of the Services, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as written in Exhibit B. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data. In addition to any other information transmitted as specified in the Privacy Policy, the Services may transmit license and/or product usage data at the time of registration, use or update in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services. By accessing the Services, You authorize SmartBear to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be deemed to be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. The Services do not collect or communicate any proprietary application data. SmartBear may elect to provide the User with the ability to disable the collection of certain license and/or product usage data through the settings menu in the Services.

Feedback. You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Services and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Services and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to Us and that We may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

Ownership.
Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Services, as an independent work and as an underlying work serving as basis for any improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.
SmartBear and other trademarks contained in the Services are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Services. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein. The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software (“Third Party Components”). Third Party Components may be licensed under additional or other license terms that accompany such Third Party Components. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear’s modifications to such Third Party Component as required, available by written request to SmartBear at the following address: support@smartbear.com.

16. Limited Warranty; Remedies.
SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Services free from any virus at the time of initial access; (c) for a period of thirty (30) days following the initial grant of access to You to the Services (the “Warranty Period”), the Services will perform in substantial conformity with the Documentation; and (d) the Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear’s sole obligation for SmartBear’s breach of 16(c), is that SmartBear will, at its option, and at no cost, to (a) provide remedial services necessary to enable the Services to conform to the warranty, or (b) replace any defective Services to enable the Services to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Services for the balance of the then-current Subscription Term. SmartBear’s warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Services except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. If the Services are not performed as warranted in this Section 16(d) then, upon your written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

**EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SERVICES ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.**

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein. If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of grant of initial access to the Services to You. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this EULA shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located. 

Reserved.
Reserved.
Reserved.

**Government Matters**
This Section applies to all acquisitions of the Services by or for the United States Federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Federal Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Services. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 apply, the license rights herein shall be subject to any such federal limitations.
227.7202-3 are deemed not applicable, then the Federal Government’s rights to use, duplicate or disclose the Services are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-14, or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with Federal law, the Federal Government agrees to terminate its access to the Services. Manufacturer is SmartBear Software Inc., 450 Artisan Way, Somerville, MA 02145.

**Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate Federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**EXHIBIT A**

**SMARTBEAR PRODUCT SUPPORT MANUAL**

**Introduction**
This document explains the procedures that are basic to an understanding of SmartBear Software's Product Support Services.

**Purpose**
The purpose of the Product Support Manual is to provide information about SmartBear Software Product Support services so Customers can access SmartBear’s Product Support to obtain effective and timely solutions.

**Audience**
The audience for this document is:
- SmartBear Customers
- SmartBear Employee

**SmartBear Product Support Procedures**
SmartBear provides assistance in several ways. Our customers or trial prospects can access online information via our SmartBear website, www.smartbear.com. Our web-site contains online documentation, troubleshooting, and many other tools that will help you get the most out of our products. We also have several community forums for SmartBear products in which you can find responses to various questions asked from other customers. This is also where you can post your own question. Both our customers and SmartBear monitor these forums and provide answers.

Finally, if you cannot find an answer to your question via our web-site, you can also submit a ticket to our Customer Care team via our web-site by selecting the contact support button at the bottom of the support page. For some of the products, we also provide chat and telephone support. Please see more detail regarding this below.

Support Services will be available to individuals who have been named, in writing, by customers or prospects eligible to receive support. Support eligibility requires an active maintenance contract, current product subscription, or a valid trial license.

**Contacting Support**
When our support teams receive your ticket, an individual will review the information you provide with the objective to provide an answer on our initial response. Our goal is to respond in the time frames mentioned below. This will be based on the urgency of the situation and product. Sometimes we do not have all of the information to provide an answer or we may need to perform more research before providing an answer. In these scenarios our initial response will be to let you know we have reviewed the information and what our next steps will be.

We will also provide updates on a regular basis. The time frames of these updates are documented below.

Our team also tracks our dialogue with you as well as captures and tracks any information you have provided us such as log files, screen captures, etc. This information is tracked in our ticketing system. Consequently you’ll be able to find out the status of your ticket simply via our updates or by contacting us.

If the support engineer who initially took your issue requires assistance from someone, he/she will either consult with a colleague or escalate your issue to a more skilled engineer, e.g. senior technical support engineer, developer, etc. The timeframe of these escalation goals are driven by the severity of the issue and are listed below.

If you feel you are not receiving the appropriate response for an issue, please check to make sure we understand the urgency of the situation properly. You can also contact your Account Manager or Customer Success Manager who will ensure the appropriate manager is aware of your situation.

**Product Support Services**
SmartBear Support Services are accessible via the telephone, chat, our web-form, our web-site and forums. Access, availability, response time, escalation time and follow-up time is product dependent.
**Product Support – Access and Availability Table.**
This following table describes the access venue and availability times for each product area.

<table>
<thead>
<tr>
<th>Products</th>
<th>Telephone</th>
<th>E-Mail/Web-Form</th>
<th>Web-Site (self-help tools and forums)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enterprise</strong></td>
<td>Not Available</td>
<td>M-F. 12:00am – 8:00pm EST excluding US National Holidays</td>
<td>Always Available: 7 x 24 x 365</td>
</tr>
<tr>
<td>AQtime Pro</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Collaborator</td>
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<td></td>
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<tr>
<td>LoadComplete</td>
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<tr>
<td>QAComplete</td>
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<tr>
<td>Ready!API</td>
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<tr>
<td>SoapUI NG</td>
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<tr>
<td>LoadUTNG</td>
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<tr>
<td>SecurePro</td>
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<tr>
<td>ServiceV</td>
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<tr>
<td>TestServer</td>
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<tr>
<td>SwaggerHub</td>
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<tr>
<td>TestComplete</td>
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<tr>
<td>TestLeft</td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>SmartBear SaaS Products</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AlertSite</td>
<td>AlertSite UXM only</td>
<td>M-F. 12:00am – 8:00pm EST excluding US National Holidays</td>
<td>Always Available: 7 x 24 x 365</td>
</tr>
<tr>
<td>QAComplete</td>
<td></td>
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<td></td>
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<tr>
<td>SwaggerHub</td>
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<td></td>
</tr>
<tr>
<td><strong>All SaaS Products</strong></td>
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<td></td>
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<tr>
<td>After Hours is available for</td>
<td>After Hours is</td>
<td></td>
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<tr>
<td>emergency issues only for all</td>
<td>available for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SaaS products.</td>
<td>emergency issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>International: 01-954-312-0188</td>
<td>01-954-312-0188</td>
<td>01-954-312-0188</td>
<td>01-954-312-0188</td>
</tr>
</tbody>
</table>

**Product Support Definitions**

**Initial Response, Follow-Up and Escalation**

The SmartBear Software Product Support organization has established service-level objectives regarding the timing of the Initial Response provided to our Customers when a new support case is received as well as for Follow Up communication regarding the status of open cases.

**Initial Response**

Initial Response is defined as the first communication from Product Support acknowledging receipt and review of a support request.

New tickets will be created either automatically by a web-form or manually by a Technical Support team member.

When a ticket is created automatically, the submitter will receive an automatic response which will include the ticket number which we use for tracking purposes. This is part of the initial response.
The initial response is completed when a Product Support team member acknowledges receipt of the ticket. This can be a follow-up from an automatic submission or initial entry of the ticket when submitted via phone or chat.

During the initial response, the support engineer may request additional information or may communicate that additional research is required. The support engineer may also escalate to a more skilled engineer if required.

The Initial Response may be provided in various forms including:
Via a support ticket response from Product Support, which would include the assigned case number, status, and next steps.
If applicable via a customer’s first telephone or chat contact with the Product Support organization during which the issue was discussed with a Support Representative.

Follow-Up Communications

SmartBear Software Product Support defines Follow-up as communication between the assigned Support Representative and the Customer. This may include a status update, additional information exchange and/or next steps. Communication may be in many forms such as the telephone, chat (if applicable), e-mail or directly updating the case information if it is available to the customer on-line.

Escalation

SmartBear Software Product Support defines Escalation as the protocol under which Product Support will escalate a case to higher skilled individuals in which their assistance is required to move a case forward. For example, when an issue needs additional help from development, the support representative will escalate to the development manager. Priority Definitions

SmartBear will commit to initial response, follow-up and escalation times based on the severity of an issue. These severities are defined by product state or behavior so we can be as transparent as possible and set the proper expectations with you, our customer. The table below lists these severity definitions.

Priority Definitions Table

<table>
<thead>
<tr>
<th>Product</th>
<th>Urgent/Sev 1</th>
<th>High</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>SaaS</td>
<td>A significant number of customers are impacted by the service, product, or major feature being unavailable. No reasonable workaround is available.</td>
<td>Service Behaviors defined under urgent, but is impacting a moderate number of customers.</td>
<td>Minimal operational impact</td>
</tr>
<tr>
<td>✦ AlertSite</td>
<td></td>
<td></td>
<td>• Cosmetic Issue</td>
</tr>
<tr>
<td>✦ QAComplete</td>
<td></td>
<td></td>
<td>• Efficiency Issue</td>
</tr>
<tr>
<td>✦ SwaggerHub</td>
<td></td>
<td></td>
<td>• Convenience Issue</td>
</tr>
<tr>
<td>✦ Enterprise</td>
<td></td>
<td></td>
<td>• Operational workaround available</td>
</tr>
<tr>
<td>✦ AQtime Pro</td>
<td></td>
<td></td>
<td>• Usage Clarification that does not impact work performance</td>
</tr>
<tr>
<td>✦ Collaborator</td>
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</tr>
<tr>
<td>✦ LoadComplete</td>
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<tr>
<td>✦ QAComplete</td>
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<tr>
<td>✦ Ready!API</td>
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<tr>
<td>✦ SoapUI NC</td>
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<tr>
<td>✦ LoadUI NC</td>
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<tr>
<td>✦ Secure Pro</td>
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<tr>
<td>✦ ServiceV</td>
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<tr>
<td>✦ TestServer</td>
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<tr>
<td>✦ TestComplete</td>
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<tr>
<td>✦ TestLeft</td>
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</tbody>
</table>

Initial Response, Escalation and Follow-Up Goals

The following matrix describes our response time, escalation time and follow-up time for each product and priority area. When reporting a case (see product support procedures above) it is imperative that you, the customer, provide us with enough information so we can determine the proper severity. Incorrect severity assignment can lead to improper response on our part which could impact your ability to get the most out of our products.
If you feel an issue is of an urgent nature, please use the most expeditious reporting mechanism available to ensure proper response.

Please note, response times and escalation times only apply to phone, chat and web-form.

Response Time Table – Includes First Response, Follow-up and Escalation based on business hours (one day is defined as one business day).

<table>
<thead>
<tr>
<th>SaaS Products</th>
<th>Urgent / Sev 1</th>
<th>High</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First Response: 30 minutes</td>
<td>First Response: 4 hours</td>
<td>First Response: 1 day</td>
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<tr>
<td></td>
<td>Follow-up: 1 hour or agreed upon time between customer and representative</td>
<td>Follow-up: 8 hours or agreed upon time between customer and representative</td>
<td>Follow-up: 2 days or agreed upon time between customer and representative</td>
</tr>
<tr>
<td></td>
<td>Escalation: 2 hours</td>
<td>Escalation: 2 days</td>
<td>Escalation: 5 days</td>
</tr>
<tr>
<td>AlertSite</td>
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<td></td>
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<tr>
<td>QAClusive</td>
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<tr>
<td>SwaggerHub</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Enterprise Products</th>
<th>Urgent / Sev 1</th>
<th>High</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>First Response: 2 hours</td>
<td>First Response: 1 day</td>
<td>First Response: 2 days</td>
</tr>
<tr>
<td></td>
<td>Follow-up: 4 hours or agreed upon time between customer and representative</td>
<td>Follow-up: 1 day or agreed upon time between customer and representative</td>
<td>Follow-up: 2 days or agreed upon time between customer and representative</td>
</tr>
<tr>
<td></td>
<td>Escalation: 1 day</td>
<td>Escalation: 2 days</td>
<td>Escalation: 5 days</td>
</tr>
<tr>
<td>AQtime Pro</td>
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<td></td>
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<tr>
<td>Collaborator</td>
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<tr>
<td>LoadComplete</td>
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<tr>
<td>QAClusive</td>
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<td>Ready!API</td>
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<tr>
<td>SoapUI NG</td>
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<tr>
<td>LoadUI NG</td>
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<tr>
<td>Secure Pro</td>
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<td>ServiceV</td>
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<tr>
<td>TestLeft</td>
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</tbody>
</table>

Update Policy

Product defects and enhancement requests are reviewed regularly by the SmartBear Software Product Management and Development organizations to assess whether the request represents an enhancement or defect and if it is assigned the appropriate priority. Product Management will determine, based upon the assigned priority, whether a patch will be made available for the current generally available release or whether an issue will be addressed in a future release through an update.

All defects and enhancements must be reported using the instructions provided in the Product Support Procedures at the beginning of this document.

Enhancements

An enhancement is any additional feature or function that would make the product easier to use, improves workflow or end-user experience, embeds new technology, or provides easier integration with other application or databases. An enhancement is not of an urgent nature, but is an improvement on the current product. Enhancements are therefore handled as a standard priority matter.

Defects

A software defect is a flaw in the product that is not working as designed or documented and impedes the workflow of a client.

Defect/Enhancement Priorities

Product Management determines the priority of defects. The defect priority drives when a fix will be available. Refer to the Severity Definitions for an explanation of each priority.
Urgent / Sev 1 Priority – SmartBear Software will work to provide a patch or work around that can be applied to the current generally available product release.

High Priority – SmartBear Software will consider a patch or work around for the current generally available product release or will work to provide the fix in a future maintenance release.

Standard Priority – SmartBear Software will consider a fix for a future major release based on market indicators.

EXHIBIT B

SMARTBEAR PRIVACY POLICY
This Privacy Policy details certain policies implemented throughout SmartBear governing SmartBear’s use of personally identifiable information about users of our Site and users of our services and/or software that is available for download on this Site.

The following applies solely to the extent that SmartBear collects personally identifiable information directly from sections of this Site, we may invite you to participate in surveys, questionnaires or contests, contact us with questions or comments or request information, participate in chat or message boards, or complete a profile or registration form. Furthermore, we may collect personally identifiable information such as your name, e-mail address, address, phone number, password, screen name, credit card information and other contact information that you voluntarily transmit with your on-line and in-person communications to us and personally identifiable information that you elect to include in your chat and message board postings.

If you use a forum on this Web Site, you should be aware that any personally identifiable information you submit there can be read, collected, or used by other users of these forums, and could be used to send you unsolicited messages. We are not responsible for the personally identifiable information you choose to submit in these forums.

We receive permission to post testimonials that include personally identifiable information prior to posting.

To facilitate product support, product development and improvement, product marketing campaigns as well as other services to you, the SoapUI 5.1.2 Software and newer versions may transmit to SmartBear application usage data regarding usage metrics such as which features are used and in which order and time of use with respect to the SoapUI 5.1.2 Software. The SoapUI 5.1.2 Software does not transmit, collect nor communicate any proprietary application data.

SmartBear will not provide any information gathered in connection with the use of the SoapUI 5.1.2 Software to any third party except (i) as may be required by law or legal process, or (ii) to enforce compliance with its terms of use. A User may disable the transmission of this information at any time through the software’s settings menu.

ORDERS
If you purchase a product or service from us, we request certain personally identifiable information from you on our order form. You must provide contact information (such as name, email, and shipping address) and financial information (such as credit card number, expiration date).

We use this information to contact you. We use your personally identifiable information to register you to use our services or download software or other content, contact you to deliver certain goods, services or information that you have requested, provide you with notices regarding goods or services you have purchased, provide you with notices regarding goods or services that you may want to purchase in the future, verify your authority to enter our Site, receive updates and improve the content and general administration of the Site, our software and our services.

In addition, we may collect information about the performance, security, software configuration and availability of our software on your servers and network in an automated fashion as part of the SmartBear software licensing. If you have opted-in to receiving software updates automatically from SmartBear, the software may report to us, and we may collect, your IP address, operating system type and version, web server type and version, php version, database type and version, version of the services, modifications to any of the Software or services, website user statistics such as the number of nodes, number of users and number of comments. The foregoing information will be linked to your personally identifiable information and user accounts and services you have purchased, provide you with notices regarding goods or services that you may want to purchase in the future, verify your authority to enter our Site, receive updates and improve the content and general administration of the Site, our software and our services.
we may use the foregoing information to better provide technical support to you and our customers and to improve our software and services.

If you subscribe to one of SmartBear’s software as a service offerings you agree that SmartBear may aggregate data and information relating to your usage of the service, which we may use to better provide technical support to you and our customers and to improve our software and services.

If you choose to contact us by e-mail, we will not disclose your contact information contained in the e-mail, but we may use your contact information to send you a response to your message. Notwithstanding the foregoing, we may publicly disclose the content and/or subject matter of your message, therefore, you should not send us any ideas, suggestions or content that you consider proprietary or confidential. All e-mail content (except your contact information) will be treated on a non-proprietary and non-confidential basis and may be used by us for any purpose.

COMMUNICATIONS FROM THE SITE SPECIAL OFFERS AND UPDATES

We will occasionally send you information on products, services, special deals, and promotions. Out of respect for your privacy, we present the option not to receive these types of communications. Please see the “Choice and Opt-out” section of this Privacy Policy.

NEWSLETTERS

If you wish to subscribe to our newsletter(s), we will use your name and email address to send the newsletter to you. Out of respect for your privacy, we provide you a way to unsubscribe from these types of communications. Please see the “Choice and Opt-out” section of this Privacy Policy.

SERVICE-RELATED ANNOUNCEMENTS

We will send you strictly service-related announcements on rare occasions when it is necessary to do so. For instance, if our service is temporarily suspended for maintenance, we might send you an email notification.

Generally, you may not opt-out of these communications, which are not promotional in nature. If you do not wish to receive them, you have the option to deactivate your account.

CUSTOMER SERVICE

Based upon the personally identifiable information you provide us, we may send you a welcoming email to verify your username and password. We will also communicate with you in response to your inquiries, to provide the services you request, and to manage your account. We will communicate with you by email or telephone, in accordance with your wishes.

CHOICE AND OPT-OUT

We provide you the opportunity to 'opt-out' of having your personally identifiable information used for certain purposes, when we ask for this information.

If you no longer wish to receive our communications, you may opt-out of receiving them at any time by following the instructions included in each communication, by going go to our Unsubscribe page, or by mail at 100 Cummings Center, Suite 234N, Beverly, MA 01915, USA.

You will be notified when your personal information is collected by any third party that is not our agent/service provider, so you can make an informed choice as to whether or not to share your information with that party.

EMPLOYMENT OPPORTUNITIES

We provide you with a means for submitting your resume or other personal information through the Site for consideration for employment opportunities at SmartBear. Personal information received through resume submissions will be kept confidential. We may contact you for additional information to supplement your resume, and we may use your personal information within SmartBear, or keep it on file for future use, as we make our hiring decisions.

CHILDREN'S PRIVACY

SmartBear recognizes the privacy interests of children and we encourage parents and guardians to take active roles in their child’s online activities and interests. This Site is not intended for children under the age of 13. SmartBear does not target its software, services or this Site to children under 13. SmartBear does not knowingly collect personally identifiable information from children under the age of 13.

COOKIES AND GIFS

We use small text files called cookies to improve overall Site experience. A cookie is a piece of data stored on the user’s hard drive containing information about the user. Cookies generally do not permit us to personally identify you (except as provided below). We may also use clear GIFs (a.k.a. "Web beacons") in HTML-based emails sent to our users to track which emails are opened by recipients. Additionally, when using the Site, we and any of our third party service providers may use cookies and other tracking mechanisms to track your user activity on the Site and identify the organization or entity from which you are using the Site. If you register with the Site, we, and our third party service providers, will be able to associate all of your user activity with your personally identifiable registration information. We will use such user activity information to improve the Site, to provide context for our sales and support staff when interacting with you and customers, to initiate automated email marketing campaigns triggered by your activity on the Site and for other internal business analysis.

AGGREGATE INFORMATION

The Site may track information that will be maintained, used and disclosed in aggregate form only and which will not contain your personally identifiable information, for example, without limitation, the total number of visitors to our Site, the number of visitors to each page of our Site, browser type, External Web Sites (defined below) linked to and IP addresses. We may analyze this data for trends and statistics in the aggregate, and we may use such aggregate information to administer the Site, track users’ movement, and gather broad demographic information for aggregate use.

DISCLOSURE AND ONWARD TRANSFER

We will not sell your personally identifiable information to any company or organization, except we may transfer your personally identifiable information to a successor entity upon a merger, consolidation or other corporate reorganization in which SmartBear participates or to a purchaser or acquirer of all of substantially all of SmartBear’s assets to which this Site relates. We may provide your personally identifiable information and the data generated by cookies and the aggregate information to parent,
subsidiary or affiliate entities within SmartBear’s corporate family, partner entities that are not within SmartBear’s corporate family and vendors and service agencies that we may engage to assist us in providing our services to you. For example, we may provide your personally identifiable information to a credit card processing company to process your payment. SmartBear will comply with the notice and choice principles as described above for all data which is disclosed or transferred to third party entities. SmartBear will obtain assurances from such entities that they will safeguard personally identifiable information consistent with this Privacy Policy. Such third party entities may be obligated to protect your personally identifiable information by requiring such party to enter into written confidentiality agreements with SmartBear or to have certified or agreed in writing to its adherence with the EU Safe Harbor Principles. We will disclose your personally identifiable information (a) if we are required to do so by law, regulation or other government authority or otherwise in cooperation with an ongoing investigation of a governmental authority, (b) to enforce SmartBear Terms of Use agreement or to protect our rights or (c) to protect the safety of users of our Site and our services.

The Site may provide links to other Web sites or resources over which SmartBear does not have control (“External Web Sites”). Such links do not constitute an endorsement by SmartBear of those External Web Sites. You acknowledge that SmartBear is providing these links to you only as a convenience, and further agree that SmartBear is not responsible for the content of such External Web Sites. Your use of External Web Sites is subject to the terms of use and privacy policies located on the linked to External Web Sites.

SECURITY
We employ procedural and technological measures that are reasonably designed to help protect your personally identifiable information including sensitive data such as your credit card information from loss, unauthorized access, disclosure, alteration or destruction. SmartBear may use encryption, secure socket layer, firewall, password protection and other physical security measures to help prevent unauthorized access to your personally identifiable information including sensitive data. SmartBear may also place internal restrictions on who in the company may access data to help prevent unauthorized access to your personally identifiable information.

UPDATING AND DELETING PERSONALLY IDENTIFIABLE INFORMATION
SmartBear provides you with the ability to review and update the contact information that you provide to us and account information retained by SmartBear related to your previous purchase, download or payment activities. If you wish to review and/or update any of the foregoing information, you may access your account and review and update your personally identifiable information or you may contact us at the e-mail, phone or mailing address listed below.

SmartBear will also delete the personally identifiable information that you have provided to us: (a) upon your request or (b) upon termination of your SmartBear account; provided, however, SmartBear will retain a copy in its files of all personally identifiable information, if required for legal reasons.

If you wish to review, correct or request the deletion of any information you have provided to us, contact us by email at privacy@smartbear.com or by regular mail at 450 Artisan Way, Somerville, MA 02145, Attention: Legal. We also gives you the option for changing and modifying information previously provided by visiting www.smartbear.com, where you can log into your account to update your contact information.

ENFORCEMENT
Individuals who wish to file a complaint or who take issue with this Privacy Policy should direct such communication to SmartBear via e-mail at the address provided above. SmartBear will explain the process to be followed when filing a complaint. Filing a complaint in English will expedite the process. SmartBear will investigate and attempt to resolve complaints and disputes regarding use and disclosure of personally identifiable information in accordance with the principles contained in this Privacy Policy.

SmartBear is also subject to the jurisdiction of the US Federal Trade Commission. You may contact it at: Federal Trade Commission, Attn: Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580.

QUESTIONS
If you have any questions about this Privacy Policy, the practices of this Web Site, or your dealings with this Web Site or SmartBear, you can contact us by email at privacy@smartbear.com. We will respond to your request within 30 days.

USERS OUTSIDE OF THE UNITED STATES OF AMERICA
Many of our computer systems are currently based in the United States, so your personal data will be processed by us in the U.S. where data protection and privacy regulations may not offer the same level of protection as in other parts of the world, such as the European Union. If you create a user account with our Web Site as a visitor from outside the United States, by using the Site, you agree to this Privacy Policy and you consent to the transfer of all such information to the United States, which may not offer an equivalent level of protection of that required in the European Union or certain other countries, and to the processing of that information as described in this Privacy Policy.

THIS PRIVACY POLICY IS EFFECTIVE AS OF: MARCH 11, 2015
ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SPIRENT COMMUNICATION

SPIRENT COMMUNICATION WARRANTY AND SUPPORT TERMS
Legacy Assurance - Hardware Repair Agreement
(SVC-1020)

Attn: 
Name: 
Address: 
State/City/Country: 
Agreement Number: 
PO Number: 
Account: 
Start Date: 
Expiration Date: 

Thank you for purchasing Spirent Communications' Legacy Assurance - Hardware Repair program. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Repair for any hardware failures, once failure is confirmed by Customer Service. Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA#), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- Telephone support to confirm hardware failure, during regular local business hours.

Contact our Customer Service team, or your local distributor, for any support needs related to products covered by this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account.

Additional terms of the Legacy Assurance - Hardware Repair program are as follows:
1. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.
2. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.220-3.
3. In cases where the product cannot be repaired, Spirent will contact the customer to discuss the options available.
4. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific address in your request.

<table>
<thead>
<tr>
<th>91301 1-800-SPIRENT</th>
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<tbody>
<tr>
<td>1-818-676-2616</td>
</tr>
<tr>
<td>8:30AM ET - 6:00PM PT</td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>

| 216, Rue Jacques Cartier RDC |
| 78960 Vosins Le Bretonneux - France |
| +33 1 6137 2270 |
| 0800-111-4363 (UK only) |
| Support Hours: 9:00AM - 6:00PM GMT+1 |
| Email: support@spirent.com |

| Room 1302, Shining Tower, No.35 |
| Xueyuan Road, Haidian District |
| Beijing, 100191, China |
| +86 400-810-9525 (mainland) |
| +86 (0) 82-33-00-33 |
| Support Hours: 9:00AM - 6:00PM GMT+8 |
| Email: support@spirent.com |
Support Maintenance
Legacy Assurance - Hardware Repair Agreement

Agreement Number:

Appendix A

Hardware products covered under this Support Services Program:

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Americas</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td></td>
</tr>
<tr>
<td>CA, 91301 1 800-SPIRENT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1-800-774-7368)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-818-676-2616 Support Hours:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8:30AM ET - 6:00PM PT</td>
<td></td>
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<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td></td>
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<tr>
<td>Spirent Communications</td>
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<tr>
<td>21G, Rue Jacques Cartier – RDC</td>
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<td></td>
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<tr>
<td>78960 Voisins Le Bretonneux - France</td>
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<tr>
<td>+33 1 6137 2270</td>
<td></td>
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<tr>
<td>0800-111-4363 (UK only)</td>
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<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<tr>
<td>Spirent Communications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Room 1302, Shining Tower, No.35</td>
<td></td>
<td></td>
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<tr>
<td>Xueyuan Road, Haidian District</td>
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<td></td>
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<tr>
<td>Beijing, 100191, China</td>
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<td>+86 400 810 9529 (mainland)</td>
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<tr>
<td>+86 (10) 82-33-00-33</td>
<td></td>
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<tr>
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<tr>
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</tr>
</tbody>
</table>
Support Maintenance
Extended Support Agreement
(SVC-1015)

Attn: 
Name: 
Address: 
City/State/Country: 
Contract Number: 
PO Number: 
Account: 
Start Date: 
Expiration Date: 

Thank you for purchasing Spirent Communications’ Extended Support. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.
- **Telephone support** from technical support engineers during regular local business hours.
- **Escalation of service requests** by our technical support engineers.
- **Software and Firmware updates** for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- **Access to our software download center** on our exclusive online Customer Service Center at [http://support.spirentcom.com](http://support.spirentcom.com) to take advantage of Spirent’s continual product improvements.
- **Email notification**
- **Access to Computer Based Training Materials** to help you get the most from using your Spirent products of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- **Access to latest product documentation** to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.
Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

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</thead>
<tbody>
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<td>Spirent Communications</td>
<td>Room 1302, Shining</td>
</tr>
<tr>
<td>Calabasas CA, 91301</td>
<td>Business Park Le Val</td>
<td>Tower, No. 35</td>
</tr>
<tr>
<td>1-800-800-SPIRENT</td>
<td>Saint Quentin</td>
<td>Xueyuan Road, Haidian</td>
</tr>
<tr>
<td>(1-800-774-7368)</td>
<td>2 rue René Caudron, Bât. G -</td>
<td>District</td>
</tr>
<tr>
<td>1-818-676-2616</td>
<td>France</td>
<td>Beijing, 100191, China</td>
</tr>
<tr>
<td>Support Hours: 8:30AM ET - 6:00PM PT</td>
<td>+33 1 6137 2270</td>
<td>400-810-9529 (Mainland)</td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>0800-111-4363 (UK only)</td>
<td>86-400-810-9529 (Rest of APAC)</td>
</tr>
<tr>
<td></td>
<td>Support Hours: 9:00AM - 6:00PM GMT +5:30</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td></td>
<td>Direct +91 80 67023400</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<td></td>
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<tr>
<td>India</td>
<td></td>
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<tr>
<td>Spirent Communications (India) Pvt. Ltd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marath halli – Sarjapur Outer Ring Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bangalore - India 560 037</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 800 419 2111</td>
<td>Direct +91 80 67023400</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Terms of service response time with Extended Support are as follows:

Additional response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue Severity</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical</td>
<td>System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established.</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established</td>
<td>12 Hours</td>
</tr>
</tbody>
</table>

Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

Additional terms of Extended Support are as follows:
1. The standard terms of Spirent's hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes, optional features or enhancements.
6. Spirent shall state separately on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
7. This agreement does not cover software products which have been designated as "obsolete" as defined by Spirent's
Advanced Lifecycle Management policy which can be found on Spirent's website.

8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

9. Defective Products and Software under a service agreement shall be at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States, (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.
Support Maintenance
Extended Support Agreement

Contract Number:

Appendix A

Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

| Americas  
27349 Agoura Road  
Calabasas CA, 91301  
1-800-SPIRENT  
(1-800-774-7368)  
1-818-676-2616  
Support Hours: 8:30AM ET - 6:00PM PT  
Email: support@spirent.com |  |
|---|---|---|

| India  
Spirent Communications (India) Pvt. Ltd  
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marathahalli – Sarjapur Outer Ring Road Bangalore - India 560 037  
1 800 419 2111  
Direct +91 80 67023400  
Support Hours: 9:00AM - 6:00PM GMT + 5:30  
Email: support@spirent.com |  |
|---|---|---|

| Europe - Middle East - Africa  
Spirent Communications Business Park Le Val Saint Quentin  
2 rue René Caudron, 8ât  
G - France  
+33 1 6137 2270  
0800-111-4363 (UK only)  
Support Hours: 9:00AM - 5:00PM GMT +1  
Email: support@spirent.com |  |
|---|---|---|

| Asia Pacific  
Room 1302,Shining Tower,No.35 Xueyuan Road,Haidian District Beijing,100191,China  
+400-810-9529 (Mainland)  
+86-400-810-9529 (Rest of APAC)  
Support Hours: 9:00AM - 6:00PM GMT +8  
Email: support@spirent.com |  |
# One year Warranty Agreement (SVC-1001)

**Attn:**  
**Name:**  
**Address:**  
**City/State/Country:**  
**Contract Number:**  
**PO Number:**  
**Account:**  
**Start Date:**  
**Expiration Date:**

Thank you for purchasing Spirent Communications' Hardware Warranty. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the warranty:

- **Repair or replacement**, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time). Spirent shall not be responsible for failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Hardware is to be returned to Spirent's factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship repaired products to Customer, freight prepaid.

- **Telephone support** from technical support engineers during regular local business hours.

- **Escalation of service requests** by our technical support engineers.

- **Access to latest product documentation** to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific address for your request.

## Contact our Customer Service team, or your local distributor, for any support related to this service agreement.

<table>
<thead>
<tr>
<th>Region</th>
<th>Address</th>
<th>Phone Numbers</th>
<th>Support Hours</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Americas</strong></td>
<td>27349 Agoura Road, Calabasas CA 91331</td>
<td>1-800-676-261</td>
<td>8:30AM ET - 6:00PM PT</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td></td>
<td>1-800-877-7368</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1-818-676-2616</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
<td>+91 80 67023400</td>
<td>9:00AM - 6:00PM GMT + 5:30</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td><strong>Europe - Middle East - Africa</strong></td>
<td>2 rue René Caudron, Bât. G - France</td>
<td>+33 1 6137 2270</td>
<td>9:00AM - 6:00PM GMT +1</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td></td>
<td>1800-111-4363 (UK only)</td>
<td>0800-111-4363 (UK only)</td>
<td>9:00AM - 6:00PM GMT +1</td>
<td></td>
</tr>
<tr>
<td><strong>Asia Pacific</strong></td>
<td>Room 1303,Shining Tower,No.35 Xueyuan Road, Haidian District</td>
<td>+65-400-810-9529</td>
<td>9:00AM - 6:00PM GMT +8</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td></td>
<td>Beijing,100191,China</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>+400-810-9529 (Mainland)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>+66-400-810-9529 (Rest of APAC)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at [http://support.spirentcom.com](http://support.spirentcom.com) and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.
# One year Warranty Agreement

Terms of service response time with Warranty are as follows:

Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Response Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Critical</td>
<td>System is inoperable or not usable as a result of hardware or software malfunction. No known workaround available. Follow up communications are once per day until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established</td>
<td>12 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established</td>
<td>16 Hours</td>
</tr>
</tbody>
</table>

Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

Additional terms of Warranty Support are as follows:

1. The standard terms of Spirent’s hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.
4. Defective Products and Software under a service agreement shall be, at Spirent’s discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent’s location in the United States; (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Price List, should any of the above conditions caused the failure.
## One year Warranty Agreement

**Entitlement Number:**

**Appendix A**

### Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>
Support Maintenance
Premium Support with
Advance Replacement Agreement
(SVC-1020)

Attn: [Name]
Address
City/State/Country

Contract Number:
PO Number:
Account:
Start Date:
Expiration Date:

Thank you for purchasing Spirent Communications’ Premium Support with Advance Replacement. The specific hardware and software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Advance Replacement of any hardware failure to minimize down-time and inconveniences of obtaining a Purchase Order in the event hardware repairs are required. All repair fees are included under this Agreement in accordance with the GSA Schedule Pricelist. This Agreement does not apply to failures caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration. Advance replacements may be new or like new condition. Hardware is to be returned to Spirent’s factory referencing a return authorization number (RMA #), freight prepaid by the Customer. Spirent will ship advance replacement products, freight prepaid, to Customer.
- Escalation of service requests by our technical support engineers.
- Telephone support from technical support engineers during regular local business hours.
- Software and Firmware updates for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- Access To Computer Based Training Materials to help you get the most from using your Spirent products.
- Access to our software download center on our exclusive online Customer Service Center at [http://support.spirent.com](http://support.spirent.com) to take advantage of Spirent’s continual product improvements.
- Automatic email notification of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- Access to latest product documentation to help you effectively utilize your investment.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at [http://support.spirent.com](http://support.spirent.com) and obtain a Customer Service log-in.

<table>
<thead>
<tr>
<th>Americas</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road, Calabasas CA, 91301</td>
<td>Room 1302, Shining Tower, No. 35, Xueyuan Road, Haidian District, Beijing, 100191, China</td>
</tr>
<tr>
<td>1-800-SPIRENT (1-800-774-7364) 1-818-676-2616</td>
<td>+86-400-810-9529 (Rest of APAC)</td>
</tr>
<tr>
<td>Support Hours: 8:30AM ET – 6:00PM PPT</td>
<td>Support Hours: 9:00AM – 6:00PM GMT +8</td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Europe - Middle East - Africa</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Spirent Communications (India) Pvt. Ltd</td>
<td>Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caupron, Bât. G - France</td>
</tr>
<tr>
<td>9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
<td>+33 1 6137 2270</td>
</tr>
<tr>
<td>Marathalli – Sarjapur Outer Ring Road, Bangalore, India 560 037</td>
<td>0800-111-4363 (UK only)</td>
</tr>
<tr>
<td>1 800 419 2111 Direct +91 80 67023400</td>
<td>Support Hours: 9:00AM – 6:00PM GMT +1</td>
</tr>
<tr>
<td>Support Hours: 9:00AM – 6:00PM GMT +5:30</td>
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</tr>
</tbody>
</table>
Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

<table>
<thead>
<tr>
<th>Americas</th>
<th>India</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27348 Agoura Road Calabasas CA, 91301 1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Spirent Communications (India) Pvt. Ltd 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli Marathahalli – Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât G - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 5:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Room 1302,Shining Tower,No.35 Xueyuan Road,Haidian District Beijing,100191,China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM - 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>
Support Maintenance
Premium Support with
Advance Replacement Agreement

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Terms of service response time with Premium Support are as follows: Additional *response times to issue submissions are targeted to be within the following guidelines based on regional Support center hours of operation in which each product is supported.

<table>
<thead>
<tr>
<th>Issue Severity</th>
<th>Description</th>
<th>Response Time</th>
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</thead>
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<tr>
<td>Critical</td>
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<td>4 Hours</td>
</tr>
<tr>
<td>Urgent</td>
<td>System is providing limited functionality. The software or product is malfunctioning and/or has restricted functionality. No known workaround is available. Follow up communications are a minimum once every two days until a resolution plan is established</td>
<td>8 Hours</td>
</tr>
<tr>
<td>Normal</td>
<td>System is providing all functionalities but consistently or randomly generates wrong results. Problem is being worked to resolution via the application or configuration details, or a workaround is available. Follow up communications are a minimum once every 3 business days until a resolution plan is established</td>
<td>12 Hours</td>
</tr>
</tbody>
</table>

*Response time is defined as the time when a customer has been informed or attempts have been made to inform the customer that the issue has a specific owner assigned to be responsible to drive the SR to resolution.

---

**Americas**
27349 Agoura Road
Calabasas CA, 91301
1-800-SPIRENT
1-818-676-2615
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com

---

**Europe - Middle East - Africa**
Spirent Communications Business Park Le Val
Saint Quentin
2 rue René Caudron, Bât. G - France
+33 1 6137 2270
0800-111-4363 (UK only)
Support Hours: 9:00AM - 6:00PM GMT + 1
Email: support@spirent.com

**Asia Pacific**
Room 1302, Shining Tower, No.35
Xueyuan Road, Haidian District
Beijing, 100191, China
+86-400-810-9529 (Mainland)
+86-400-810-9529 (Rest of APAC)
Support Hours: 9:00AM - 6:00PM GMT +8
Email: support@spirent.com

---

**India**
Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marathahalli – Sarjapur Outer Ring Road
Bangalore - India 560 037
1 800 419 2111 Direct +91 80 57023400
Support Hours: 9:00AM - 6:00PM GMT + 5:30
Email: support@spirent.com
Support Maintenance
Premium Support with
Advance Replacement Agreement
Contract Number:

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirentcom.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Additional terms of Premium Support with Advance Replacement are as follows:

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customs requirements which vary globally.

2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.

3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent’s list price of the Advance Replacement Product.

4. All repair charges are covered under this agreement.

5. The standard terms of Spirent’s hardware and software warranty that has been executed by both parties are applicable to this service agreement unless where specifically stated otherwise in this agreement.

6. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.

7. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.

8. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

9. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plans. Customer shall be under no obligation to utilize the newest version and may
<table>
<thead>
<tr>
<th>Region</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>America</td>
<td>27349 Agoura Road, Calabasas CA, 91301</td>
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<tr>
<td></td>
<td>1-800-SPIRENT (1-800-774-7368) 1-818-676-2616</td>
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</tr>
<tr>
<td>India</td>
<td>Spirent Communications India Pvt Ltd, 9th Floor, Umiya Business Bay, Tower 1, Cessna</td>
</tr>
<tr>
<td></td>
<td>Business Park, Kandivali East, Mumbai, Maharashtra, India</td>
</tr>
<tr>
<td></td>
<td>Support Hours: 9:00AM - 6:00PM GMT + 5:30</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
<tr>
<td>Europe -</td>
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<td>Spirent Communications Business Park Le Val</td>
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<td></td>
<td>Saint Quentin Rive Gauche, Caudron, Bât. G, France</td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>Room 1302, Shining Tower, No. 35</td>
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<tr>
<td></td>
<td>Xueyuan Road, Haidian District</td>
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<tr>
<td></td>
<td>Beijing, 100191, China</td>
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<tr>
<td></td>
<td>+400-810-9529 (Mainland)</td>
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<td>+86-400-810-9529 (Rest of APAC)</td>
</tr>
<tr>
<td></td>
<td>Support Hours: 9:00AM - 6:00PM GMT +8</td>
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<tr>
<td></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
</tr>
</tbody>
</table>
continue to utilize prior versions.

10. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes optional features or enhancements.

11. This agreement does not cover hardware products which have been designated as "obsolete" as defined by Spirent's Advanced Lifecycle Management policy which can be found on Spirent's website.

12. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

13. Defective Products and Software under a service agreement shall be, at Spirent's discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent's location in the United States; (b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

14. Repair Return - It is the customers' responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specification as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customer's attention and a quote for repair provided upon request.

Spirent reserves the right to deny service delivery, or charge Customer for repair at Spirent's then-current prevailing rates in accordance with the GSA Schedule Price List, should any of the above conditions caused the failure.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific address see in your request.

<table>
<thead>
<tr>
<th>Americas</th>
<th>Europe - Middle East - Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
<tbody>
<tr>
<td>27349 Agoura Road, Calabasas CA, 91301</td>
<td>Spirent Communications (India) Pvt. Ltd, 9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli, Marathalli – Sarjapur Outer Ring Road, Bangalore, India 560 037</td>
<td>Room 1903, Shining Tower, No.35, Xueyuan Road, Haidian District, Beijing, 100191, China</td>
</tr>
<tr>
<td>1-800-800-800-7277</td>
<td>Direct +91 80 67023400</td>
<td>+86-400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC)</td>
</tr>
<tr>
<td>Support Hours: 8:00AM - 6:00PM ET</td>
<td>Support Hours: 9:00AM - 6:00PM GMT +1</td>
<td>Support Hours: 9:00AM – 5:00PM GMT +8</td>
</tr>
<tr>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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</table>
Support Maintenance
Premium Support with
Advance Replacement Agreement

Contract Number:

Appendix A
Products Covered under this Support Services Program

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

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<thead>
<tr>
<th>Americas</th>
<th>27349 Agoura Road Calabasas CA, 91301</th>
<th>1-800-SPIRENT (1-800-774-7368) 1-818-676-2616 Support Hours: 8:30AM ET - 6:00PM PT Email: <a href="mailto:support@spirent.com">support@spirent.com</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>Spirent Communications (India) Pvt. Ltd 9th Floor, Unilya Business Bay, Tower-1 Cessina Business Park, Kadubeesahalli Marathahalli — Sarjapur Outer Ring Road Bangalore - India 560 037 1 800 419 2111 Direct +91 80 67023400 Support Hours: 9:00AM - 6:00PM GMT + 5:30 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td></td>
</tr>
<tr>
<td>Europe - Middle East - Africa</td>
<td>Spirent Communications Business Park Le Val Saint Quentin 2 rue René Caudron, Bât. 6 - France +33 1 6137 2270 0800-111-4363 (UK only) Support Hours: 9:00AM - 6:00PM GMT +1 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td></td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China +400-810-9529 (Mainland) +86-400-810-9529 (Rest of APAC) Support Hours: 9:00AM - 6:00PM GMT +8 Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
<td></td>
</tr>
</tbody>
</table>
This Software License Agreement ("Agreement") is made by and between (i) Spirent Communications, Inc. and its affiliates ("Spirent"), and (ii) the undersigned Ordering Activity under GSA Schedule contracts ("Customer" "You" "User" or "Ordering Activity"), who, intending to be legally bound and for good and valuable consideration hereby acknowledge and agree as follows. If you are accepting the terms of this Agreement on behalf of an entity, you and such entity represent and warrant that you have the authority to bind such entity to this Agreement, and, in such event, "Customer" will refer to such entity.

THIS AGREEMENT GOVERNS CUSTOMER'S USE OF SPIRENT SOFTWARE, INCLUDING EMBEDDED OR PRE-INSTALLED SOFTWARE IN SPIRENT HARDWARE, (THE "SOFTWARE"), UNLESS SPIRENT AND CUSTOMER HAVE EXECUTED A SEPARATE AGREEMENT IN WRITING. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, CUSTOMER IS EXPRESSLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER MAY NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THE SOFTWARE.

1. SOFTWARE LICENSE

1.1. Licensed Rights. Subject to the terms and conditions of this Agreement, Spirent grants to Customer a limited, nonexclusive, nontransferable license, without right of sublicense, to use, solely for Customer's internal business purposes, the Software, in object code form only and only in accordance with (a) the technical specification documentation generally made available by Spirent to its customers with respect to the Software ("Documentation"), (b) this Agreement and (c) any term, user, number of licenses or other restrictions set forth in the applicable Spirent quotation ("Quote") or, if not expressly specified in such Quote, the number of licenses, users and/or test sessions for the part numbers listed in Spirent's price list as of the date of such Quote. Licenses designated as "subscription" licenses are for a twelve (12) month period only (unless otherwise designated in the Quote), and may be renewed for additional successive one (1) year terms by executing a new Purchase Order in writing. Software shall also include any Documentation and any maintenance and support releases, improvements, enhancements, and other updates of the same Software product provided to Customer under this Agreement. The Quote shall specify the license type for each license of the Software:

- **Global Floating**: Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, no more than the specified maximum number of simultaneous instances may be executed at any one time.

- **Floating**: Customer may install the Software on any number of internal systems and any of Customer’s employees, consultants or agents may use the Software on behalf of Customer, provided however, that (i) no more than the specified maximum number of simultaneous instances may be executed at any one time, and (ii) the Software may not be installed on any system or used by any user outside of the specified jurisdiction(s).

- **Named** Customer may only permit one registered, unique named individual to use each licensed instance of the Software and may only be installed on a reasonable number of systems utilized by such individuals. Named licenses must be registered with the individual's actual name and may not be shared by individuals or allocated to a job function. Once a license is associated with an individual, the license may not be transferred to another individual without the express prior written consent of Spirent.

- **Node Locked**: Customer may install each license of the Software on one specific system and that system is the only one which may access that instance of the Software. Once a license is associated with a specific system, the license may not be transferred to another system without Spirent's prior written consent.

Spirent and Customer may agree on alternate types of licenses as set forth in a Quote. If no license type is specified in a Quote, the Software is licensed as a one-year subscription of a single Named license.

1.1.1 Pre-installed Software. To the extent that the Software is pre-installed on Spirent hardware acquired by Customer, Customer may use such Software solely as installed on and to the extent necessary for the normal and intended uses of, such Spirent hardware, subject to the terms of this Agreement.

1.2. Restrictions on Licensed Rights. Customer acknowledges that the components of the Software are subject to copyrights owned by Spirent or its licensors and the Software is licensed, and not sold, to Customer. Customer is prohibited from modifying or permitting anyone else to modify the Software or any module or other portion thereof. Except as necessary to exercise the rights expressly granted in this Agreement, Customer is prohibited from copying or duplicating, or permitting anyone else to copy or duplicate the Software or any module or other portion thereof, other than for purposes of replacing a worn copy or creating an archive copy. Any such copy shall contain the same copyright notice and propietary markings as the copy of the Software furnished by Spirent to Customer hereunder. In addition to the other restrictions in this Agreement, and other than
as may be required or impermissible by applicable law or third-party licenses. Customer shall not, and shall not permit others to: (i) create derivate works, distribute, transmit, license or otherwise transfer the Software directly or through third parties; (ii) reverse engineer, disassemble, decompile the Software or any component of the Software or otherwise attempt to obtain the source code of the Software; (iii) use the Software in a service bureau environment nor use the Software to process any data other than Customer’s own internal data; or (iv) use the Software for any illegal or malicious purpose or to access any information not owned by Customer or for which it does not have express permission to access; (v) tamper with, or attempt to circumvent or disable, any license key; or (vi) use the Software on any networks, devices or applications not owned or controlled by the Customer. The Software may contain certain devices or mechanisms that Spirent may use to disable or terminate Customer’s access to or use of the Software pursuant to the procedures for bringing a dispute for an alleged breach of this Agreement under the contract Disputes Clause (Contract Disputes Act). Nothing in this Agreement limits or restricts the rights granted to Customer under the license terms applicable to the open source or other third-party software provided hereunder.

U.S. Government Users. The Software is commercial computer software and commercial computer software documentation within the meaning of the applicable acquisition regulations. If acquired by or on behalf of a civilian agency of the United States government, the Software will be subject to terms of this Agreement as a “license customarily provided to the public” as specified in 48 C.F.R. ch. 1 Part 12.212 of the Federal Acquisition Regulations and its successors. If Spirent receives a request from any Customer agency of the U.S. Government to provide Software with rights beyond those stated above, Spirent will promptly, in its sole discretion, accept or reject such request.

2. INVOICING/PAYMENTS
2.1. License subject to Payment. The license of the Software granted under this Agreement is subject to the payment of Spirent’s then-current GSA Schedule Pricelist list price for the Software or such other amount as set out in the Quote (“Fees”) in accordance with the GSA Schedule Pricelist.
2.2. Payment of Fees. Customer shall pay Spirent the Fees for the Software and any associated software or services net thirty (30) days from the receipt date of Spirent’s invoice for the same. If Customer wishes to expand the scope of its license, additional agreed-upon license fees shall become due and payable to Spirent prior to the effective date of any expansion of the scope of the Customer’s license. Such invoice shall be issued in accordance with the Quote or absent such a Quote upon the delivery or download of the Software whichever is the earlier. Any amounts not paid within such thirty (30) day period shall bear interest governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. All Fees will be paid in US dollars.
2.3. Taxes. Spirent shall separately state on invoices taxes excluded from the fees, and the [Customer] agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

3. PROPRIETARY RIGHTS; CONFIDENTIAL INFORMATION
3.1. Ownership of Software. Other than the limited licenses set forth in this Agreement, any and all rights, title and interest in and to the Software, and the intellectual property and proprietary rights to the Software, shall not pass to Customer, but shall remain the exclusive property of Spirent or its licensors.
3.2. Spirent Confidential Information. Customer acknowledges that the following categories of information constitute Spirent Confidential Information: (a) all components of the Software; and (b) reserved; and (c) other information disclosed by Spirent that would reasonably be understood to be confidential or proprietary. Spirent Confidential Information will not include, however, any information which: (a) is or becomes part of the public domain through no act or omission of Customer; (b) was in the Customer’s lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from Spirent or the Software; (c) is lawfully disclosed to Customer by a third party without restriction on disclosure; or (d) is independently developed by the Customer. For a period of ten (10) years from and after disclosure of Spirent Confidential Information to Customer, Customer agrees to hold all such Spirent Confidential Information in strict confidence, and agrees not to disclose (or permit others to disclose) it to others or use it in any way, commercially or otherwise, except in exercising its rights pursuant to this Agreement. Customer shall not disclose any Spirent Confidential Information to a recipient not authorized in writing by Spirent or use the Confidential Information for any purpose not expressly authorized by this Agreement. Any disclosures by Customer of Spirent Confidential Information shall only be to Customer’s employees, consultants, or agents as expressly permitted hereunder on a “need to know” basis for the purposes of this Agreement and subject to such third parties’ acceptance of terms and conditions with respect to the disclosed information at least as restrictive as those set forth in this Agreement. If Customer is compelled by law or a court of competent jurisdiction to disclose Spirent Confidential Information, Customer will promptly notify Spirent in writing and will cooperate at Spirent’s expense in seeking a protective order or other appropriate remedy. If disclosure is ultimately required, Customer will furnish only that portion of Spirent Confidential Information that is legally required and will exercise reasonable efforts to obtain assurance that it will receive confidential treatment. Spirent recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.
3.3. Reserved.

4. TERMINATION
4.1. Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Spirent shall proceed diligently with performance of this Agreement, pending final resolution.
of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Customer Obligations Upon Termination. Upon termination of this Agreement for any reason, (a) all licenses granted to Customer hereunder shall immediately terminate and Spirent may disable access to the Software, (b) Customer shall discontinue use of the Software and the other Spirent Confidential Information, and any portion thereof, and return the Software and any and all other Spirent Confidential Information in its possession to Spirent, or, at Spirent’s option, destroy the Software and such other Spirent Confidential Information, including all copies or partial copies thereof, and shall certify to Spirent in writing that Customer has retained none of the Spirent Confidential Information, and (c) all outstanding Fees for the Software use prior to the termination date shall become due and payable within thirty (30) days of invoice receipt. The following Sections will survive the expiration or termination of this Agreement: 1.2, 2, 3, 4.2, 5, Error! Reference source not found., and 8.

5. LIMITED WARRANTIES AND INDEMNIFICATION; EXCLUSIVE REMEDIES

5.1. Software. For a period of ninety (90) days from the date of delivery of the Software to Customer, or such other period as stated in the Quote accepted in writing by Spirent, Spirent warrants to Customer that the Software, if used in accordance with this Agreement, will operate in material conformity with the specifications for the Software which Spirent may publish. The warranties set forth herein do not apply to any material deviation from the accompanying documentation or specifications which results from (a) modification of the Software by anyone other than Spirent or in accordance with Customer’s instructions, (b) use of the Software for any purpose other than intended, (c) use of Software in combination with any other software or devices, if such claim would have been avoided but for such combination, (d) any misuse or incorrect use of the Software, (e) Customer’s failure to use the latest release of the Software provided by Spirent, or (f) any hardware malfunction. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT BECAUSE OF THE COMPLEX NATURE OF COMPUTER SOFTWARE, SPIRENT CANNOT AND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET A SPECIFIC REQUIREMENT OR THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT INTERRUPTION OR ERROR-FREE. During the aforementioned warranty period, Spirent will, at Spirent’s expense and as its entire liability (and Customer’s exclusive remedy) for any breach of the warranty and provided Customer has notified Spirent in writing of the nature of the non-conformity within ten (10) days of Customer’s discovery of the non-conformity and provided Spirent is able to verify such non-conformity: (i) correct the non-conformity or (ii) replace the non-conforming Software with Software meeting Spirent’s then-current published specifications.

5.2. Infringement

5.2.1. Cure. In the event of a determination that the Software infringes, or is likely to infringe, any proprietary right of any third party, Spirent shall have the option, at its discretion and expense, to (a) obtain for Customer the right to continue using the actual or potential infringing component of the Software or (b) replace the actual or potential infringing component of the Software or modify such component so that it becomes non-infringing, or (c) terminate the licenses rights granted herein and grant Customer a refund of the license fee, less reasonable depreciation based on usage, which shall in no event be less than the result of a straight-line computation based upon a three (3) year usable life.

5.2.2. Indemnification. Spirent shall indemnify, defend and hold Customer harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys) arising from any claim, demand, action or proceeding initiated by any third party alleging the Software infringes the copyright, US registered patent or trademark of any third party; provided, however, that as a condition to this indemnification obligation, Customer shall promptly (a) notify Spirent of any threat or initiation of any claim, demand, action or proceeding to which the indemnification obligation may apply, (b) assist Spirent in the defense or settlement of the matter, and (c) provide Spirent control over the defense and settlement of such matter. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

5.2.3. Exclusions. Spirent shall have no obligations under Section 5.2 for any alleged infringement based upon: (a) modification of the Software by anyone other than Spirent, (b) use of the Software in combination with other software or any other Software or devices if such claim would have been avoided but for such combination, (c) Customer’s continued use of the infringing Software after receipt of notice of an infringement claim or after receipt of a remedy from Spirent under this Agreement, (d) Customer’s use of the Software other than in accordance with the terms of this Agreement or Documentation, or (e) modifications to the Software made pursuant to Customer’s express instruction. THIS SECTION 5.2 STATES SPIRENT’S ENTIRE LIABILITY, AND CUSTOMER’S EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

5.3. Disclaimers. THE LIMITED WARRANTIES AND INTELLECTUAL PROPERTY INDEMNIFICATION SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SOFTWARE FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

5.4. Reserved.

6. LIMITATION OF LIABILITY

6.1. Limitations and Exclusions. IN NO EVENT SHALL SPIRENT OR ANY OF ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES OR LIABILITY RELATING TO INTERRUPTION OF SERVICE, COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, LOST PROFITS, OR LOSS OF DATA), INCURRED BY THE CUSTOMER, WITHOUT
REGARD TO CAUSE OR THEORY OF LIABILITY AND REGARDLESS OF WHETHER OR NOT SPIRENT OR ITS SUPPLIERS WERE ADVISED SUCH DAMAGES MIGHT ARISE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

6.2. Maximum Liability. THE LIABILITY OF SPIRENT AND ITS SUPPLIERS UNDER THIS AGREEMENT, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY) OR TORT OR ANY OTHER REASON, SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID TO SPIRENT BY CUSTOMER, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE OR HARDWARE SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID FOR THE RELEVANT SOFTWARE OR HARDWARE GIVING RISE TO THE LIABILITY.

7. GOVERNING LAW

7.1. Governing Law. This Agreement and any disputes arising from or related to it, or its subject matters, shall be governed, resolved and remedied in accordance with the Federal laws of the United States. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

7.2. Reserved.

7.3. Compliance with Laws: Export Control Laws. Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Software. Customer acknowledges that the Software may be subject to export controls imposed by the U.S. Export Administration Regulations (the "EAR"). Customer will not export or reexport (directly or indirectly) the Software, or any derivatives of the Software without complying with the EAR or other applicable laws with respect to the export of technology from the United States.

8. GENERAL TERMS

8.1. Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification, discharge or waiver is sought. Failure of either party to insist upon strict performance of any of the terms and conditions hereunder, or the delay in exercising any of its remedies shall not constitute a waiver of such terms and conditions or a waiver of any default or remedy.

8.2. Customer. Customer shall maintain complete and accurate records of its use of the Software during the applicable subscription term (if applicable, or otherwise the term of the Agreement) and for 2 years thereafter. Upon 10 days' written notice from Spirent, and no more than once per calendar year, Customer shall provide Spirent with reasonable access to Customer’s premises during normal business hours and subject to Government security requirements to conduct an audit of Customer’s records and systems to verify compliance with this Agreement, including calculation of Fees. Spirent shall bear the costs of any such audit.

8.3. Assignment. This Agreement and any rights granted hereby may not be assigned by Customer, directly or indirectly, including without limitation by merger, sale of assets or stock, change of control, or operation of law, without the prior written consent of Spirent. Spirent may not assign this Agreement and it rights and obligations hereunder without the prior written consent of the Customer. Any attempt by Customer to assign any rights, duties or obligations without such consent shall be void and without force or effect.

8.4. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

8.5. Reserved.

8.6. Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

8.7. Entire Agreement. This Agreement, together with the Quotes, the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), embodies the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all oral and written prior or contemporaneous agreements related to such subject matter.

8.8. Headings. Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purposes, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

8.9. Relationship of the Parties. Spirent and Customer will be and shall act as independent contractors, and neither party is authorized to act as an agent or partner of, joint venturer with, the other party for any purpose. Neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

8.10. Third-Party Components. Customer acknowledges that the Software contains components made available to Spirent by third party suppliers.

8.11. Precedence of Documents. The terms and conditions of this Agreement, insofar as they relate to the rights licensed to the Software will control over any conflicting or inconsistent terms contained in any Quote, or Spirent invoice unless otherwise mutually agreed to in writing. No terms in any quotation, acknowledgment or other form provided by Customer will modify this Agreement, regardless of whether Spirent objects to such terms, and any such additional or conflicting terms are expressly rejected. A negotiated Government Purchase Order, signed by both parties, shall supersede the terms of the Agreement. Notwithstanding Section 8.7, the terms and conditions of this Agreement insofar as they relate to matters other than the rights licensed to the Software shall be subject to the terms and conditions of the master purchase agreement between Spirent and Customer (if any) (the "Master Agreement") only to the extent that such Master Agreement expressly contradicts the terms and conditions of this Agreement.
Support Maintenance Extended Hardware Agreement (SVC-1900)

Attn:  
Name:  
Address:  
State/City/Country:  
Agreement Number:  
PO Number:  
Account:  
Start Date:  
Expiration Date:  

Thank you for purchasing Spirent Communications' Extended Hardware support. The specific hardware listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Repair of hardware failure. Discontinued Hardware Repair, customarily 7-20 business days at one of our repair facilities, for any hardware failures, once failure is confirmed by Customer Service (excludes shipping time).
- Telephone support from technical support engineers during regular local business hours to help determine HW fault condition.
- Escalation of service requests by our technical support engineers.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at [http://support.spirent.com](http://support.spirent.com) and obtain a Customer Service Center user account.

<table>
<thead>
<tr>
<th>America</th>
<th>Europe-Middle East-Africa</th>
<th>Asia Pacific</th>
</tr>
</thead>
</table>
| 27349 Agoura Road
Calabasas CA, 91301
1-800-SPIRENT
(1-800-774-7368)
1-818-676-2616
Support Hours: 8:30AM ET - 6:00PM PT
Email: support@spirent.com | Spirent Communications (India) Pvt. Ltd
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli
Marath Halli – Sarjapur Outer Ring Road
Bangalore - India 560 037
1 800 419 2111 Direct +91 80 57023400
Support Hours: 9:00AM - 5:30PM GMT + 5:30
Email: support@spirent.com | Room 1302,Shining Tower,No.35
Xueyuan Road,Haidian District
Beijing,100191,China
+400-810-9529
(Mainland)
+86-400-810-9529 (Rest of APAC)
Support Hours: 9:00AM - 6:00PM GMT +8
Email: support@spirent.com |
Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.
Support Maintenance
Extended Hardware
Agreement (SVC-1900)

Additional terms of Extended Hardware Advance Replacement support are as follows:

1. A customer requiring support in connection with the equipment covered by this agreement should contact Spirent Technical Support. Once Technical Support has determined that the hardware is faulty, a new or refurbished replacement unit will be processed to ship within a forty-eight (48) hour time period. Time of delivery is contingent upon factors such as customer requirements which vary globally.

2. Our customer service representative will also issue an RMA # with instructions for return of the defective product. Customer agrees that the defective product will to be returned to Spirent within thirty (30) days from receipt of the advance replacement unit.

3. Should a defective Product not be returned within thirty (30) days of the shipment of the Advance Replacement Product, Spirent will invoice Customer for defects not returned (DNR) prior to 30 days from shipment of the Advance Replacement. Charges for defects not returned will be based on Spirent’s list price in accordance with the GSA Schedule Prisetlist of the Advance Replacement Product.

4. The standard terms of Spirent’s limited hardware warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement

5. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this agreement.

6. Spirent shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. This agreement does not cover hardware products which have been designated as “obsolete” as defined by Spirent’s Advanced Lifecycle Management policy which can be found on Spirent’s website.

8. This agreement may be renewed prior to the expiration date of the current term by executing a new Agreement in writing.

9. Defective Products and Software under a service agreement shall be, at Spirent’s discretion, repaired, replaced, or updated with current software based on the service agreement terms and conditions. Provided that: (a) Such hardware product is returned to Spirent after first obtaining a return authorization number and shipping instructions, freight prepaid, to Spirent’s
<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Address/Location</th>
<th>Support Hours</th>
<th>Email</th>
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<tr>
<td>Americas</td>
<td></td>
<td>27349 Agoura Road</td>
<td>8:30AM - 6:00PM GMT</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<td>1-800-SPIRENT</td>
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<tr>
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<td></td>
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<td>9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
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<td>2 rue René Caudron, Bât. G - France</td>
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<td></td>
<td>Room 1302, Shining</td>
<td>9:00AM - 6:00PM GMT +8</td>
<td><a href="mailto:support@spirent.com">support@spirent.com</a></td>
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<td>Tower, No.35</td>
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<td>+86-400-810-9529 (Rest of APAC)</td>
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<td>Support Hours: 9:00AM - 6:00PM GMT +8</td>
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location in the United States;(b) Customer provides a written explanation of the Hardware defect or Software failure claimed by Customer; and (c) The claimed failure can be validated by Spirent and was not caused by neglect, accident, misuse, improper installation, improper repair, fire, flood, lightning, power surges, earthquake, or alteration.

10. Repair Return - It is the customers responsibility to pre-pay shipping to Spirent. Additionally, the customer is responsible to ensure the equipment is packed in containers which meet the same specification as when they were shipped from Spirent. When contacting Spirent for such returns, shipping container standards will be provided upon request. Any damage caused in shipping due to improper packing is not covered by Spirent warranty or any service agreement. Damages due to shipping will be immediately brought to the customers attention and a quote for repair provided upon request. Spirent reserves the right to deny service delivery in the event a customer fails to meet Spirent’s then-current prevailing rates, should any of the above conditions caused the failure.

Support Maintenance
Extended Hardware Agreement (SVC-1900)

| Americas  
27349 Agoura Road  
Calabasas CA, 91301  
1-800-SPIRENT  
(1-800-774-7358)  
1-618-676-2616  
Support Hours: 8:30AM ET - 6:00PM PT  
Email: support@spirent.com  
| India  
Spirent Communications (India) Pvt. Ltd  
9th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli  
Marathalli – Sarjapur Outer Ring Road  
Bangalore - India 560 037  
1 800 419 2111  
Direct +91 80 67023400  
Support Hours: 9:00AM - 5:30PM GMT + 5:30  
Email: support@spirent.com  
| Europe - Middle East -  
Africa  
Spirent Communications  
Business Park Le Val  
Saint Quentin  
2 rue René Caudron, Bât. G - France  
+33 1 6137 2276  
0800-111-4363 (UK only)  
Support Hours: 9:00AM - 6:00PM GMT +1  
Email: support@spirent.com  
| Asia Pacific  
Room 1302, Shining Tower, No. 35  
Xueyuan Road, Haidian District  
Beijing, 100191, China  
+86-10-9529 (Mainland)  
+86-400-810-9529 (Rest of APAC)  
Support Hours: 9:00AM – 6:00PM GMT +8  
Email: support@spirent.com  

Support Maintenance
Extended Hardware
Agreement (SVC-1900)

Agreement Number:

Appendix A
Hardware products covered under this Support Services program:

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<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Serial Number</th>
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<tr>
<td>1-800-SPIRENT (1-800-774-7368)</td>
<td>8th Floor, Umiya Business Bay, Tower-1 Cessna Business Park, Kadubeesanahalli</td>
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<tr>
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<tr>
<td>8(TM) 30AM-6:00PM PT</td>
<td>1 800 419 2111 Direct</td>
<td>+91 80 67023400</td>
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<td>+33 1 6137 2270</td>
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<tr>
<td>Room 1302, Shining Tower, No.35 Xueyuan Road, Haidian District Beijing, 100191, China</td>
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<td>+86-400-810-9529 (Rest of APAC)</td>
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<td>8(TM) 9:00AM - 6:00PM GMT +8</td>
<td>Email: <a href="mailto:support@spirent.com">support@spirent.com</a></td>
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</table>
Support Maintenance
Software Support Agreement

Contract Number:
(SVC-1010)

Attn:
Name Address:
City/State/Country:

Contract
Number:
PO Number:
Account:
Start Date:
Expiration Date:

Thank you for purchasing Spirent Communications' Software Support. The specific software listed in Appendix A shall be entitled to the following support for the term of the agreement:

- Telephone support from technical support engineers during regular local business hours.
- Escalation of service requests by our technical support engineers.
- Software and Firmware updates for the software listed in Appendix A to ensure your system remains current with evolving industry standards (excludes discontinued and obsolete products).
- Access to our software download center on our exclusive online Customer Service Center at http://support.spirent.com to take advantage of Spirent's continual product improvements.
- Access To Computer Based Training Materials to help you get the most from using your Spirent products.
- Email Notification of major software releases so you can quickly take advantage of the software fixes and enhancements implemented in the release for increased productivity.
- Access to latest product documentation to help you effectively utilize your investment.

Note: Spirent is returning your copy of the service agreement in electronic format. We retain all original agreements in our corporate office. Upon request, Spirent will send an original copy of the agreement. Please be sure to designate a specific addressee in your request.

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Signature: ______________________________________
Name: ______________________________________
Title: ______________________________________
Date: ______________________________________
Support Maintenance  
Software Support Agreement  
Contract Number: (SVC-1010)

Contact our Customer Service team, or your local distributor, for any support related to this service agreement. Your serial number is required on all service requests. It is strongly recommended that all individuals associated with this service agreement go to our support website at http://support.spirent.com and obtain a Customer Service Center (CSC) user account. Further information on the terms and deliverables of this agreement can be found on the CSC website.

Additional terms of Basic Support are as follows:
1. The standard terms of Spirent’s hardware and software warranty that both parties have executed in writing are applicable to this service agreement unless where specifically stated otherwise in this agreement.
2. This agreement is non-transferable and services will only be provided to employees and/or agent of the account listed on this certificate.
3. Software and firmware updates are restricted to only the ones listed in Appendix A and only for the chassis or modules in which it is licensed per our software license agreement.
4. Spirent shall be under no obligation to release a specific version or any number of versions of the software covered under the Support Services Plan. Customer shall be under no obligation to utilize the newest version and may continue to utilize prior versions.
5. In cases where Customer does not upgrade to the latest or prior release, Spirent will not recreate or consider any bug fixes or optional features or enhancements.
6. This agreement does not cover hardware products which have been designated as “obsolele” as defined by Spirent’s Advanced Lifecycle Management policy which can be found on Spirent’s website.
## Support Maintenance

### Software Support Agreement

**Contract Number:**
(SVC-1010)

### Appendix A

**Products Covered under this Support Services Program**

<table>
<thead>
<tr>
<th>Part Number</th>
<th>Product Name</th>
<th>Chassis ID or S/N</th>
</tr>
</thead>
</table>

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Spirent Communications  
27349 Agoura Road  
Calabasas CA, 91301  
1-800-SPIRENT  
(1-800-774-7368)  
1-818-676-2616  
Support Hours: 8:30AM ET - 6:00PM PT  
Email: support@spirent.com
EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)

Scope. This Rider and the attached SquirrelWERKZ, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renews. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17
U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

SQUIRRELWERKZ, INC.

SQUIRRELWERKZ INC. WARRANTY AND SUPPORT TERMS

1. Definitions.

“Affiliate” means any entity controlled by, controlling, or under common control with a party. For the purposes of this definition, the term “control” will mean the ownership of voting stock or other equity interest entitling the owner to exercise at least fifty percent (50%) of the voting rights of the applicable entity.

“Agreement” includes these General Terms and all Schedules attached hereto.

“Authorized Representative” means, the person(s) designated by Ordering Activity in this Agreement, or in another writing provided with ten (10) days prior written notice, as authorized to instruct SquirrelWerkz with respect to all matters and policies related to the performance of Ordering Activity’s obligations under this Agreement.

“Ordering Activity Account” means the individual account that is established for Ordering Activity for the purpose of its access to the applicable Services.

“Ordering Activity Confidential Data” means, collectively, any and all information provided by Ordering Activity to SquirrelWerkz in connection with the Services that is considered private, confidential or proprietary and is labeled as such.

“Reports” means reports generated through the use of the Services or otherwise delivered to Ordering Activity as part of the Services.

“Service Portal” means the web-based resources made available to Ordering Activity by SquirrelWerkz through which Ordering Activity may access its Ordering Activity Account.

“Service Provider Data” means collectively all data exclusively owned and stored within the SquirrelWerkz, or authorized partner, data store for use within the context of its services delivery model or separately licensed for use by Ordering Activities.

“Service(s)” means the services provided by SquirrelWerkz to Ordering Activity for Ordering Activity and its Users under this Agreement, as more particularly set out in the attached Schedules.

“System” means the computer hardware, network, software, tools and other equipment used by SquirrelWerkz through which the Services are provided.

“User(s)” means the individual employees of Ordering Activity identified by Ordering Activity as eligible to use the Services on Ordering Activity’s behalf.

“User Account” means the individual log on account that is established for each User for the purpose of such User’s access to the Services, which shall be sub-accounts of Ordering Activity Account.

Reserved.

Services.

During the term specified in the applicable purchase order, SquirrelWerkz will provide to Ordering Activity and its Users the Services related to the Subscription Level selected by Ordering Activity, as set forth on the first page of this Agreement and as described in Schedule A attached hereto.

The Services, including the Reports, are provided solely at Ordering Activity’s request and instruction and SquirrelWerkz is not acting as an agent or advisor, legal or otherwise, to Ordering Activity. SquirrelWerkz reserves the right to make modifications, updates and changes to the Services and to change its policies (including, without limitation, terms of use and privacy policies) relating to the System and the Services at any time, effective upon posting of notice of such changes or updated version of the policy on the Service Portal or emailing such changes or updated version of the policy to Ordering Activity’s Authorized Representative.

Reserved.

Ordering Activity and User Obligations. Ordering Activity and its Users may use the Services and all information generated using the Services, including the Reports, only for Ordering Activity’s internal business purposes. Ordering Activity will take all necessary action to ensure that the access, use and security of the Services and all information generated using the Services, including the Reports, is in accordance with the terms of these Agreement, the underlying GSA Schedule Contract, Schedule Pricelist and the applicable purchase order. Ordering Activity shall not allow any unauthorized persons or entities to access or use the Services using Ordering Activity Account or any User Account. Ordering Activity will not (i) use, disclose or store data in violation of third party privacy or other rights; (ii) upload or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs to the System; (iii) interfere with or disrupt the integrity or performance of the Services; (iv) attempt to gain unauthorized access to the System; or (v) attempt to gain access to data which is not included the Reports provided to Ordering Activity.

Restrictions. Ordering Activity will not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services; (ii) make any Reports generated through the Services or delivered to Ordering Activity available to any third party, except as required by applicable law; or (iii) otherwise use or permit the use of the Services or the Reports in violation of this Agreement. Notwithstanding the foregoing, Ordering Activity may use data and conclusions contained in the Reports
externally, and provide such information to third parties, if and only if such data and conclusions are incorporated into materials created by Ordering Activity and Ordering Activity does not represent such data and conclusions as having originated with SquirrelWerkz.

**Ordering Activity Account.** Ordering Activity is responsible for all activity occurring under Ordering Activity Account, including the User Accounts. Ordering Activity will: (i) notify SquirrelWerkz immediately of any unauthorized use of any password or of Ordering Activity Account or any User Accounts or any other known or suspected breach of security; and (ii) report to SquirrelWerkz immediately and use all available efforts to stop immediately any violations of this Agreement using Ordering Activity Account or any of the User Accounts known or suspected by Ordering Activity. Ordering Activity must immediately notify SquirrelWerkz of any change in its Users who have terminated employment or otherwise changed job status or function and are no longer authorized by Ordering Activity to use the Services.

**Authorized Representative.** SquirrelWerkz may act in total reliance upon, and will have no liability with respect to, any instruction, instrument or signature reasonably believed by SquirrelWerkz to be from an Authorized Representative. SquirrelWerkz may assume that any Authorized Representative who gives any written notice, request or instruction has the effective authority to do so on behalf of Ordering Activity. As relating to any User and as between the parties hereto, Ordering Activity will bear sole responsibility with respect to any conduct, error or omission by any of its Authorized Representatives and Users. Ordering Activity will provide SquirrelWerkz at least ten (10) days prior written notice of a change of its Authorized Representative.

**Ordering Activity’s Certifications and Warranties.** Ordering Activity understands that its access to the Services and information generated using the Services is provided in reliance upon the following certifications and warranties of Ordering Activity. Ordering Activity certifies that:

- it has the legal power and authority to enter into this Agreement, that the information it has provided is complete, accurate and correct;
- it will use the Services, the Reports, and any information therein only as contemplated by the terms of this Agreement; and
- it will ensure that its Users will not request a Report or obtain access to Ordering Activity Account, except in the exercise of their duties for Ordering Activity.

**Ordering Activity Property.** Ordering Activity will retain ownership of Ordering Activity Confidential Data delivered to SquirrelWerkz for use in the performance of the Services under this Agreement. SquirrelWerkz agrees to deliver to Ordering Activity any Ordering Activity Data, other than archive copies, upon expiration or termination of this Agreement. SquirrelWerkz may retain archival copies of all information relating to the performance of the Services, as required by law, and as necessary to permit it to enforce its rights or defend any claims arising from or relating to this Agreement.

**SquirrelWerkz Property.** Title to and ownership of all right, title and interest in and to the Service Provider Data and the System, including, without limitation, any methodologies or analytical techniques used in generating the Reports or other product made, conceived or developed by SquirrelWerkz alone or with others which in any way result from or relate to the Services pursuant to this Agreement, will at all times remain the sole property of SquirrelWerkz.

**Reserved.**

**SquirrelWerkz Warranties.** SQUIRRELWERKZ will provide a 60 day express warranty for repair and/or replacement of defective products/services. Ordering Activity understands that the Services may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. SquirrelWerkz is not responsible for delays, delivery failures or otherwise resulting from the Internet (i.e., problems with Ordering Activity’s internet service provider, modem, cable, DSL or dial-up connection or other Ordering Activity Internet connectivity issues) or any other Ordering Activity equipment, Ordering Activity’s firewall software, hardware or security settings, Ordering Activity’s configuration of anti-virus software or anti-spyware or malware software, or any other misuse or operator error of Ordering Activity.

**Reserved.**

**No Solicitation.** Ordering Activity will not, during the term of this Agreement and for a period of one (1) year thereafter, solicit, seek to hire or engage in employment any person, who while employed by SquirrelWerkz, assists or has assisted in the performance of the Services under this Agreement, provided, however, the foregoing shall not apply to general solicitation through advertisements that are not targeted at such employees of SquirrelWerkz.

**Reserved.**

**Relationship of Parties.** The parties hereto understand and agree that each party hereto is an independent contractor in the performance of its obligations under this Agreement, and is solely responsible for all of its own employees and agents and its labor costs and expenses arising in connection therewith. Neither party hereto nor its agents or employees are the representatives of the other party for any purpose and neither party hereto has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

**No Third Party Beneficiaries.** This Agreement has been entered into for the sole benefit of the parties hereto and their respective successors and permitted assigns. Except as specifically set forth in this Agreement with respect to indemnification, the parties hereto do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein will be construed as creating any right, claim or cause of action in favor of any such third party against any party hereto. Furthermore, this Agreement will not create any contract, legal relationship, interest or right whatsoever between SquirrelWerkz and any individual, beneficiary, User, applicant or assignee under this Agreement.

**Reserved.**

**Notices.** Except as otherwise provided in this Agreement, notices under this Agreement will be sufficient only if in writing, personally delivered, delivered by a major commercial delivery courier service, postage or charges prepaid, return receipt requested to a party hereto at its addresses set forth on the first page of this Agreement, or as amended by notice pursuant to this Section. Notwithstanding the foregoing, SquirrelWerkz may give notice by means of a general notice on Service Portal, or by electronic mail to Ordering Activity’s Authorized Representative’s e-mail address on record in the SquirrelWerkz account information. Such notice will be deemed...
to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

**Modification; Waiver.** This Agreement, including referenced schedules and attachments, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s) contains the entire understanding between SquirrelWerkz and Ordering Activity with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, dealings and negotiations. Except as otherwise permitted in this Agreement, no modification, alteration, amendment or addition will be effective unless made in writing, dated and signed by the Authorized Representative of Ordering Activity, and an authorized representative of SquirrelWerkz. No waiver of any breach hereof will be held to be a waiver of any other or subsequent breach.

**Headings; Interpretation.** The headings provided in this Agreement are for convenience only and will not be used in interpreting or construing this Agreement. The parties desire that this Agreement be construed according to its terms, in plain English, without constructive presumptions against the drafting party.

**Severability.** If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, such provision will be renegotiated so as to give effect to the intent of the Parties to the maximum possible extent. Such determination and renegotiation will not affect or invalidate the remaining provisions of this Agreement, which will remain in full force and effect, except as modifications may be required for consistency with renegotiated terms.

Reserved.

Reserved.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

STACKROX, INC.

1. Order Forms; Product License
StackRox, Inc. ("StackRox") and the Ordering Activity ("Customer" or "Ordering Activity") placing an order under a GSA Schedule contract that includes this Agreement (any such order being an "Order Form") mutually agree to be bound to these Terms. Subject to Customer's compliance with the Terms, StackRox grants Customer the right and license to use the software product specified in each Order Form (the "Product") during the applicable Order Form Term (as defined below) for the business purposes of Customer, only in object code form and as provided herein and only in accordance with StackRox's applicable official product documentation (the "Documentation").

2. Implementation; Support
StackRox agrees to use reasonable commercial efforts to provide standard implementation assistance for the Product only if and to the extent such assistance is set forth on such Order Form as authorized, in advance, by StackRox ("Implementation Assistance"). StackRox will provide support for the Product in accordance with the attached StackRox Support Policy.

3. Product Updates
From time to time, StackRox may provide upgrades, patches, enhancements, or fixes for the Product to its customers generally without additional charge ("Updates"), and such Updates will become part of the Product and subject to this Agreement; provided that StackRox shall have no obligation under this Agreement or otherwise to provide any such Updates. Customer understands that StackRox may cease supporting old versions or releases of the Product (which Customer failed to Update) at any time in its sole discretion; provided that StackRox shall use commercially reasonable efforts to give Customer sixty (60) days prior notice of any major changes and will give Customer a reasonable opportunity to implement available Updates to retain support.

4. Ownership; Feedback; Customer Data
As between the parties, StackRox retains all right, title, and interest in and to the Product, and all software, works, and other intellectual property and moral rights related thereto or created, used, or provided by StackRox for the purposes of this Agreement, including any copies and derivative works that are minor modifications of the foregoing. All software which is distributed or otherwise provided to Customer hereunder is licensed and not sold. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Customer may from time to time provide suggestions, comments or other feedback to StackRox with respect to the Product ("Feedback"). Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for StackRox notwithstanding anything else. Customer shall, and hereby does, grant to StackRox a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royaltyfree, fully paid up license to use and exploit the Feedback for any purpose. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71. Nothing in this Agreement will impair StackRox's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute. As between the parties, Customer shall own all right, title, and interest in and to the Customer Data. For the avoidance of doubt, except as expressly set forth herein, Customer does not grant StackRox any rights (i) to any Customer Data (other than for StackRox to perform its obligations under the Agreement), and (ii) any intellectual property rights owned or licensed by Customer. "Customer Data" means all data or information contained in Customer's virtual containers, submitted by or on behalf of Customer or protected by the Product.

StackRox does not permit its third-parties licensors, including third-party licensors of software or technology providers (e.g., open source software, online software applications, software-as-a-service, application program interfaces, and offline software products) delivered with, incorporated into or interoperate with the Product or that interoperate with and/or are incorporated into the Product (the "Third-Party Applications"), to access Customer Data except to the extent required for the interoperation of such Third-Party Applications with Products or as specifically set forth in the Agreement, the applicable Product Schedule and/or Documentation. StackRox may freely use, copy, modify, disclose and make available to third parties for their use and other exploitation, and otherwise exploit any aggregated, anonymized data that does not specifically identify Customer, submitted to, collected by, or generated by StackRox in connection with Customer's use of the Products (including without limitation, for purposes of improving, testing, operating, promoting and marketing products and services).

5. Fees; Payment
Payment terms are as set forth in the Order Form between Customer and the prime contractor in accordance with the GSA Schedule Pricelist. All Fees paid are non-refundable by StackRox and are not subject to set-off against any other StackRox payment, except that, if the Ordering Activity is entitled to a refund under the prime contract, such refund shall be paid by the prime contractor and not by StackRox.

6. Restrictions
Except as expressly set forth in this Agreement, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying structure, ideas, or algorithms of the Product (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Product; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Product; (iv) use the Product for the benefit of an unauthorized third party; (v) remove or otherwise alter any proprietary notices or labels from the Product or any portion thereof; (vi) use the Product to build an application or product that is competitive with any StackRox product; (vii) interfere with the proper working of the Product; or (viii) bypass any measures StackRox may use to prevent or restrict access to the Product (or other accounts, computer systems or networks connected to StackRox). Customer is responsible for all of Customer's activity in connection with the Product, including but not limited to handling Customer's data used with the Product. Customer (i) shall use the Product in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Product (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Product in a manner that violates any third party intellectual property, contractual or other proprietary rights.

7. Confidentiality
Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is in the public domain on December 1, 2019; (b) is generally available to the public without any action by, or involvement of, the Disclosing Party; or (c) was in its possession or known by it prior to receipt from the Disclosing Party, or (d) was rightfully disclosed to it without restriction by a third party, or (e) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial order or subpoena, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. StackRox recognizes that Federal agencies are subject to the Freedom of Information Act ("FOIA"). 5 U.S.C. 552, which requires that GDSVF&P&\2688473.2

8. Term; Termination
This Agreement shall commence upon the Effective Date set forth in the first Order Form, and, unless earlier terminated in accordance herewith, shall last until the expiration of all Order Form Terms. For each Order Form, the "Order Form Term" shall begin as of the Effective Date set forth on such Order Form, and unless earlier terminated as set forth herein, (x) shall continue for the initial term specified on the Order Form (the "Initial Order Term"), and (y) following the Initial Order Term, may be renewed for additional successive one (1) year terms by executing a new Agreement in writing (each, a "Renewal Order Form Term") if Customer exercises an option for such successive period or enters into a new Order Form with the prime contractor. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, StackRox shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Notwithstanding the foregoing, any dispute regarding a material breach or regarding whether such breach has been materially and timely cured shall be subject to the Contract Disputes Act. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

9. Indemnification
StackRox ("Indemnitor") shall defend (subject to 28 USC §516), indemnify, and hold harmless Customer, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives (collectively, the "Indemnitees") from all liabilities, claims, and expenses paid or payable to an unaffiliated third party (including reasonable attorneys' fees) ("Losses"), that arise from or relate to any third-party claim that (i) Customer's use of the Product violates any applicable statue, regulation, ordinance or other law (so long as Customer's use is in accordance with the Product's intended use and in compliance with the Product's documentation), (ii) Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) Customer's use of the Product is not strictly in accordance herewith. Nothing contained herein

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shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdicational statute 28 U.S.C. §516.

10. Disclaimer
StackRox warrants that the Software will, for a period of sixty (60) days from the start date of the Term, perform substantially in accordance with Documentation. The PRODUCT IS ACCEPTED IN ACCORDANCE WITH GSA SCHEDULE TERMS AND CONDITIONS AND EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE PRODUCT IS PROVIDED "AS IS" AND "AS AVAILABLE" AND IS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

11. Limitation of Liability
EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS IN SECTION 9 OR BREACH OF SECTION 6 (RESTRICTIONS) or 7 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY, NOR STACKROX'S DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE CONTRACT PRICE, INCLUDING FEES PAID (OR PAYABLE) BY CUSTOMER TO STACKROX HEREUNDER, FOR PURPOSES OF THIS SECTION 11, LIMITATION OF LIABILITY, 'CONTRACT PRICE' MEANS AN ORDER PLACED UNDER THE GSA SCHEDULE PRIME CONTRACT. THE PARTIES AGREE THAT THEIR TOTAL LIABILITY SHALL NOT EXCEED THE LIABILITY OF THE OTHER PARTY, IF THE LIABILITY OF A PARTY IS LIMITED FOR ANY REASON.

The Product and accompanying Documentation are "commercial items" as that term is defined at FAR 2.101. If Licensee is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), StackRox provides the Product and Documentation, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. In addition, if DFARS 252.227-7015 (Technical Data – Commercial Items) is applicable to the contract, this clause governs technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with StackRox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government’s needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use in accordance with Contract Disputes Act of the Product and Documentation and return the Product and Documentation and any other software or technical data delivered as part of the Product and Documentation, unused, to StackRox. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

13. Miscellaneous
This Agreement represents the entire agreement between Customer and StackRox with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Customer and StackRox with respect thereto. Nothing in this Agreement modifies Customer’s agreement with the prime contractor, however, the prime contractor’s terms and conditions are solely between prime contractor and Customer and are not a part of this Agreement between Customer and StackRox. The Agreement shall be governed by and construed in accordance with the Federal laws of the United States. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Notices must be sent to the contacts for each party set forth on the Order Form with a copy to Legal Department, StackRox, Inc., 700 E El Camino Real #200, Mountain View, CA 94040, USA . Either party may update its notice address herein by giving notice in accordance with this section. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties. Excusable delays shall be governed by FAR 52.212-4(f). In addition to the terms at 52.212-4(f), the following are expressly considered excusable delays under this Agreement: earthquake; vandalism; accidents; sabotage; power failure; denial of service attacks or similar attacks; Internet failure; acts of war; acts of terrorism; riots; civil or public disturbances; strikes, lock-outs or labor disruptions; any laws, orders, rules, regulations, acts or restraints of any government or governmental body or authority, civil or military, including the orders and judgments of courts. Neither party may transfer any or all of its rights or obligations hereunder without the other party’s consent; and (ii) StackRox may utilize contractors/subcontractors in the performance of its obligations hereunder provided that StackRox shall remain liable for the actions and services provided by such subcontractors at all times. Any assignment is subject to the requirements of FAR 42.12 Novation and Change-Of-Name Agreement to the extent applicable to this Agreement and/or to GSAR 52.212-4(w) if this is included in an Order Form under a GSA prime contract. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party’s rights with respect to such breach or any subsequent breaches.
During the applicable Order Form Term, StackRox will provide support to Customer for defects with the Product as follows:

<table>
<thead>
<tr>
<th>Channels</th>
<th>Support portal with documentation &amp; case management Support via phone Support via e-mail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage</td>
<td>P1 issues: 24x7x365</td>
</tr>
<tr>
<td></td>
<td>All other issues: 6am-6pm Pacific Time, excluding holidays</td>
</tr>
<tr>
<td>Target response time</td>
<td>P1 (significant widespread degradation of software): 1 hour</td>
</tr>
<tr>
<td></td>
<td>P2 (major, isolated degradation of software): 4 business hours</td>
</tr>
<tr>
<td></td>
<td>P3 (all other requests): 1 business day</td>
</tr>
<tr>
<td>Number of support issues allowed</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Emergency fixes</td>
<td>As needed, based on issue severity</td>
</tr>
</tbody>
</table>

Customer may designate up to 4 support contacts ("Designated Support Contacts"), and all support requests must come through the Designated Support Contacts. Customer may update the Designated Support Contacts by providing notice to StackRox. Contact information for support channels are provided when the Product is delivered.
1. **Scope.** This Rider and the attached SunView Software, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A – SUNVIEW

USER AGREEMENT AND SOFTWARE LICENSE TERMS

This Agreement applies to an order that incorporates these terms and conditions entered into between the eligible Ordering Activity under GSA Schedule contracts ("you", "your", or "Ordering Activity") and the GSA Multiple Award Schedule Contractor acting by and through its supplier, SunView Software Inc., ("SunView Software") which sets forth all of the terms, conditions, obligations, responsibilities and remedies between you and Contractor with regard to your Use of SunView Software ChangeGear Software.

Section 1 - Definitions:

The following definitions apply throughout this Agreement: "Software" means SunView Software ChangeGear Software, the computer software and all associated printed materials, which may include "online" or electronic documentation; "Use" means storing, loading, installing, executing or displaying the Software; "Computer" means a central processing unit ("CPU") or group of CPU's that accesses its or their own individual non-cache Random Access Memory; "Server" means a Computer that permits Concurrent Use by multiple users; "Client" means a Computer used to access a Server; "Concurrent Use" means access, directly or indirectly, by a licensed user of the Software executing on a Server.

Section 2 - License Grant - Usage in General:

You may Use the Software pursuant to the terms of the particular license(s) you have acquired as specified below. Your license to the Software is perpetual unless you elect to subscribe to the Software for a specified period, in which case the terms specified in the attached Subscription License Addendum will also apply.
SunView Software grants to you, and you accept, the non-exclusive, non-transferable limited right to Use the Software in object code form only, and only on a single Computer.

You may have either a Named User License or a Concurrent User License, subject to the terms below.

(a) Named User License: If you have a "Named User License," the Software may only be used by the individual designated by the administrator as the "Named User" for that copy of the Software. The Named User may Use that particular copy of the Software on any Computer.

(b) Concurrent User License: If you have a "Concurrent User License," you are only authorized to permit the Concurrent Use of the Software installed on a Server by the number of Clients for which you have purchased Concurrent Use Licenses. The Software may contain codes that enforce Concurrent Use restrictions. You may only Use the Software installed on the Server if the Use of the Software on such Server is properly licensed and complies with the conditions and restrictions (including any Concurrent Use restrictions) of such Server license.

Section 3 - License Rights and Restrictions:

(a) Ownership: You acknowledge and agree that the Software is owned and copyrighted by SunView Software or its third party suppliers and/or licensors. Your license confers no title or ownership in the Software and is not a sale of any rights in the Software. All ownership rights remain in SunView Software or its third party suppliers and/or licensors, as the case may be. SunView Software and ChangeGear are trademarks or service marks or registered trademarks of SunView Software in the United States of America and/or in other countries. All other marks in the Software are the marks of their respective owners.

(b) Copies: You may only make one (1) copy of the object code of the Software, which you may Use, subject to the terms of this Agreement, solely for (i) backup or archival purposes and (ii) development and testing purposes, or when copying is an essential step in the authorized Use of the Software. You must reproduce all copyright and other proprietary or restricted rights notices in the original Software on the authorized copy. You may not copy any of the books or printed materials provided in connection with the Software.

(c) Additional Restrictions: The Software contains SunView Software trade secrets, which you must not disclose. You must also not decompile, reverse engineer, disassemble, copy, modify, translate, or adapt the Software, or create derivative works based on the Software, or otherwise reduce the Software to human-perceivable form except to the extent that such rights cannot be excluded by mandatory applicable law. You must not disable any licensing, anti-piracy or other control features of the Software. Except to the extent expressly permitted herein, you must not: permit other individuals to Use the Software; rent, resell for profit, distribute, sublicense, lease, grant a security interest in, or otherwise transfer or assign any rights to the Software; or remove any proprietary notices or labels on the Software. You must not use the Software to create competitive products or applications or to create software or products using similar features, functions or graphics of the Software. You must not disclose to third parties any benchmark tests or other evaluations of the Software. You have no rights to the Software except as explicitly granted to you by SunView Software in this Agreement.

(d) Upgrades: If the Software you purchased is an upgrade of a SunView Software product, you may Use that upgraded product only in accordance with this Agreement. If the Software is an upgrade of a component of a package of software programs that you licensed as a single product, the Software may be Used and transferred only as part of that single product package and may not be separated for Use on more than one Computer. You must not loan, rent, lease, or otherwise transfer the original non-upgraded product to another user.
(e) Content: Any non-SunView Software materials (Third-Party Content”) you access via the Software (on-line or otherwise) is the property of the applicable owner and may be protected by applicable copyright law. This Agreement grants you no rights to Third-Party Content.

Section 4 - Reserved.

Section 5 - Remedies:

(a) Limited Returns; Defective Software:

If you identify that the Software is defective, you may (i) obtain a refund of the purchase or subscription price of the Software or the Software upgrade (as applicable), or (ii) request replacement Software provided that, you return to SunView Software the Software and any copies thereof, any accompanying documentation and dated proof of purchase within sixty (60) days from the date of your purchase of the Software.

THIS SECTION 5(a) SETS FORTH SUNVIEW SOFTWARE’S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDIES IN RELATION TO SOFTWARE DEFECTS OR YOUR DISSATISFACTION WITH THE SOFTWARE.

(b) Limited Warranty and Disclaimers:

(i) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, SUNVIEW SOFTWARE, FOR ITSELF AND ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, RELATED DOCUMENTATION AND OTHER MATERIALS AND SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, SUNVIEW SOFTWARE DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM WITHOUT INTERRUPTION OR BE ERROR FREE, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS. YOU ACKNOWLEDGE THAT THE SOFTWARE IS PROVIDED "AS IS" AND YOU ACCEPT THE ENTIRE RISK AS TO THE SOFTWARE’S QUALITY AND PERFORMANCE.

(ii) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SUNVIEW SOFTWARE AND ITS LICENSORS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS IN CONNECTION WITH THE SOFTWARE OR ANY SERVICE RELATED THERETO.

(iii) SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT YOUR JURISDICTION PERMITS SUCH LIMITATIONS, ANY IMPLIED REPRESENTATIONS, WARRANTIES, AND/OR TERMS OR CONDITIONS ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE YOU PURCHASED OR SUBSCRIBED TO THE SOFTWARE OR TO THE SHORTEST PERIOD PERMITTED BY APPLICABLE LAW, IF LONGER. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH MAY VARY ACCORDING TO JURISDICTION.

(c) Reserved.

(d) Reserved.

Section 6 - Export Controls:
None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the United States of America has embargoed goods; and/or (ii) to anyone on the United States of America's Treasury Department's list of Specially Designated Nationals or the United States of America's Commerce Department's Table of Denial Orders and/or (iii) otherwise in breach of United States laws and regulations related to exports and to all administrative acts of the US Government pursuant to such laws and regulations. By downloading, installing and/or Using the Software, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any country or on a list in breach of this Section 6. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or Use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

Section 7 - U.S. Government End Users:

The Software is a "commercial item," as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and the Department of Defense Federal Acquisition Regulations Sections 252.227-7014(a)(1), (5). Consistent with 48 C.F.R. 12.212, all U.S. Government End Users acquire the Software with only those rights set forth herein. The manufacturer is SunView Software Inc., 10210 Highland Manor Drive Suite 275, Tampa, FL 33610.

Section 8 - Reserved.

Section 9 - Technical Support:

SunView Software shall provide Software support and maintenance to you in accordance with Exhibit A attached hereto, subject to the terms below. If you are granted a perpetual license to the Software, following the initial one (1) year period of Software support and maintenance, such support and maintenance may be renewed for subsequent one (1) year periods by executing a new purchase order for the subsequent period. If you are granted a subscription license to the Software, support and maintenance is included in the license fee as described in the Subscription License Addendum hereto.

Section 10 - Reserved.

Section 11 - Reserved.

Exhibit A: Support and Maintenance

SunView Software shall provide the Software support and maintenance described in this Exhibit A in order to ensure that the Software remains in good working order and operates in accordance with its documentation and specifications.

SunView Software shall advise you on the use of the Software and shall assist you in identifying and solving any problems encountered in such use and reported by you by rendering the following support and maintenance:

(i) Corrective maintenance. Corrective maintenance includes diagnosis and correction by SunView Software of actual errors or defects in the program codes of the Software and in the documentation. An error or defect is the failure of the Software to operate materially in accordance with the documentation and its specifications.
(ii) Perfective maintenance. Perfective maintenance includes the modification of the Software in order to improve and extend its functionality.

(iii) Releases. All permanent solutions developed for problems encountered in the Use of the Software, all corrections of errors and defects in the Software and all enhancements, improvements and modifications of the Software referred to hereinabove shall be incorporated by SunView Software as soon as reasonably possible in a release, a copy of which shall be provided to you as soon as it is ready for release together with the updated documentation.

A release of any particular item of the Software shall be based on the previously offered version and shall have equivalent or enhanced functionality with such corrections and amendments as SunView Software reasonably decides to include.

You are free to adopt a new release or to continue to Use the current release.

Subscription License Addendum

When the Software is licensed hereunder for a particular subscription period ("Subscription Licensed Software"), the following terms apply and prevail over any conflicting terms in this Agreement:

1. The Software is licensed for the agreed term indicated in the applicable purchase order.

2. Maintenance for Subscription Licensed Software commences as of delivery and is included in the annual Subscription Period license fee. Maintenance ceases if the Subscription Period expires and is not renewed.

3. Reserved.

4. Reserved.

5. If you do not renew your license for Subscription Licensed Software, within five (5) business days following the end of the Subscription Period, you must present a certification signed by you or a corporate officer of your enterprise stating that the Software has been uninstalled from all devices, you have retained no copies, and you acknowledge that you have no right to continue using the Software. You acknowledge that following the expiration of the Subscription Period, any data that is retained in formats only readable by the Software will not be accessible.
SYFERLOCK TECHNOLOGY CORPORATION  
917 BRIDGEPORT AVENUE  
SHELTON, CT 06484

EC America Rider to Product Specific License Terms and Conditions

All references to Syferlock in these Terms and Conditions should be read as “Contractor (immixTechnology, Inc.), acting by and through its supplier, Syferlock.”

TERMS AND CONDITIONS FOR SYFERLOCK PRODUCTS AND SERVICES

1. Definitions  
Defined terms are capitalized and have the meanings indicated in Definitions section below

2. Right to Use Software  
SyferLock hereby grants to Customer a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein and in the applicable Attachment(s). SyferLock hereby grants to Customer a nonexclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, SyferLock’s trademarks and trade names set forth on Attachment H hereof (“SyferLock Marks”) solely for the purpose of using the Software in accordance with this Agreement. Customer shall comply with SyferLock’s trademark guidelines as provided from time to time by SyferLock. Customer agrees to use no other trademarks or trade names in connection with the Software, except for the use in addition to the SyferLock Marks, of its own trademark as approved in writing by SyferLock. To the extent that SyferLock will authorize any use of a composite trademark comprised out of SyferLock Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with this Agreement and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Customer’s trademarks with the SyferLock Marks must maintain the distinctness of each trademark. Subject to the foregoing, the SyferLock Marks are the only trademarks and trade names that Customer is authorized by SyferLock to employ in connection with the Software and Customer agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Customer’s use of the SyferLock Marks shall inure to the benefit of SyferLock. The license set forth in this Section 2 is not sub-licensable.

3. Restrictions on Use of Software  
Customer’s use of the Software is subject to the following restrictions. Except as expressly permitted in this Agreement, Customer shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing SyferLock’s copyright notices and other SyferLock Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Customer’s right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other SyferLock Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by SyferLock (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved, or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Customer are reserved by SyferLock. There are no implied rights. Customer shall install the Software only on Enterprise Servers and/or CPUs, as the case may be, located in the country specified on the Cover page.

4. Third Parties  
Customer’s use and disclosure of the Software is restricted solely to its employees, professional advisors who acknowledge the confidental nature of the Software and agents and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth in this Agreement. Customer agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Customer herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by SyferLock, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Customer shall not use the Software in any manner other than as expressly provided for in this Agreement.

5. Reserved  

6. Effect of Termination or Expiration  
Reserved.  

Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information. Customer shall not, in advertising or otherwise, use or display any of SyferLock Marks or any name, mark, or logo that is the same as or similar to SyferLock Marks, represent itself to be a licensee of SyferLock, or in any way identify itself with SyferLock or contains any portion of a SyferLock Mark.  

Reserved.  

Sections 5, 6, 7(a), 7(b), 7(e), 8, 10-14, and 15 hereof, will survive termination or expiration of this Agreement. g) Reserved.

7. Inspection/Acceptance  
The Contractor (immixTechnology, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer’s (“SYFERLOCK”) published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may
require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights: (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

8. Proprietary Rights
As between SyferLock and Customer, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Customer in connection with this Agreement. Customer acknowledges that, as between SyferLock and Customer, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Customer shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of SyferLock granting Customer the rights set forth in this Agreement, Customer agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications, enhancements, improvements, inventions, works of authorship or any suggestion Customer or any of Customer personnel or third party proposes, creates, authors or develops relating to the Software, Documentation, SyferLock Marks or any other deliverable made available by SyferLock in connection with this Agreement or any portion of any of the foregoing (collectively, the “Suggestions”) are hereby assigned to SyferLock, shall be the sole and exclusive property of SyferLock and shall be considered SyferLock Confidential Information for all purposes hereof. At SyferLock’s expense, Customer agrees to take any action (and to cause its personnel to take any action) SyferLock requests to perfect SyferLock’s ownership in the Software and/or any Suggestion.

9. Software Maintenance and Support Services; Other Services
Customer may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. SyferLock shall provide the Standard Maintenance and Support Services described on Attachment E during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth on the Cover Page. If selected by Customer on the Cover Page, all such services will be provided by SyferLock in accordance with the terms set forth hereunder and applicable Statement(s) of Work. Customer will be entitled to receive Updates only if Customer is a paid-up Maintenance and Support Services customer at the time an Update is commercially released. Customer shall have the option to purchase Upgrades in accordance with SyferLock’s pricing structure in effect at the time the Upgrade is commercially released.

10. SyferLock’s Duty of Indemnification
To the extent permitted by federal law, SyferLock, at its expense, shall defend any action, suit or proceeding brought against Customer which alleges that any Software infringes any United States copyright and SyferLock shall pay damages finally awarded against Customer (including attorneys’ reasonable fees), provided that (a) Customer notifies SyferLock promptly in writing of the claim, (b) SyferLock has sole control of the defense and all related settlement negotiations, and (c) Customer provides SyferLock with all requested assistance, information and authority to perform the above at SyferLock’s expense. In the event that Customer’s use of the Software is enjoined by a court of competent authority, SyferLock shall, at its sole option and at its expense, either: (i) procure for Customer the right to use the Software or (ii) modify the Software to avoid infringement without material impairment of its functionality or (iii) if neither of the foregoing remedies can be obtained upon terms commercially reasonable in the judgment of SyferLock, require Customer to remove and return to SyferLock the Software involved and, if Perpetual Term is selected on the Cover Page, refund Customer a portion of the price thereof as depreciated over a three (3) year life of the Software commencing on the date of delivery. The foregoing indemnity shall not apply if the alleged infringement is attributable to (i) any adjustment, enhancement, revision, development or addition to the Software based on Customer provided guidelines, requests and/or specifications, (ii) the combination of the Software and products and/or other materials not provided by SyferLock under this Agreement, (iii) if the Software is modified or altered by any person or entity other than SyferLock, (iv) if the Software is used in any way other than as set forth in the Documentation, or (v) if the Software is otherwise used outside the scope of this Agreement. THIS SECTION STATES SYFERLOCK’S SOLE LIABILITY HEREUNDER WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

11. Reserved

12. Limited Warranty
SyferLock warrants that for a period of thirty (30) days following initial delivery of the Software to Customer ("Warranty Period"), SyferLock will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that SyferLock receives a written claim from Customer under this limited warranty within the Warranty Period. This Warranty does not apply if Customer or any third party changes or modifies the Software without the authorization of SyferLock. SyferLock does not warrant that the Software will be error free or that all errors can be remedied.

SyferLock warrants that the services provided by SyferLock in connection with this Agreement will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be SyferLock’s entire liability and Customer’s sole and exclusive remedy under this warranty.

THE EXPRESS WARRANTIES GRANTED UNDER THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY SYFERLOCK WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HEREUNDER OR ANY DELIVERABLE MADE AVAILABLE HEREUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. SYFERLOCK HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, SYFERLOCK’S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS REQUIRED BY THE LOCAL LAW OF CUSTOMER. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, SYFERLOCK SPECIFICALLY DOES

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NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. SYFERLOCK EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF CUSTOMER OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF SYFERLOCK'S OR ANY THIRD PARTY'S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

13. Limitation of Liability
CUSTOMER'S SOLE REMEDY AND SYFERLOCK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT,
TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CUSTOMER'S REMEDY SHALL BE LIMITED TO THE LESSER OF (A) THE ACTUAL MONEY DAMAGES, OR (B) AN AMOUNT NOT EXCEEDING THE SOFTWARE LICENSE FEES PAID TO SYFERLOCK BY CUSTOMER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL SYFERLOCK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF SYFERLOCK, INCLUDING ITS EMPLOYEES, AGENTS, PARTNERS, REPRESENTATIVES, OR SUBCONTRACTORS, BE LIABLE FOR ANY (A) DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (B) INDIRECT,
INCIDENTAL, SPECIAL, RELIANCE, INCIDENTAL, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF SYFERLOCK COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF SYFERLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY OTHER THAN THOSE DETERMINED TO BE INDEMNIFIABLE CLAIMS UNDER SECTION 10 BY AN UNAPPEALABLE COURT RULING AND ONLY TO THE EXTENT PROVIDED FOR ABOVE, OR (D) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-SYFERLOCK PRODUCT, SERVICES OR DELIVERABLES. CUSTOMER RECOGNIZES THAT THE FEES HERELUNDER ARE BASED IN PART ON THE LIMITED WARRANTY AND LIMITATION OF LIABILITY AND REMEDIES SET FORTH HEREIN.

14. Confidentiality
Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to Confidential Information. Each party agrees to maintain in confidence and use only as expressly permitted in this Agreement all Confidential Information received from the other, both orally and in writing, provided that the parties' obligations of nondisclosure under this Agreement shall not apply to Confidential Information which the receiving party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party in lawful possession of such Confidential Information; or (iv) is independently developed by the receiving party without reference to Confidential Information. In the event a subpoena or other legal process is served upon a party receiving Confidential Information of the other party hereunder that, pursuant to the requirement of a governmental agency or law of the United States or any state thereof (or any governmental or political subdivision thereof), requires the disclosure of such Confidential Information, the receiving party will notify the disclosing party promptly upon receipt of such subpoena or other request for legal process, and will cooperate with the disclosing party, at the disclosing party's expense, in any lawful effort by the disclosing party to contest the legal validity or scope of such subpoena or other legal process.

15. Miscellaneous Assignment
Customer may not sublicense, assign (by operation of law or otherwise) or otherwise transfer this Agreement or any license or any right, duty or obligation under this Agreement without SyferLock's prior written consent, and any attempt to do so shall be null and void. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the parties, their successors and assigns. Export Control Customer acknowledges that the export of any Software is or may be subject to export or import control and Customer agrees that any Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Customer obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. U.S. Government Restricted Rights Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. License subject to Licensor's Rights Customer acknowledges that portions of the Software may have been licensed to SyferLock by one or more third parties. All rights and obligations provided by SyferLock to Customer under this Agreement shall be limited to the extent that such underlying rights and obligations have been provided to SyferLock. e) Reserved

Waiver
A failure or delay by either party to enforce any right under this Agreement shall not at any time constitute a waiver of such right or any other right, and shall not modify the rights or obligations of either party under this Agreement. Any waiver by either party of any right under this Agreement shall not constitute a waiver of such right in the future. All rights and remedies evidenced hereby are in addition to and cumulative to rights and remedies available at law or equity or otherwise available under any other contract.

**Severability**

If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly affects the parties' intent in entering this Agreement.

i) **Force Majeure**

Excluding the payment of money, neither party will be deemed in default of any obligation hereunder nor be liable for any failure or delay in performance which results directly or indirectly from any cause beyond its reasonable control, including without limitation, "Acts of God," delays or failures in the Internet or related carriers and third-party equipment, acts of civil or military authority, strikes, fire, theft, delays by suppliers, or action or inaction by the other party or any third party.

**Reserves**

Compliance with Law

Customer is solely responsible for ensuring that its use of the Software is in compliance with all foreign, federal, state, and local laws and regulations, and Customer represents and warrants to SyferLock that it will comply with this subsection.

**Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**No Third Party Beneficiaries**

Except as set forth herein, no person or entity who is not a party to this Agreement shall derive any rights whatsoever hereunder as a third party beneficiary of this Agreement.

**DEFINITIONS**

"Agreement" means this License Agreement, together with agreed upon terms in the ordering documents.

"Confidential Information" means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled "confidential" or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled "confidential" or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral): the Documentation, the Software, the terms of this Agreement, information relating to the Company's products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training tools, personnel information, customer data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

"Cover Page" means the quote.

"CPU" means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Customer will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed on the quote as a single CPU.

"Documentation" means end user materials, including manuals and training materials, in any form or medium, provided by SyferLock for use with the Software.

"Effective Date" means the effective date indicated on the Cover Page.

"Maintenance and Support Services" means the services provided to Customer by SyferLock in accordance with the terms set forth herein.

"Response (Time)" means contact to Customer via phone or an electronic means.

"Resolution (Time)" means a corrective measure(s) to address an Error.

"Server" or "Enterprise Server" means a central a computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

"Service Bureau" means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

"Severity Level" means a reported anomaly or error isolated to software, and as defined herein.

"Severity Level 1 (SL1)" means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

"Severity Level 2 (SL2)" means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

"Severity Level 3 (SL3)" means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

"Severity Level 4 (SL4)" means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

"Severity Level 5 (SL5)" means an enhancement request.

"Software" means one or more of the commercially available software products, available from SyferLock, as specified on the Cover Page.
“Update” or “Upgrade” means an improved and enhanced version of the Software released by SyferLock subsequent to the version licensed by Customer hereunder that SyferLock may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that SyferLock, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

**STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

**E-1) Maintenance and Support Services**

SyferLock will provide Customer with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Customer as specified on the Cover Page; SyferLock is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SyferLock shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Customer’s neglect or misuse of the Software, (b) modification of the Software by a person or entity other than SyferLock without the prior written consent of SyferLock, or (c) any other cause beyond the reasonable control of SyferLock. SyferLock shall not be obligated to respond to requests for support from any person or entity other than a representative of Customer’s IT department that have been pre-approved in writing by SyferLock. SyferLock shall have no liability to any third party with respect to the Maintenance and Support Services.

**E-2) Versions**

Upon commercial release of a new Version, SyferLock shall provide such Version to paid-up Maintenance and Support Services Customers.

**E-3) Error Correction**

Customer may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide SyferLock all information necessary for diagnosis of the Error. SyferLock will use commercially reasonable efforts to contact Customer with respect to such reported Error within one (1) business day following the business day upon which it was submitted. SyferLock shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Customer possible custom professional services to resolve Customer’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

**E-4) Reserved**

**E-5) Reserved**

**E-6) SyferLock Personnel**

In the performance of the Maintenance and Support Services, SyferLock reserves the right to determine the assignment of SyferLock personnel, to replace or reassign such personnel and to subcontract with qualified third persons for part or all of the services. No person performing services on behalf of SyferLock hereunder shall be restricted or prevented from performing services for others that are similar to the services provided under this Agreement.

**E-7) On-Site Visits**

For purposes of performing the Maintenance and Support Services, Customer shall permit authorized SyferLock service engineers to inspect periodically during normal business hours Customer's computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Customer). If SyferLock is unable by remote telephone or on-line support to address an Error, then SyferLock, at its sole discretion, may dispatch a software engineer to Customer’s site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Customer. Dispatch shall be within two (2) business days after SyferLock has determined at its sole discretion that telephone or on-line assistance is not sufficient. If Customer requests an on-site software support visit and SyferLock reasonably determines that the reported problem is not the responsibility of SyferLock, Customer shall work with SyferLock to determine the costs reasonably incurred by the SyferLock personnel in making such visit.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support Provided</td>
<td>Second Tier*, On-Line and Phone Support during Support Hours</td>
</tr>
<tr>
<td>Support Hours</td>
<td>Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. SyferLock will reply to Customer’s call or email/on-line Error report within the time frames set forth in Section E-3 above.</td>
</tr>
<tr>
<td>Staff</td>
<td>Access to technical support staff</td>
</tr>
<tr>
<td>Diagnostics &amp; Resolution</td>
<td>Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics &amp; Resolution shall be conducted via remote assistance where possible.</td>
</tr>
</tbody>
</table>

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Customer IT staff identified pre-approved for such purpose in writing by SyferLock. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Customer personnel trained for such purpose and that no First Tier Support shall be rendered by SyferLock.
1. Definitions
Defined terms are capitalized and have the meanings indicated in the Definitions section hereunder.

2. Right to Use Software
Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use the Software, subject to the terms and conditions set forth herein. Contractor hereby grants to Ordering Activity a non-exclusive, royalty-free, non-assignable license to use, subject to the terms and conditions set forth herein, Contractor’s trademarks and trade names set forth ("Contractor Marks") solely for the purpose of using the Software in accordance with these terms. Ordering Activity agrees to use no other trademarks or trade names in connection with the Software, except for the use, in addition to the Contractor Marks, of its own trademark as approved in writing by Contractor. To the extent that Contractor will authorize any use of a composite trademark comprised out of Contractor Mark(s) and other trademarks or expressions, such composite trademark shall only be used for the purpose of using the Software in accordance with these terms and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Ordering Activity’s trademarks with the Contractor Marks must maintain the distinctness of each trademark. Subject to the foregoing, The Contractor Marks are the only trademarks and trade names that Ordering Activity is authorized by Contractor to employ in connection with the Software and Ordering Activity agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Ordering Activity’s use of the Contractor Marks shall inure to the benefit of Contractor. The license set forth in this Section 2 is not sub-licensable.

3. Restrictions on Use of Software
Ordering Activity’s use of the Software is subject to the following restrictions. Except as expressly permitted in these terms, Ordering Activity shall not, and shall not permit others to, (a) use, modify, copy (except for one back-up copy containing Contractor’s copyright notices and other Contractor Marks), or otherwise reproduce the Software in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for Service Bureau purposes, or otherwise transfer the Software or Ordering Activity’s right to use the Software; or (d) remove any copyright, trademark, proprietary rights, disclaimer, warning notice or other Contractor Marks included on or embedded in any part of the Software, (e) install, reconfigure or uninstall any Software on any CPU or Server other than by its IT personnel who have been pre-approved in writing by Contractor (such that no end-user of the Software installed on a mobile or stationary device used by such user, such as a PDA, lap top computer, tablet computer, Server or desktop computer, will be permitted or able to carry out such installation, reconfiguration or un-installation), (f) reserved or (g) distribute copies of the Software, or electronically transfer the Software from one CPU or Server to another or over a network. All rights not expressly granted to Ordering Activity are reserved by Contractor. There are no implied rights. Ordering Activity agrees to use no other license to use, subject to the terms and conditions set forth herein, Contractor’s trademarks and trade names set forth ("Contractor Marks") solely for the purpose of using the Software in accordance with these terms and upon termination of the right to use the Software any use of such composite trademark shall immediately cease and be prohibited. Any use of Ordering Activity’s trademarks with the Contractor Marks must maintain the distinctness of each trademark. Subject to the foregoing, The Contractor Marks are the only trademarks and trade names that Ordering Activity is authorized by Contractor to employ in connection with the Software and Ordering Activity agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from Ordering Activity’s use of the Contractor Marks shall inure to the benefit of Contractor. The license set forth in this Section 2 is not sub-licensable.

4. Third Parties
Ordering Activity’s use and disclosure of the Software is restricted solely to its employees, agents, consultants and/or independent contractors (collectively referred to as "employees," hereinafter) who acknowledge the confidential nature of the Software and agents, consultants and independent contractors who agree in writing to be bound by the Confidentiality Provisions set forth herein. Ordering Activity agrees that it is fully responsible for the actions of each of its employees, professional advisors, agents and independent contractors with respect to the proper use and protection of the Software, whether or not such individual is or was acting within the scope of his or her employment or authority. The rights granted to Ordering Activity herein expressly exclude the right (i) to provide training to third parties in the use of the Software unless pre-approved in writing by Contractor, (ii) to enter into time-sharing arrangements for use of the Software with third parties, (iii) to rent the Software to third parties, or (iv) to distribute or sublicense the Software to third parties. Ordering Activity shall not use the Software in any manner other than as expressly provided for herein these terms.

5. Terms of Agreement Termination
The Order shall commence upon the Effective Date and, unless terminated in accordance with the FAR, the underlying GSA Schedule Contract, and/or any applicable GSA Customer Purchase Orders. and shall remain in effect for the term specified on the Order (either perpetual or yearly subscription, each as defined below).

a) Yearly Subscription Term. If yearly subscription term is ordered, this License shall have an initial term of 12 (twelve) months.

b) Perpetual Term. If perpetual term is ordered, the term of this License shall be perpetual with respect to the version of the Software licensed hereunder.

6. Effect of Termination or Expiration
a) Each party shall immediately surrender all rights, licenses, and privileges granted under this Attachment A.

b) Each party shall immediately cease using and return all property in its possession belonging to the other party, including without limitation all Software, Documentation, and tangible embodiments of Confidential Information.

7. Reserved
8. Proprietary Rights
As between SyferLock and Ordering Activity, SyferLock shall have sole and exclusive ownership of all right, title, and interest in and to the Software and Documentation, including all associated intellectual property rights therein and thereto and in and to any other deliverable made available by SyferLock to Ordering Activity in connection with these terms. Ordering Activity acknowledges that, as between SyferLock and Ordering Activity, the Software, including associated screen displays and menu features, the SyferLock Marks and Documentation constitutes the valuable trade secrets of SyferLock and are copyrighted works owned by SyferLock and protected by federal and international copyright laws. Ordering Activity shall not permit any personnel to remove any SyferLock Marks or any other proprietary or other legends or restrictive notices contained or included in any materials provided by SyferLock. In partial consideration of Contractor through SyferLock granting Ordering Activity the rights set forth herein, Ordering Activity agrees that all intellectual property rights and all other ownership in any ideas, feedbacks, modifications and enhancements.

9. Software Maintenance and Support Services; Other Services
Ordering Activity may purchase Maintenance and Support Services, and installation, training, and development and/or consulting services together with the license of any Software. Contractor through SyferLock shall provide the Standard Maintenance and Support Services described herein below during the Warranty Period at no charge and thereafter during each maintenance term for the fees set forth in the GSA Customer Purchase Order. If selected by Ordering Activity, all such services will be provided by Contractor in accordance with the terms herein below (Software Maintenance and Support Services), and applicable Statement(s) of Work. Ordering Activity will be entitled to receive Updates only if Ordering Activity is a paid-up Maintenance and Support Services Ordering Activity at the time an Update is commercially released. Ordering Activity shall have the option to purchase Upgrades pursuant to the execution of a new GSA Customer Purchase Order.

10. Reserved

11. Reserved

12. Limited Warranty
a) Contractor warrants that for a period of thirty (30) days following initial delivery of the Software to Ordering Activity ("Warranty Period"), Contractor will use commercially reasonable efforts to resolve programming errors in the Software or Documentation to make the Software function in material conformity with the Documentation, provided that Contractor receives a written claim from Ordering Activity under this limited warranty within the Warranty Period. This Warranty does not apply if Ordering Activity or any third party changes or modifies the Software without the authorization of Contractor. Contractor does not warrant that the Software will be error free or that all errors can be remedied. Contractor warrants that the services provided by Contractor in connection with these terms will be rendered by qualified personnel and consistent with commercial practices standard in the industry. The foregoing shall be Contractor’s entire liability and Ordering Activity’s remedy under this warranty.

b) THE EXPRESS WARRANTIES GRANTED HERUNDER ARE THE ONLY WARRANTIES MADE BY CONTRACTOR WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, ANY SERVICES PROVIDED HERUNDER OR ANY DELIVERABLE MADE AVAILABLE HERUNDER, EXPRESS OR IMPLIED, AND THEY ARE MADE IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES. CONTRACTOR HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USE OF TRADE, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, FEATURES OR CAPABILITIES OF THE SOFTWARE, CONTRACTOR’S COMPUTERS AND SERVERS, INFORMATION, REPORTS OR OTHER MATTERS PRODUCED OR PROVIDED IN CONNECTION WITH THESE TERMS, EXCEPT AS REQUIRED BY FEDERAL LAW. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, CONTRACTOR SPECIFICALLY DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF ANY SOFTWARE OR FEATURE OR CAPABILITY OF THE SOFTWARE, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, SECURITY, OR OTHERWISE. CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE QUALITY OR CONTINUITY OF ORDERING ACTIVITY OR ANY THIRD-PARTY TELECOMMUNICATION OR INFORMATION SYSTEMS OR SERVICES, SERVER CONNECTION SPEEDS, OR THE FUNCTIONALITY, OPERABILITY, OR RELIABILITY OF CONTRACTOR’S OR ANY THIRD PARTY’S DATA SECURITY FEATURES OR SYSTEMS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS.

13. Reserved

14. Reserved

15. Miscellaneous
a) Export Control
Ordering Activity acknowledges that the export of any Software is or may be subject to export or import control and Ordering Activity agrees that any Software or the direct or indirect product thereof will not be exported (or re exported from a country of installation) directly or indirectly, unless Ordering Activity obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law.

b) U.S. Government Restricted Rights
Use, duplication, or disclosure of the Software by the U.S. government is subject to the restrictions set forth in subparagraph (C)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and subparagraphs (C)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

c) License subject to Licensor’s Rights
Ordering Activity acknowledges that portions of the Software may have been licensed to Contractor by one or more third parties. All rights and obligations provided by Contractor to Ordering Activity hereunder shall be limited to the extent that such underlying rights and obligations have been provided to Contractor.

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f) Reserved.
g) Reserved
h) Reserved
i) Reserved
j) Reserved
k) Reserved
l) Reserved
m) Reserved
n) Reserved
o) Reserved
p) Reserved

DEFINITIONS
“Agreement” means this License Agreement.

“Confidential Information” means non-public information or materials (including all deliverables made available hereunder) that, if disclosed in written form, is labeled “confidential” or, if disclosed orally, is identified as confidential and submitted to the other party within thirty (30) days in a writing labeled “confidential” or by a similar legend, provided, however, that the following types of information are always to be considered Confidential Information, regardless of compliance with the foregoing marking requirements, regardless of format, written or oral: the Documentation, the Software, information relating to the Company’s products and the marketing thereof, product development plans and general business strategies, forecasts, research activities, pricing models, training materials, training personnel information, Ordering Activity data, trade secrets, techniques, know-how, formulas, processes, product ideas, inventions, improvements, copyrightable or patentable materials, schematics, and other technical, business and financial information relating to Company and the Software.

“Cover Page” means the first two pages of this Agreement.

“CPU” means the single processing system consisting of either a single or multiple processor unit and its associated RAM memory and disk storage units, regardless of platform or operating environment, on which Ordering Activity will load, execute, and use the Software. For all purposes hereof, each virtual machine functioning as a single CPU that can be identified by an IP address shall also be considered a CPU, shall be priced as a single CPU and shall be listed in ordering documents as a single CPU.

“Documentation” means end user materials, including manuals and training materials, in any form or medium, provided by Contractor for use with the Software.

“Effective Date” means the effective date indicated on the quote.

“Maintenance and Support Services” means the services provided to Ordering Activity by Contractor in accordance with the terms set forth herein.

“Response (Time)” means contact to Ordering Activity via phone or an electronic means.

“Resolution (Time)” means a corrective measure(s) to address an Error.

“Server” or “Enterprise Server” means a central computing system which hosts one or more of the applications listed on the Cover Page and is accessed by one or more named users.

“Service Bureau” means a person or entity that uses the Software to deliver services or the functionality of the Software to a third party where such person or entity receives directly or indirectly in return anything of value.

“Severity Level” means a reported anomaly or error isolated to software, and as defined and set for the in section G-8 of herein.

“Severity Level 1 (SL1)” means an error isolated to software that renders product inoperative or causes the product to fail catastrophically, major system impact or system down (e.g. users cannot logon to their system).

“Severity Level 2 (SL2)” means an error isolated to software which causes one of the GridCore servers to fail. The user can still logon onto their system due to the failover process.

“Severity Level 3 (SL3)” means an error isolated to software that substantially degrades the performance of the product or materially restricts business with no work around, moderate system impact, system hanging.

“Severity Level 4 (SL4)” means a reported anomaly in the licensed product which does not substantially restrict the use of one or more features of the licensed product to perform necessary business functions. Additionally, an error isolated to software which materially restricts business which has a work around.

“Severity Level 5 (SL5)” means an enhancement request.

“Software” means one or more of the commercially available software products, available from Contractor, as specified on the Cover Page.

“Update” or “Upgrade” means an improved and enhanced version of the Software released by Contractor subsequent to the version licensed by Ordering Activity hereunder that Contractor may make available to licensees of the Software for an additional fee.

“Version” means any update, version, release, revision, patch, bug fix or modified form of the Software that Contractor, in its sole discretion, elects to make available at no additional charge to licensees of the Software that have purchased Maintenance and Support Services.

“Warranty Period” has the meaning set forth in Section 12(a).

STANDARD SOFTWARE MAINTENANCE AND SUPPORT SERVICES

E-1) Maintenance and Support Services
Contractor through SyferLock will provide Ordering Activity with the Software Maintenance and Support Services set forth in the table below for the most current release of the Software and the most current previous release of the Software. The Maintenance and Support Services shall apply only to the Software licensed by Ordering Activity as specified on the Cover Page; Contractor is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. Contractor shall not be obligated to provide Maintenance and Support Services if such services are required as a result of (a) Ordering Activity's neglect or misuse of the Software, (b) modification of the Software by a person or entity other than Contractor without the prior written consent of Contractor, or (c) any other cause beyond the reasonable control of Contractor. Contractor shall not be obligated to respond to requests for support from any person or entity other than a representative of Ordering Activity's IT department that have been pre-approved in writing by Contractor. Contractor shall have no liability to any third party with respect to the Maintenance and Support Services.

E-2) Versions
Upon commercial release of a new Version, Contractor through SyferLock shall provide such Version to paid-up Maintenance and Support Services Ordering Activities.

E-3) Error Correction
Ordering Activity may call to report an “Error” in the Software (i.e., a failure of the Software to function in material conformity with the Documentation) that requires at least Second Tier (as defined below) support services during the hours specified in the table below and shall provide Contractor through SyferLock all information necessary for diagnosis of the Error. Contractor shall use commercially reasonable efforts to contact Ordering Activity with respect to such reported Error within one (1) business day following the business day upon which it was submitted. Contractor shall make commercially reasonable efforts to either: provide a software solution or workaround; provide an avoidance procedure; address the request in the next revision/iteration; or discuss with Ordering Activity possible custom professional services to resolve Ordering Activity’s request. The foregoing support services during the hours specified in the table below are unlimited in any given month.

E-4) Term
The initial term of Maintenance and Support Services shall be one year (the “Term”) commencing on the expiration of the Warranty Period if Ordering Activity has elected a perpetual term on the Cover Page, and commencing on the Effective Date if Ordering Activity has elected a Yearly Subscription term on the Cover Page. In the event that Ordering Activity elects to reinstate Maintenance and Support Services following termination of such services by Ordering Activity, execution of a new GSA Customer Purchase Order will be required.

E-5) On-Site Visits
For purposes of performing the Maintenance and Support Services, Ordering Activity shall permit authorized Contractor through SyferLock service engineers to inspect periodically during normal business hours Ordering Activity's computer systems operating the Software (it is agreed that such inspection shall be done, to the extent commercially reasonable, concurrently with on-site visits initiated following a reported Error (or other service request) by Ordering Activity). If Contractor is unable by remote telephone or on-line support to address an Error, then Contractor, at its sole discretion, may dispatch a software engineer to Ordering Activity’s site to address the Error. The travel and other reasonably-incurred expenses of such on-site assistance (excluding the personnel cost) shall be borne by Ordering Activity and shall be billed to Ordering Activity in accordance with the Federal Joint Travel Regulations. Dispatch shall be within two (2) business days after Contractor has determined at its sole discretion that telephone or on-line assistance is not sufficient.

Deliverable Support
Support Provided Second Tier*, On-Line and Phone Support during Support Hours
Support Hours Monday – Friday 9 A.M. to 5 P.M. Eastern time Excluding National Holidays. Contractor will reply to Ordering Activity’s call or email/on-line Error report within the time frames set forth in Section E-3 above.
Staff Access to technical support staff
Diagnostics & Resolution Services shall include making commercially reasonable efforts for the purposes of (i) diagnosis of the Error and (ii) a resolution of the Error. Diagnostics & Resolution shall be conducted via remote assistance where possible.

* Second Tier Support shall mean support requests that have been reviewed and assessed by one or more members of the Ordering Activity IT staff identified pre-approved for such purpose in writing by Contractor. It is agreed and clarified that First Tier Support (defined as support request originating from end users) shall be rendered by Ordering Activity personnel trained for such purpose and that no First Tier Support shall be rendered by Contractor.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached SyncDog, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.
Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
SYNCDOG, INC

SYNCDOG, INC. LICENSE, WARRANTY AND SUPPORT TERMS

SYNCDOG LICENSE AGREEMENT

SyncDog Software; Ordering.

SyncDog Software. SyncDog licenses its software products on a subscription basis. Software is made available as a software-only (or “virtual”) solution, as a hosted solution, or on a physical appliance. Ordering Activity’s rights to use SyncDog software apply only to the SyncDog software licensed under an applicable Order.

Reserved.

Delivery. For downloadable versions of the SyncDog software, Ordering Activity may download the software from a link provided by SyncDog. For hosted versions of the SyncDog Solution, access shall be provided through a password-protected web interface.

Definitions. Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

“SyncDog Solution” means the object code versions of the SyncDog software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open Source Software, which is provided pursuant to Section 3.5.

“Affiliate” means an entity, which directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement.

“Client Software” means the object code versions of the desktop client software for the licensed SyncDog Solution.

“Designated User” means the number of users for whom Ordering Activity has purchased rights to use the SyncDog Solution, as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 5.3 below. Designated Users may consist of: (i) employees and independent contractors of Ordering Activity and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Ordering Activity and its Affiliates.

“Documentation” means SyncDog’s standard written materials and specifications for the SyncDog Solution licensed by Ordering.

“Effective Date” means (i) for Orders submitted to SyncDog, the date that SyncDog accepts the Order; or (ii) for orders submitted to a Channel Partner on a form other than an SyncDog Order form, the date SyncDog makes the software available to Ordering Activity for download or, for software provided on a physical appliance, the date of shipment.

“Hardware” means computer equipment, if any, purchased from SyncDog by Ordering.

“Hosted Services” means the remote access and use of a hosted version of the SyncDog Solution as hosted by SyncDog.

“License Term” means the subscription period for use of the SyncDog Solution, as identified on the applicable Order.

“Maintenance Support Services” means the support services provided by SyncDog as described in Section 4.

“Release” means a version of the SyncDog Solution for which SyncDog charges a separate fee.

“Server Software” means the object code server software version of the SyncDog Solution, as identified on the applicable Order.

“Update” means additions, upgrades, or modifications to the SyncDog Solution. Updates do not include Releases.

License Terms.
License Grant. SyncDog hereby grants to Ordering Activity during the License Term, a non-exclusive, non-transferable and non-sublicenseable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users; and (b) use, access, and for SyncDog not hosted by SyncDog, copy the Server Software on supported environments for up to the number of copies identified on the Order for Ordering Activity's internal business purposes.

License Restrictions. Ordering Activity shall not copy the SyncDog Solution except to make a reasonable number of copies for the purposes of security back-up, relocation or disaster recovery; provided, however, that Ordering Activity may make and use the number of copies of Client Software that it deems appropriate unless the number of copies of Client Software is restricted as set forth on the applicable Order. The SyncDog Solution may not be modified, disclosed, reverse-engineered, disassembled, or decompiled except and to the extent allowed by applicable law. Ordering Activity shall not transfer, sell, license, sublicense, outsource, rent or lease the SyncDog Solution or use it for service bureau or other third-party use. All rights not expressly granted hereunder are reserved. Ordering Activity is solely responsible and liable for the use of and access to the SyncDog Solution by Designated Users and for all files and data transmitted, shared, or stored using the SyncDog Solution. Ordering Activity acknowledges and agrees that the licenses granted herein are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SyncDog with respect to future functionality or features.

Ownership. All right, title, and interest, including without limitation all intellectual property rights, in and to the SyncDog Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of SyncDog and its licensors. Ordering Activity shall not remove, and shall reproduce on any permitted copies, all proprietary, copyright, trademark and trade secret notices contained in or placed upon the SyncDog Solution. Ordering Activity will take reasonable precautions (including the precautions used for Ordering Activity’s own confidential information) to prevent the unauthorized use or disclosure of the SyncDog Solution, the Documentation, or the results of any performance or benchmark tests of the SyncDog Solution.

Maintenance Support Services. SyncDog provides Maintenance and Support Services for the License Term at no additional charge. As part of Maintenance Support Services, SyncDog will make available to Ordering Activity all Updates that SyncDog makes generally available to its other Ordering Activities.

5.4 Automated Reporting. The Server Software periodically transmits technical data to SyncDog. That data does not include the content of any emails or attachments, file names or any personally identifiable information. The transmitted information contains aggregate non-personal usage information for each day the SyncDog Solution is in use, including but not limited to: (i) the number and type of messaging senders and recipients, (ii) account usage information, (iii) technical data about messaging transmissions and management; and (iv) the type of SyncDog Solution features used and related data. Ordering Activity will not in any way attempt to prevent the transmission or delivery of such usage data. SyncDog uses such data only for SyncDog’s own internal business purposes. SyncDog only discloses such data (a) in an aggregated form with data from other Ordering Activities in which neither Ordering Activity’s identity nor that of Designated Users are revealed, or (b) as required by applicable law.

Reserved.

Limited Warranties and Disclaimer.

Limited SyncDog Solution and Hardware Performance Warranty.

Warranty. SyncDog warrants to Ordering Activity that: (i) the media on which the SyncDog Solution is furnished under normal use will be free from material defects in materials and workmanship for a period of thirty (30) days after the delivery date; (ii) the Hardware sold to Ordering Activity, if any, will be free from defects in materials and workmanship for a period of one (1) year from the date it is furnished to Ordering Activity; and (iii) the SyncDog Solution and Open Source Software will operate in substantial conformance with the Documentation for a period of thirty (30) days after the delivery date.

Remedy. Any warranty claim must be made by written notice to SyncDog within the applicable warranty period. SyncDog's liability and Ordering Activity's remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media, Hardware or SyncDog Solution that does not meet SyncDog’s limited warranty and if SyncDog is unable to repair or replace defective components of the SyncDog Solution within a reasonable period of time (not to exceed thirty (30) days from SyncDog’s receipt of Ordering Activity’s notice), this Agreement shall terminate, in which case: (i) SyncDog shall (a) refund all license fees received by SyncDog for the SyncDog Solution (and Hardware fees, if any); and (b) the fees received by SyncDog for the unexpired term of Maintenance Support Services, and (ii) Ordering Activity shall (a) uninstall and destroy the nonconforming SyncDog Solution and certify in writing that it has done the same; and (b) return the Hardware, if any, at SyncDog’s expense. SyncDog is not liable under any warranty or otherwise for defects or liability caused by the use of the SyncDog Solution or Hardware in any manner or for any purpose other than that for which it was licensed to Ordering Activity, or for causes not within SyncDog’s reasonable control. Warranties are void if failures are caused in whole or in part by accident, abuse, misuse, or modifications not authorized in writing by SyncDog.
Virus Protection. SyncDog warrants to Ordering Activity that, to the best of SyncDog’s knowledge as of the date of delivery, the SyncDog Solution will be free from any viruses, spyware, tros, or disabling or malicious code, provided that Server Software includes disabling mechanisms that prevent access to the Server Software following expiration of the License Term.

Limited Services Warranty. SyncDog warrants that for a period of thirty (30) days following installation or professional services, such services will be provided in a professional and workmanlike manner consistent with generally accepted industry standards. As Ordering Activity’s sole and exclusive remedy and SyncDog’s sole and exclusive liability for breach of the foregoing warranty, SyncDog will, at its sole option and expense, and provided that SyncDog is notified of any such breach during the warranty period, re-perform the services, or if SyncDog is unable to perform the services as warranted, refund the fees paid to SyncDog for the services.

Disclaimer. THE EXPRESS LIMITED WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SYNCDOG DOES NOT WARRANT THAT THE USE OF THE SYNCDOG SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. SYNCDOG. MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS OR SERVICES PROVIDED BY ITS CHANNEL PARTNERS OR ANY HOSTED SERVICES PROVIDERS, AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACT OR OMISSION OF ANY CHANNEL PARTNER OR HOSTED SERVICES PROVIDERS. NO CHANNEL PARTNER OR HOSTED SERVICES PROVIDER SHALL HAVE ANY AUTHORITY TO BIND SYNCDOG TO ANY TERMS OR CONDITIONS OTHER THEN THOSE EXPRESSLY SET FORTH HEREIN.

Reserved.

Reserved.

Reserved.

11. Government Licensing. If the SyncDog Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the SyncDog Solution and accompanying materials constitute “commercial computer software” and “commercial computer software documentation” under paragraphs 252.227.14 of the DoD Supplement to the Federal Acquisition Regulations (“DFARS”) or any successor regulations, and the Government is acquiring only the usage rights specifically granted in this Agreement; (ii) the SyncDog Solution constitutes “restricted computer software” under paragraph 52.227-14 of the Federal Acquisition Regulations (“FAR”) or any successor regulations and the government’s usage rights are defined in this Agreement and the FAR.
TANIUM
1625 SHATTUCK AVE., SUITE 200
BERKELEY, CA 94709

End User License Agreement

GRANT OF LICENSE;

License. Affiliates and Managing Parties. During the term of this Agreement, Tanium grants Customer a revocable, nontransferable, nonexclusive license to use the proprietary software in object code form and related proprietary components provided by Tanium to Customer in connection with this Agreement (the "Licensed Software") in accordance with the Documentation for Customer's internal use only during the applicable Licensed Term. The term "Licensed Software" will include Tanium's then-current documentation made generally available by Tanium to its licensees for use of the Licensed Software, as updated from time-to-time by Tanium in its discretion (the "Documentation"), and any updates, bug fixes, and versions (collectively, "Enhancements") made generally available by Tanium in connection with a Support Services entitlement or subscription-based license grant to use the Licensed Software (the "License").

License Metric. The Licensed Software is licensed on a per Managed OS Instance basis. A "Managed OS Instance" means a physical or virtual hardware device where the Licensed Software can be installed, and wherethat device is capable of processing data. Managed OS Instances include any of the following types of computer devices: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homeworker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, or portable workstation connected or connecting to a server or network. In the case of a virtual system, in addition to the virtual Managed OS Instances, the hypervisor is considered to be a single instance if Licensed Software is installed at the hypervisor level.

Affiliates and Managing Parties. The term "Affiliate" means an entity that is controlled by, controls, or is under common control of the Customer, where "control" means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Licensed Software provided that (a) the Affiliate only uses the Licensed Software for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate’s use of the Licensed Software in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer’s information technology resources (“Managing Party”), Customer may allow its Managing Party to use Licensed Software, provided that (a) the Managing Party only uses the Licensed Software for Customer’s internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party’s use of the Licensed Software in compliance with the terms and conditions of this Agreement.

System Configuration. Hardware and software requirements for proper installation and use of the Licensed Software are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software and hardware, including, but not limited to, third-party software, scripts or other technologies that may interoperate and be used in conjunction with the Licensed Software, all of which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement.

Restrictions. Customer’s license to the Licensed Software is subject to the following license conditions and restrictions:

Customer’s Benefit. Customer must not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use
the Licensed Software for anyone’s benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use.

Limitations on Copying and Distribution. Customer must not copy or distribute the Licensed Software, whether directly or indirectly, except to the extent that copying is necessary to use the Licensed Software for the purposes set forth herein. Customer may make a single copy of the Licensed Software for backup and archival purposes.

Limitations on Reverse Engineering and Modification. Except to the extent such a limitation is expressly prohibited by applicable law, Customer must not reverse engineer, decompile, disassemble, modify or create derivative works of the Licensed Software whether directly or indirectly.

Sublicense, Rental and Third Party Use. Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Licensed Software, or directly or indirectly permit any third party to use or copy the Licensed Software. Customer must not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software.

Proprietary Notices. Customer must not remove any proprietary notices (e.g., copyright and trademark notices) from the Licensed Software. Customer must reproduce the copyright and all other proprietary notices displayed on the Licensed Software on each permitted back-up or archival copy.

Use in Accordance with Documentation. All use of the Licensed Software shall be in accordance with the Documentation and this Agreement.

Use of the Licensed Software. Customer shall be solely responsible and fully liable for its use of the Licensed Software, including, but not limited to, for ensuring that the use of the Licensed Software is in compliance with all applicable foreign, federal, state and local laws, rules, and regulations.

Tanium’s Intellectual Property. Customer shall not use the Licensed Software or Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Licensed Software.

Competition. Customer shall not use the Licensed Software or Tanium Confidential Information in a manner to compete with Tanium or to assist a third party in competing with Tanium, or for benchmarking or competitive analysis.

The Licensed Software is licensed to Customer, not sold. The Licensed Software, Documentation, and Services provided by Tanium contain material that is protected by United States copyright, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Licensed Software, Documentation, and Services provided by Tanium whether or not registered will remain the sole and exclusive property of Tanium or its licensors and suppliers, as applicable. Customer shall notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Licensed Software and Customer shall cooperate and assist Tanium in discovering, preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Licensed Software.

If Customer enters into a contract with a third party that manages Customer’s information technology resources (“Managing Party”), Customer may allow its Managing Party to use the Licensed Software on Customer’s Managed OS Instances, provided that (a) the Managing Party only uses the Licensed Software for Customer’s internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party’s use of the Licensed Software in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.
Term and Termination. Unless otherwise agreed in a Schedule, the License(s) will commence upon the initial delivery of the license keys that allow Customer to download or access the Licensed Software (“Delivery”) and will continue for the term of the applicable License(s) or until this Agreement is terminated as provided in this Section, whichever occurs first (the “Licensed Term”). When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tanium shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief.

FEES AND EXPENSES; DELIVERY AND TAXES.

Fees and Expenses. Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner (“Reseller”), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. This Agreement will govern Tanium’s provision and Customer’s license to the Licensed Software and Services whether Customer orders the Licensed Software and Services from Tanium or a Reseller. Unless Customer orders directly from a Reseller, Customer will pay the Licensed Software and Services fees directly to Tanium and Tanium will fulfill all orders. The parties will enter into a schedule(s) or purchase order(s) that describe the Licensed Software and/or Services to be acquired by Customer (each a “Schedule”). This Agreement applies to any Schedule that references this Agreement. When a purchase order will be utilized as a Schedule, the purchase order must reference and be made pursuant to this Agreement and the applicable Quote. Notwithstanding anything else to the contrary, any terms and conditions in the purchase order that conflict or are inconsistent with the current approved Tanium-provided quote issued to the Customer for the Licensed Software and Services in accordance with the GSA Schedule Contract and GSA Schedule Price List (the “Quote”) or this Agreement will have no force or effect. The purchase order will not add or remove terms from the Quote or this Agreement. Tanium further reserves the right to expressly reject any purchase order that does not comport to the requirements of this Section.

Unless otherwise set forth in a Schedule: (a) fees for Licenses and Support Services will be billed, due, and payable fully in thirty (30) days after Customer’s receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Licensed Software and Services ordered (less any applicable credits and deductions and plus any applicable shipping and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium’s bank account or the instrument enabling immediate collection of the entire amount due is received. All payments not made by Customer when due will be subject to late charges of the maximum amount permitted under the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

Taxes. Tanium shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Taxes do not include any taxes payable by Tanium for its employees or for its net income.

All Licensed Software will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer must provide Tanium with a physical address of the download site for the Licensed Software. This address will be used as the “shipped to address” on all invoices.

SERVICES; SYSTEMS INFORMATION.

Services. The term “Services” means, collectively, the Support Services, training and any other services acquired by Customer from Tanium. If Customer has a current Support Services entitlement or License
governed by this Agreement, then Tanium will provide Customer with the support and maintenance services described in Exhibit A (the “Support Services”). Once the relevant Support Services entitlement or License has expired, Customer has no further right to receive any Support Services. All Services are provided subject to the terms and conditions of this Agreement.

**Systems Information.** During the term of the Agreement, Customer may provide to Tanium or Tanium’s Licensed Software and Services may collect information including, but not limited to, performance and analytics information relating to Customer’s use of Tanium’s products and services, metadata relating to Customer’s networks and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, “Systems Information”). Customer agrees that Tanium may use Systems Information to provide Customer with technical support and to research, develop, and improve

Tanium’s products and services, and, on an aggregated, anonymized basis, for marketing purposes (the “Permitted Purpose”). To the extent Systems Information constitutes Customer’s Confidential Information, Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality). For clarity, any data that is derived by Tanium from its use of the Systems Information for the Permitted Purpose, such that the Customer cannot be identified from the derived data, is not considered Customer’s Confidential Information. Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists on its systems. To the extent that Tanium obtains Personal Data in connection with providing the Licensed Software and Services, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at http://www.tanium.com/dpa. Because Customer’s endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. Customer may redact, edit, or otherwise suppress any Systems Information, including Personal Data, prior to providing to Tanium for processing. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose. In addition, Tanium may process, use or disclose such Personal Data only: (i) in furtherance of its obligations pursuant to this Agreement; (ii) as required or permitted by law; (iii) as directed or instructed by Customer; or (iv) with prior informed consent of the data subject to whom the Personal Data pertains. As between Customer and Tanium, the foregoing states Tanium’s entire obligation with respect to Personal Data.

**Limited Warranty; Disclaimer.** Tanium warrants that (i) for a period of ninety (90) days from the Effective Date, the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Licensed Software prior to Delivery to Customer for viruses, Trojan horses, and other malicious code. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Licensed Software. This warranty is contingent upon the proper installation and use of the Licensed Software as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Licensed Software if not operated in a manner recommended in the Documentation. Any modification to the Licensed Software by Customer or any third party or failure by Customer to implement any Enhancements to the Licensed Software may void Tanium’s obligation to provide Support Services and Tanium’s warranties under this Section. EXCEPT AS PROVIDED IN THIS SECTION, THE LICENSED SOFTWARE AND ALL SERVICES ARE PROVIDED ON AN “AS-AVAILABLE,” “AS-IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS, OR WILL CAUSE CUSTOMER TO BE COMPLIANT WITH APPLICABLE LAW; THAT CUSTOMER’S USE OF THE LICENSED SOFTWARE OR SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY
OBLIGATIONS; THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. TANIUM DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE OR RESULTS OF THE LICENSED SOFTWARE OR SERVICES. TANIUM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, SCRIPTS, CONTENT OR OTHER TECHNOLOGIES. NO ORAL OR WRITTEN INFORMATION OR ADVICE, INCLUDING, BUT NOT LIMITED TO, SUGGESTIONS, ROUTINES, SCRIPTS OR QUERIES, PROVIDED BY TANIUM SHALL CREATE ANY ADDITIONAL TANIUM WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF WARRANTIES OR TANIUM’S LIABILITY OR OBLIGATIONS UNDER THIS AGREEMENT. TANIUM HAS NO RESPONSIBILITY OR LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE LICENSED SOFTWARE. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer’s remedies will be limited to the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer) and 9 (Limitation of Liability).

Indemnities. If a third party claims that Customer’s licensed use of the Licensed Software in compliance with the terms of this Agreement infringes a United States: (i) patent, (ii) copyright, or (iii) trade secret of that third party, Tanium, at its sole cost and expense, will have the right to intervene to defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Tanium. The foregoing obligation of Tanium is contingent upon Customer promptly notifying Tanium in writing of such claim, permitting Tanium authority to control the defense or settlement of such claim, and providing Tanium reasonable assistance in connection therewith. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to either: (i) procure for Customer the right or license to continue to use the Licensed Software; or (ii) modify the Licensed Software to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Licensed Software, prorated for use over the lesser of: (i) reserved (ii) the remaining unused Licensed Term. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of the “Excluded Claims”: (i) the use or combination of the Licensed Software with any third-party or Customer hardware, software, products, data or other materials; (ii) modification or alteration of the Licensed Software by anyone other than Tanium; (iii) Customer’s failure to implement any fix or release that would have avoided the claim; (iv) Customer’s use of the Licensed Software in excess of the rights granted in this Agreement; (v) any third-party components; or (vi) a business method or process that is inherent to Customer’s business. The provisions of this Section state Customer’s sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed.

Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIUM OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH THE PARTIES EXPRESSLY AGREE SHALL INCLUDE, WITHOUT LIMITATION AND REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR LOST PROFITS, LOST DATA AND BUSINESS
INTERRUPTION, COMPUTER FAILURE AND MALFUNCTION, AND/OR COST OF REPLACEMENT GOODS AND SERVICES OR ANY OTHER DAMAGES ARISING OUT OF OR RELATED TO THE LICENSED SOFTWARE, SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTIONS OR ITEMS DISCLAIMED IN SECTION 7 (LIMITED WARRANTY; DISCLAIMER), EVEN IF TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS LICENSORS AND SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR PURCHASE ORDER(S) GIVING RISE TO SUCH CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMER CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT THEMSELVES IF AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER’S AGREEMENT TO THESE TERMS, THE FEE CHARGED FOR THE LICENSED SOFTWARE WOULD BE HIGHER. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH ACTION ACCRUED. IN THE EVENT TANIUM MAKES A REFUND PURSUANT TO AN EXPRESS REMEDY UNDER THIS AGREEMENT, ANY SUCH MONIES REFUNDED BY TANIUM WILL BE APPLIED TO THE MEASURE OF DAMAGES SUBSEQUENTLY AWARDED BY THE COURT, IF ANY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

Confidentiality. Each party agrees to hold the other party’s (and of its affiliates disclosed in connection with this Agreement) Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such Confidential Information), and not to make each other’s Confidential Information available in any form to any third party (other than their authorized agents) or to use each other’s Confidential Information for any purpose other than as specified in this Agreement (subject, in all cases, to the rights granted to Tanium in Section 11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed, used or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer must ensure that any Managing Party will hold Tanium’s Confidential Information in confidence and otherwise comply with this Section. “Confidential Information” shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other or its affiliates in connection with this Agreement which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Licensed Software. Each party’s Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information which:

(i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party’s Confidential Information; or (iv) is approved for release by the disclosing party in writing. Notwithstanding the foregoing, Customer acknowledges and agrees that Tanium may use Customer’s Confidential Information internally at Tanium for sales/support analytics and training. In the event the parties previously executed a non-disclosure agreement related to Customer’s prospective license of the Licensed Software or Services, the terms of this Section 10 (Confidentiality) will supersede such non-disclosure agreement from and after the Effective Date.

EVALUATION SOFTWARE AND FEEDBACK.

Evaluation Software. This Section only applies to Licensed Software designated by Tanium as “Evaluation Software.” Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-
exclusive limited license to use the Evaluation Software for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following Delivery of the Evaluation Software ("Evaluation Period"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. TANiUM PROVIDES THE EVALUATION SOFTWARE TO CUSTOMER "AS-IS" AND GIVES NO REPRESENTATION, WARRANTY, INDEMNITY, GUARANTEE OR CONDITION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANiUM'S TOTAL AGGREGATE LIABILITY AND THAT OF ITS LICENSORS, SUPPLIERS, AND PARTNERS IS EXPRESSLY LIMITED TO FIVE HUNDRED DOLLARS ($500) FOR ANY AND ALL DAMAGES REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY. Because the Evaluation Software is provided "AS-IS," Tanium may not provide Services for it. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Software.

Feedback. Customer may provide suggestions, comments, or other feedback (collectively, “Feedback”) to Tanium with respect to its products and services, including the Licensed Software. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Tanium’s business, including enhancement of the Licensed Software. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

Beta Software. If the Licensed Software released to Customer has been identified by Tanium as "Beta Software," then the provisions of Section 11.1 (Evaluation Software) will apply, in addition to this Section 11.3. Customer is under no obligation to use any Beta Software; doing so is in Customer’s sole discretion. Because Beta Software can be at various stages of development, operation and use of the Beta Software may be unpredictable. Customer acknowledges and agrees that: (1) Beta Software has not been fully tested; (2) use or operation of Beta Software should not occur in a production environment; (3) Customer’s use of Beta Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (4) Customer will inform its personnel regarding the nature of the Beta Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide Services for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) or release(s) of the Beta Software that it received from Tanium.

Governing Law/Jurisdiction. This Agreement will be governed by and construed in accordance with the Federal laws in force in the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

General. This Agreement, together with the attached Data Processing Addendum, Schedules and any exhibits attached hereto, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation pre-printed terms and conditions on Customer’s purchase order, with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. All notices, demands, or consents given under this Agreement will be in writing to the address on Page 1 of this Agreement, “Attention Legal Department.” Notices will be considered when delivered personally, or three (3) days after deposit in the mail (registered mail), or one (1) day after being sent by overnight courier. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions shall survive any termination or expiration of this Agreement:
Sections 2 (Restrictions), 4 (Term and Termination), 5.1 (Fees and Expenses; Delivery and Taxes), 6.2 (Systems Information), 9 (Limitation of Liability), 10 (Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), and Customer's indemnity obligations hereunder. Tanium may assign any of its rights or obligations hereunder as it deems necessary. It is expressly understood and agreed that in the event any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth herein shall remain in effect.

Export. Customer acknowledges that the Licensed Software is subject to the export control, economic sanctions, and import laws, regulations and requirements of the United States and other countries including European Union regulations. Without limiting the foregoing, Customer agrees that it will not export, re-export, or re-transfer the Licensed Software or Services in contravention of the foregoing, or provide the Licensed Software or Services to any person, in any jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer acknowledges that certain Licensed Software that contains encryption may be subject to export and/or import restrictions in other countries. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer acknowledges it is Customer's ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale. In addition to the other requirements of this Section, Customer shall be solely responsible for complying with the import laws and regulations and other relevant restrictions, if any, of any country into which Customer imports the Licensed Software or Services. Customer will not export or use any Licensed Software or Services in any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government.

U.S. Government Rights. The Licensed Software is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of any agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

Audit. During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer's use of the Licensed Software ("Audit"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer's deployment of the Licensed Software. An Audit may also include the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and Customer's compliance with the terms of this Agreement. Tanium (or an auditor retained by Tanium) shall provide Customer at least five (5) days' advance notice of an Audit. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer's normal business hours and are subject to Government security requirements. The cost of the Audit shall be borne by Tanium. Customer will immediately remit payment for any Licensed Software deployed in excess of the Licensed Software licenses purchased by Customer under this Agreement.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Tanium and Customer have executed this Agreement to become effective as of the Effective Date.
EXHIBIT A

TANIUM SUPPORT SERVICES TERMS AND CONDITIONS

TANIUM WILL PROVIDE SUPPORT SERVICES TO CUSTOMER ACCORDING TO THE AGREEMENT AND SUPPORT SERVICES TERMS AND CONDITIONS SET FORTH BELOW. CAPITALIZED TERMS NOT OTHERWISE DEFINED HEREIN WILL HAVE THE MEANING SET FORTH IN THE AGREEMENT.

Definitions.

“Error” means a failure of the Licensed Software to perform in substantial accordance with the Documentation.

“Error Correction” or “Correction” means the use of reasonable commercial efforts to correct Errors.

“Fix” means the repair or replacement of object or executable code versions of Licensed Software to remedy an Error.

“Previous Sequential Release” means at any time the release of Licensed Software that has been replaced by the then-current release of the same Licensed Software. Notwithstanding anything else, a Previous Sequential Release will be
supported by Tanium only for a period of three (3) months after release of the then-current release. For example, Tanium will support 1.0 for a period of three (3) months following release of 1.1.
“Severity 1 Error” means an Error that renders Licensed Software inoperative or causes Licensed Software to fail catastrophically.

“Severity 2 Error” means an Error that substantially degrades the performance of Licensed Software or materially restricts Customer’s use of the Licensed Software.

“Severity 3 Error” means an Error that causes only a minor impact on the performance of Licensed Software or Customer’s use of Licensed Software.

“Support Services” or “Support” means Tanium support services as described in Section 4 (Standard Support Services), Section 6 (Premium Support), and/or Section 7 (Premium Onsite Support and Enterprise Services Resources), as applicable.

“Support Request” means a Customer request made to Tanium in accordance these Support Services Terms and Conditions.

“Telephone Support” means technical support telephone assistance provided by Tanium to the Technical Support Contact concerning the installation and use of the then-current release of Licensed Software and the Previous Sequential Release.

“Technical Support Contact” means the person designated by Customer that may contact Tanium for support.

“Workaround” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of Licensed Software.

**Support Term; Renewal Fees.** Unless otherwise set forth in a Schedule, the term of Support shall be one (1) year from the Support order date (the “Initial Support Term”). After the Initial Support Term, the Support may be renewed by both parties exercising an option, or a new purchase order, and all applicable fees shall be due at the commencement of each successive one (1) year period or other period specified in a Schedule (each a “Renewal Support Term”). The Initial Support Term and any Renewal Support Terms, if any, are referred to collectively as the “Support Term.” Unless otherwise set forth in a Schedule, following the Initial Support Term, Tanium may change the fees for Support set forth above by providing Customer with thirty (30) days’ written notice in advance of the effective date of any change in such fees.

RESERVED.

**Support Services.**

*General.* During the Support Term, Tanium shall provide Customer with (i) reasonable support for Customer’s Technical Support Contact(s), (ii) Error Correction, and (iii) Enhancements that Tanium in its sole discretion makes generally available to its other customers at no charge. Support Services are available Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium will
endeavor to work with Customer during Customer’s normal business hours in the time zone in which the Customer located. Customer may designate up to a maximum of two (2) Technical Support Contacts with Tanium’s standard Support Services. Tanium is only obligated to provide Support Services to Customer in countries supported by Tanium.

Customer may contact Tanium for support by:

- submitting a request via the Tanium Support Portal;
- emailing support@tanium.com; or
- calling Telephone Support (1 510 900 9443).

Tanium will make commercially reasonable efforts to assist Customer with the installation and configuration of the Licensed Software, during the hours specified in Section 4.1 as part of Support Services, which will include, but not be limited to:

Specifying hardware and software requirements; and
Reviewing Tanium’s pre-deployment and production deployment checklist(s), as applicable.

Customer will support remote delivery via teleconference or screen sharing application (e.g., WebEx). Customer will assign qualified technical administrators and project management personnel to perform hands-on installation and configuration tasks. Customer will make a good-faith effort to ensure timeliness of deployment and Customer will provision alternate physical or virtual server(s) to permit initial agent deployment, if necessary; and Customer will ensure server(s) are in one location. Unless otherwise agreed in writing, Customer will not provide Tanium with direct access to Customer’s systems.

**Error Correction.** Tanium shall use commercially reasonable efforts to correct reproducible Errors reported by Customer in the current unmodified release of the Licensed Software, in accordance with the severity level reasonably assigned to such Error by Tanium:

**Severity 1 Error:** Tanium shall promptly commence the following procedures: (i) assign Tanium engineers to correct the Error; (ii) notify Tanium management that such Error has been reported and of steps being taken to correct such Error; (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix.

**Severity 2 Error:** Tanium shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Licensed Software maintenance update.

**Severity 3 Error:** Tanium may include a Fix for the Error in a later major release of the Licensed Software.

**Unsupported Failures.** If Tanium believes that a problem reported by Customer may not be due to an Error in the Licensed Software, Tanium will so notify Customer. If Customer informs Tanium that it does not wish the problem pursued at Customer’s possible expense or if such determination requires effort more than Customer’s instructions, Tanium may, at its sole discretion, elect not to investigate the problem without liability therefor.

**Exclusions.** Notwithstanding the foregoing, Tanium shall have no obligation to provide Support Services for: (i) altered, damaged or modified Licensed Software or any portion of the Licensed Software incorporated with or into other software; (ii) Licensed Software that is not the then-current release or Previous Sequential Release; (iii) Licensed Software issues caused by Customer’s negligence, abuse or misapplication, Customer’s use ofLicensed Software other than as specified in the Documentation, or by
other factors beyond the control of Tanium; or (iv) third-party products.

**Customer’s Obligations.** Customer shall have the following obligations:

Customer will provide the location of its server(s) to Tanium.

All Support Requests shall be submitted by Customer to Tanium through Customer’s Technical Support Contact(s). Customer may change its designation of Technical Support Contact(s) upon written notice to Tanium.

Customer shall provide Tanium with the personnel who have free and full access to the Licensed Software for purposes of rendering Support Services, including, where appropriate, dedicated modem access.

Customer is responsible for (1) preparing and maintaining their systems and facilities in accordance with the specifications of the appropriate suppliers, (2) securing all required permits, inspections, and licenses, (3) providing adequate personnel to assist Tanium in carrying out its duties under this Agreement, (4) installing any Fixes and Enhancements to the Licensed Software made generally available by Tanium, and (5) complying with all applicable state and federal laws.

Customer shall ensure the appropriate Customer personnel have been trained in the operation, support, and management of the Licensed Software.

Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.

Customer shall install and implement Fixes and Enhancements to the Licensed Software made generally available by Tanium within sixty (60) days of their general availability, unless a delay is mutually agreed upon in writing by the parties. Customer’s failure to install and implement Fixes and Enhancements may result in Customer’s inability to (1) receive future Fixes or Enhancements, or (2) achieve compatibility among the Licensed Software products made available by Tanium.

Customer shall obtain at Customer’s expense the latest level of third-party technology as designated by Tanium.

**Premium Support.** If Customer purchases Tanium Premium Support ("TPS"), Tanium will provide an expanded support offering over the duration of the TPS Support Term that, in addition to Tanium's standard Support Services, includes:

*Priority Support Portal Notification –* Technical Account Manager ("TAM") management team copied on each Support Request submitted by Customer to ensure immediate escalation.

*Prioritization –* TAMs assigned to Customer will prioritize Support Requests submitted by Customer.

*Implementation Review and Advice* - TAMs assigned to Customer will be available to assist with the deployment and configuration of the Licensed Software and provide ongoing advice to the Customer.
Remote Support – TAMs assigned to the Customer will provide remote support.

24-Hour Support – For Severity 1 Error and Severity 2 Error Support Requests, 24-hour support is available via telephone, Support Portal or email.

Technical Support Contacts – Customer may designate up to a maximum of six (6) Technical Support Contacts with TPS.

24-Hour Support Process.

During normal business hours, support for Severity 1 Error and Severity 2 Error Support Requests following the guidelines specified in the relevant Standard Support Services and Premium Support Services sections. During off-business hours, Support is extended through TPS.

Support Portal – Support Requests made through the Support Portal during off hours are automatically assigned to active TAMs. For appropriate escalation, Support Requests must be flagged as “Severity 1 Error” or “Severity 2 Error” and must be filed through a user account where the domain of the configured email matches a customer entitled to TPS. If the Support Request is not engaged or opened in an timely fashion, active TAM managers are automatically notified.

Phone Support – Support Requests via telephone during off hours are sent to active TAMs. Only Support Requests that are verbally verified as “Severity 1 Error” or “Severity 2 Error” will be engaged and supported during off hours.

Support Portal-Email Support – Support Requests via email to support@tanium.com cannot be escalated with the appropriate “Severity 1 Error” or “Severity 2 Error” classification. However, once submitted, the Technical Support Contact or reporter of the Support Request may enter the Support Portal and directly update the Support Request to include the “Severity 1 Error” or “Severity 2 Error” classification to engage in the 24-hour support process accordingly.

Premium Onsite Support and Enterprise Services Resources. If Customer purchases Premium Onsite Support Services or an Enterprise Support Services Resource, the terms and conditions of Appendix A will apply.
PREMIUM ONSITE SUPPORT.

**General.** Tanium Premium Onsite Support may be obtained from Tanium at its then-current list price or a mutually negotiated price in accordance with the GSA Schedule Pricelist. Premium Onsite Support consists of a fixed number of onsite support visits to be provided by a qualified Tanium Technical Account Manager ("TAM"). Unless otherwise set forth in the Agreement or Schedule, each unit of Premium Onsite Support will entitle Customer to a maximum number of site visits during the relevant premium support term, the length of which is specified in the Agreement or Schedule ("Premium Support Term"). A site visit will generally be based on an eight (8) hour workday, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business work day. If Customer purchases Premium Onsite Support Services, Tanium will perform the support services for Customer in accordance with the following terms and conditions.

_During the site visits, the TAM may:_

- act as a primary Tanium console operator in a staff augmentation capacity for the Customer;
- help plan, communicate and monitor the status, health and challenges associated with installation and deployment of the Licensed Software in Customer’s environment;
- provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;
- maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;
- track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Licensed Software within the customer’s environment;
- observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives; and
- independently undertake tuning and configuration of the Tanium system as well as provide more advanced technical support.

_The TAM will not and the Customer shall ensure that its personnel do not request that the TAM:_

- create custom content such as sensors, packages, and ‘Saved Questions’ for the Licensed Software;
- execute an action (e.g., deploying a patch) using the Licensed Software without the advance written review and approval by a designated Customer representative;
- use the Licensed Software to perform any incident response services;
- use any destructive content (e.g., file delete action) on behalf of the Customer; or
act in a capacity to directly support the underlying operating system, hardware, network or other involved hardware or software on which the Tanium instance is running or dependent.

In addition, Tanium will designate a lead onsite TAM during the Premium Support Term ("Lead OTAM") where Tanium and Customer agree that the level of support and/or necessary access and privileges require the TAM to be a named individual. The Lead OTAM will be the primary TAM supporting Customer during the Premium Support Term. Tanium and Customer will cooperate to select a Lead OTAM who will be eligible for all necessary access and privileges to perform the support services described herein. Customer acknowledges and agrees that the timeline for the Lead OTAM to on-board at Customer's location is approximately sixty (60) to ninety (90) days from the order date ("On-Boarding Period"). During the On-Boarding Period, Tanium will assign an interim support resource, which may be an interim Lead OTAM or other available TAM, to facilitate the support services. In any event, site visits for all resources will be scheduled by phone, email, or through the Tanium's TAM scheduling tool in accordance with applicable Government security requirements. Customer may not be able to schedule a site visit for specific days due to paid-time-off, illness, holidays, training, vacations or meetings. Even on days when a TAM is not available for a site visit, Customer may obtain TAM support through interim resources using the TAM scheduling tool or through Tanium's standard Technical Account Management procedures set forth in the Agreement. The interim TAM will support Customer until the Lead OTAM commences or returns, as applicable, or a new Lead OTAM is designated by Tanium.

TAMs will work with Customer to schedule site visits. Scheduling may be accomplished by planning visits one day at a time or by designating regular office hours on a recurring basis. If the Lead OTAM is unavailable or has not yet been designated, an interim lead or other TAM resource will conduct site visits. Customer bears the ultimate responsibility to schedule the TAM site visits. No refunds for Premium Onsite Support Services will be provided because Customer did not schedule visits or was unable to provide access, materials, credentials, escorts or anything else necessary to conduct the support services described herein during the Premium Support Term.

Customer Responsibilities. While Tanium endeavors to complete Support Services in a reasonable period of time, certain factors are beyond Tanium's control, including force majeure events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the Licensed Software is or will be installed, and providing access to all necessary information regarding Customer's systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to support operation of the Licensed Software. In addition, Customer is responsible for providing the TAM or Lead OTAM with all access, materials, credentials, escorts, or anything else necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act as the final Tanium Action Approver for all Tanium Actions submitted by the Lead OTAM who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

Scope and Progress Meeting. Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Premium Onsite Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the Lead OTAM. Customer's representative and the Lead OTAM will meet once a week to discuss the status and progress of all work related to the Premium Onsite Support Services.
Remote Support. Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant Premium Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Support Services, Customer will provide such access as follows:

Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer’s Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer’s Tanium environment.

Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium’s onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer’s VPN client software and/or VPN infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.

ENTERPRISE SUPPORT SERVICES RESOURCES.

General. Tanium Enterprise Support Services Resources may be obtained from Tanium at its then-current list price or mutually negotiated price during the relevant Enterprise Support Services term, the length as specified in the Agreement or Schedule (“ESR Support Term”). The Enterprise Support Services Resource (“ESR”) will be available to provide Enterprise Support Services for a specified period of time, as determined by Tanium, during the ESR Support Term, which may consist of remote and onsite support. If applicable, unless otherwise set forth in the Agreement or Schedule, Tanium and Customer will determine the number of site visits required during the ESR Support Term. A site visit will generally be based on an eight (8) hour work day, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business work day. If Customer purchases Tanium Enterprise Support Services, Tanium will provide an ESR to Customer in accordance with the following terms and conditions.

The ESR may:

act as a primary Tanium console operator in a staff augmentation capacity for the Customer;
help plan, communicate and monitor the status, health and challenges associated with installation and deployment of the Licensed Software in Customer’s environment;
provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;
maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;
track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Licensed Software within the customer’s environment; and
observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives.

The ESR will not and the Customer shall ensure that its personnel do not request that an ESR:
create custom content such as sensors, packages, and ‘Saved Questions’ for the Licensed Software;
execute an action (e.g., deploying a patch) using the Licensed Software without the advance written review and
approval by a designated Customer representative;
use the Licensed Software to perform any incident response services;
use any destructive content (e.g., file delete action) on behalf of the Customer;
act in a capacity to directly support the underlying operating system, hardware, network or other involved
hardware or software on which the Tanium instance is running or dependent; or
change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without
direct instruction from the assigned primary TAM or such delegate as assigned by said primary TAM.
Customer acknowledges and agrees that the timeline for the ESR to on-board at Customer’s location is approximately thirty (30) to ninety (90) days from the order date (“On-Boarding Period”). During the On-Boarding Period, Tanium will assign an interim support resource, which may be the TAM, to facilitate the Enterprise Support Services until the parties agree upon the individual to be placed as the ESR. Tanium and Customer will work together in good faith to select the ESR. In the event Customer rejects the ESR candidate or delays in the selection of a reasonable candidate Tanium has offered for consideration, Tanium will assign an interim ESR. The ESR will work during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the ESR’s employment with Tanium end, Tanium may provide to Customer an interim support resource that will support Customer until the ESR returns or a new ESR is designated by Tanium through the ESR Support Term. In all instances, an interim support resource will provide Enterprise Support Services remotely and may be a shared resource.

Customer acknowledges that any delay in the selection of an ESR candidate may: (1) result in Customer not being able to have its desired individual perform the Enterprise Support Services; (2) result in the use of an interim support resource; and (3) hinder the performance of the Enterprise Support Services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the ESR Support Term. Customer will not receive any refunds or credits for any period in which an interim support resource is utilized.

Customer Responsibilities. While Tanium endeavors to complete Enterprise Support Services in a reasonable period of time, certain factors are beyond Tanium’s control, including force majeure events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Enterprise Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the Licensed Software is or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Licensed Software. In addition, Customer is responsible for providing the ESR with all access, materials, credentials, escorts, or any other thing necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act in as the final Tanium Action Approver for all Tanium Actions submitted by the ESR who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

Scope and Progress Meeting. Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Enterprise Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the ESR. Customer’s representative and the ESR will meet once a week to discuss the status and progress of all work related to the Enterprise Support Services.

Remote Support. Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Enterprise Support Services, Customer will provide such access as follows:
Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer’s Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquire and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer’s Tanium environment. Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium’s onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer’s VPN client software and/or VPN infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.
SOFTWARE LICENSE RIDER – U.S. GOVERNMENT

This Software License Rider (“Rider”) supersedes the commercial computer software End User License Agreement (“EULA”) which is included as “click-wrap” within the commercial computer software and/or included as an attachment to the EC America GSA Contract (“Agreement”). This Rider brings the EULA into compliance with the “Notice of Class Deviation to Commercial Supplier Agreement Terms Inconsistent with Federal Law,” 80 Fed. Reg. 15011 (March 20, 2015), and GSA Acquisition Letter MV-15-03, “Memorandum for the Acquisition Workforce: Class Deviation Addressing Commercial Supplier Agreement Terms that Conflict or Are Incompatible with Federal Law” (July 31, 2015). FAR 12.212(a) require the Government procure commercial computer software under the licenses customarily provided to the public except to the extent that those licenses are inconsistent with Federal law. The EULAs is modified as follows:

CLICK-WRAP. NO GOVERNMENT NOR ANY GOVERNMENT AUTHORIZED END USER SHALL BE DEEMED TO HAVE AGREED TO ANY CLAUSE BY VIRTUE OF IT APPEARING IN THE EULA, RATHER THE EULA AND THIS SOFTWARE RIDER ARE ACCEPTED BY INCLUSION IN THE AGREEMENT BY AN AUTHORIZED OFFICIAL. IF THE EULA OR ANY OTHER THIRD-PARTY EULA IS INVOKED THROUGH AN “I AGREE” CLICK BOX OR OTHER COMPARABLE MECHANISM (E.G., “CLICK-WRAP” OR “BROWSE- WRAP” AGREEMENTS), EXECUTION DOES NOT BIND THE GOVERNMENT OR ANY GOVERNMENT AUTHORIZED END USER TO SUCH CLAUSE; SUCH INDEMNITY CLAUSE IS DEEMED TO BE STRICKEN FROM THE EULA. THE GOVERNMENT ACKNOWLEDGES THAT THIRD PARTY TERMS MAY APPLY BUT DOES NOT AGREE TO BE BOUND BY THEM UNLESS PROVIDED FOR REVIEW. INCLUSION OF THESE THIRD PARTY LICENSE AGREEMENT(S) WITHIN RELEASE NOTES WITHIN THE LICENSED SOFTWARE FILE IS AN ACCEPTABLE PRESENTATION OF THE THIRD PARTY LICENSE AGREEMENT(S), PROVIDED THAT THE THIRD PARTY LICENSE AGREEMENT(S) WILN'T CREATE ANY NEW MONETARY OBLIGATION UPON THE END USER OR DIMINISH THE END USER'S RIGHT TO USE THE LICENSED SOFTWARE AS SET FORTH IN THE EULA WHERE THE END USER IS IN COMPLIANCE WITH THE EULA. ANY CLAUSE TO THE CONTRARY IS HEREBY DELETED.

Applicability. The EULA and this Software License Rider is a part of the Agreement between Tanium and the U.S. Government for the acquisition of the supply or service that necessitates a license, except to the extent inconsistent with Federal law.

End user. This Software License Rider and the EULA shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

Law and disputes. This Software License Rider and the EULA are governed by Federal law.

Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

Other disputes will be resolved through the Disputes Clause in the Agreement.

**Continued performance.** If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall continue performance while pursuing rights under the Disputes Clause in the Agreement.

**Arbitration; equitable or injunctive relief.** In the event of a claim or dispute arising under or relating to the Agreement, (a) binding arbitration shall not be used unless specifically authorized by agency guidance, and (b) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

**Additional terms.**

THIS SOFTWARE LICENSE RIDER MAY UNILATERALLY INCORPORATE ADDITIONAL TERMS BY REFERENCE. TERMS MAY BE INCLUDED BY REFERENCE USING ELECTRONIC MEANS (E.G., VIA WEB LINKS, CLICK AND ACCEPT, ETC). SUCH TERMS SHALL BE ENFORCEABLE ONLY TO THE EXTENT THAT:

When included by reference using electronic means, the terms are readily available at referenced locations; and

Terms do not materially change Government obligations; and

Terms do not increase Government prices; and

Terms do not decrease overall level of service; and

Terms do not limit any other Government rights addressed elsewhere in this contract; order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award are not enforceable against the Government.

**No automatic renewals.** If any license or service tied to periodic payment is provided under the EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

**Indemnification & Liability.** Any clause of the EULA requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law or where settlement has been agreed to by the Government agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the Government’s rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement.
Audits. Any clause of the Agreement permitting the commercial supplier or licensor to audit the end user's compliance with the Agreement is hereby amended as follows: (a) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. (b) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process; (c) Any audit requested by the Contractor will be performed at the Contractor's expense, without reimbursement by the Government and in accordance with Government security requirements.

Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

Non-assignment. The Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.

Use of Government logos. Notwithstanding any contrary provision contained in the Agreement, the vendor shall not be permitted to use U.S. Government logos for advertising or endorsement purposes, without obtaining the separate written consent of the Government.

Right of entry. No provision in the Agreement shall provide any Party the right of entry to any Government facility.

Termination. Termination, including termination for convenience of the government, may occur in accordance with the procedures described in Paragraph 4 of the Tanium EULA in the GSA Schedule Contract. Any terms of unilateral termination by Tanium are hereby deleted. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
Grant of License.

License. Subject to the terms and conditions of this Agreement, Tanium grants Customer a revocable, non-transferable, non-exclusive, term-based license ("Subscription License") to access and use the internet-based service as well as proprietary software in object code form and related proprietary components, sensors, scripts, packages, actions, and ‘Saved Questions’ made generally available by Tanium and provided by or on behalf of Tanium to Customer in connection with this Agreement, as may be updated by Tanium from time to time (the "Service") in accordance with the Documentation for Customer’s internal use only during the applicable Service Period (as defined in Section 4). The term "Service" includes Maintenance and Tanium’s then-current documentation made generally available by Tanium for use of the Service, as updated from time-to-time by Tanium in its discretion (the "Documentation").

License Metric. The Service is licensed on a per Managed OS Instance basis. A "Managed OS Instance" means a physical or virtual hardware device where the Service can be installed, and where that device is capable of processing data. Managed OS Instances include any of the following types of computer devices: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homeworker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, or portable workstation connected or connecting to a server or network. In the case of a virtual system, in addition to the virtual Managed OS Instances, the hypervisor is considered to be a single Managed OS Instance if the Service is installed at the hypervisor level. Customer acknowledges that the Service includes access to certain software to be installed on Customer’s Managed OS instances, all of which is included in the defined term, “Service.”

System Configuration. Hardware and software requirements for proper installation and use of the Service are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software and hardware, scripts, or other technologies that may interoperate and be used in conjunction with the Service, all of which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement.

Customer Data. As between the parties, Customer or its licensors, partners, or suppliers ("Suppliers") will retain all right, title and interest (including any and all intellectual property rights) in and to any Customer data or Customer data files of any type that are uploaded by or on behalf of Customer to the Service ("Customer Data"). Customer hereby grants to Tanium a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Service and Premium Services to Customer under this Agreement. Customer will ensure that its use of the Service and Premium Services and all Customer Data is at all times compliant with this Agreement, Customer’s privacy policies, and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content, and legality of all Customer Data. Customer represents and warrants to Tanium that Customer has sufficient rights in the Customer Data to grant the rights granted to Tanium in this section and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy, or other rights of any third party.

Restrictions. Customer’s Subscription License to the Service is subject to the following license
conditions and restrictions:

**Customer’s Benefit.** Customer shall not use or permit the Service to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use the Service for anyone’s benefit other than Customer or its Affiliates. Customer shall purchase each license it intends to use. Use of and access to the Service is permitted only by Customer-designated personnel ("Users").

**Limitations on Copying and Distribution.** Customer shall not copy or distribute the Service whether directly or indirectly except to the extent that copying is necessary to use the Service for the purposes set forth herein.

**Limitations on Reverse Engineering and Modification.** Except to the extent such a limitation is expressly prohibited by applicable law, Customer shall not reverse engineer, decompile, disassemble, modify or create derivative works of the Service whether directly or indirectly.

**Sublicense, Rental and Third-party Use.** Except to the extent expressly permitted by this Agreement, Customer shall not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Service, or directly or indirectly permit any third-party to use or copy the Service. Customer shall not operate a service bureau or other similar service for the benefit of third parties using the Service.

**Proprietary Notices.** Customer shall not remove any proprietary notices (e.g., copyright and trademark notices) from the Service. Customer shall reproduce the copyright and all other proprietary notices displayed on the Service on each permitted back-up or archival copy.

**Use in Accordance with Documentation.** All use of the Service shall be in accordance with the Documentation, Tanium’s Acceptable Use Policy made available at http://www.tanium.com/aup ("AUP"), and in this Agreement. In the event of a material conflict between the terms found at the website and in this Agreement, the terms of this Agreement shall prevail.

**Use of the Service.** Customer shall be solely responsible and fully liable for its use of the Service, including, but not limited to, for ensuring that the use of the Service is in compliance with all applicable foreign, federal, state and local laws, rules, and regulations. Customer shall not interfere with, or disrupt the integrity or performance of the Service, or any data or content contained therein or transmitted thereby; or access the Service (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Service features provided by Tanium expressly for such purposes.

**Tanium’s Intellectual Property.** Customer shall not use the Service or other Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property.

**Competition.** Customer shall not use the Service or Tanium Confidential Information in a manner to compete with Tanium, to assist a third-party in competing with Tanium, or for benchmarking or competitive analysis.

**Credential Protection; Authentication.** Customer shall require that all Users keep user ID and password information ("Credentials") strictly confidential and not share such information with anyone, including any other User. Customer agrees that neither Tanium nor its Suppliers have any liability under this Agreement for actions taken using User’s Credentials, including any unauthorized use or access caused by misuse or misappropriation of such Credentials. Customer will be responsible for initiating and facilitating the removal of Service access by any User who is no longer authorized to
access the Service. Customer shall use security assertion markup language 2.0 and multi-factor authentication when accessing the Service, unless other related security measures are required in the Documentation.

**Prohibited Data.** Customer shall not use the Service to store, identify, locate, maintain, process, or transmit any sensitive or special data that might impose specific data security or data protection obligations on Tanium, including, without limitation (i) “protected health information” as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (ii) “cardholder data” as defined under the Payment Card Industry Data Security Standard (PCI DSS); or (iii) “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act of 1999, in each case as such Acts and standards have been or may be supplemented and amended from time to time. The Service is licensed to Customer, not sold. The Service provided by Tanium contains material that is protected by United States copyright, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Service and any Premium Services provided by Tanium whether or not registered will remain the sole and exclusive property of Tanium or its Suppliers, as applicable. Customer shall notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Service and Customer shall cooperate and assist Tanium in discovering, preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Service.

**Affiliates and Managing Parties.** The term "Affiliate" means an entity that is controlled by, controls, or is under common control of the Customer, where "control" means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Service provided that (a) the Affiliate only uses the Service for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate’s use of the Service in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer’s information technology resources ("Managing Party"), Customer may allow its Managing Party to use the Service on Customer’s Managed OS Instances, provided that (a) the Managing Party only uses the Service for Customer’s internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party’s use of the Service in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.

**Term and Termination.** The Subscription License will commence upon the Effective Date and will continue for the duration of the Subscription License term or until this Agreement is terminated as provided in this Section, as applicable (the "Service Period"). When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tanium shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon expiration of the Subscription License or any termination or expiration of this Agreement, the Subscription License granted in Section 1 (Grant of License) will automatically terminate and
Tanium shall (at Customer’s election) destroy or return to Customer all Customer Data in its possession or control that Tanium processes as a data processor. If Customer does not notify Tanium of its election within thirty (30) days following termination or expiry of the Agreement, then Tanium shall automatically destroy all such Customer Data. Tanium shall not destroy Customer Data to the extent (i) it is required by applicable law to retain some or all of Customer Data, or (ii) Customer Data was archived on back-up systems, which Customer Data Tanium shall use commercially-reasonable efforts to securely isolate and protect from any further processing except to the extent required by such law. Tanium reserves the right to seek all remedies available at law and in equity for Customer’s material breach of this Agreement.

Fees and Expenses; Delivery and Taxes.

Fees and Expenses. Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner ("Reseller"), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. This Agreement will govern Tanium’s provision and Customer’s license to the Service and Premium Services whether Customer orders the Service and Premium Services from Tanium or a Reseller. Unless Customer orders directly from a Reseller, (i) Customer will pay the Service and Premium Services fees directly to Tanium and Tanium will fulfill all orders; and (ii) the parties will enter into a schedule(s) or purchase order(s) that describe the Service and any Premium Services to be acquired by Customer (each a "Schedule"). This Agreement applies to any Schedule that references this Agreement. When a purchase order will be utilized as a Schedule, the purchase order must reference the applicable Quote and this Agreement, which will be deemed incorporated by such reference. Notwithstanding anything else to the contrary, any terms and conditions in the purchase order in accordance with the GSA Schedule Contract and GSA Schedule Pricelist that conflict or are inconsistent with the Quote or this Agreement will have no force or effect. The purchase order will not add or remove terms from the Quote or this Agreement. Tanium further reserves the right to expressly reject any purchase order that does not comport to the requirements of this Section.

Unless otherwise set forth in a Schedule, (a) fees for Service will be billed on an annual basis, payable in advance; and (b) all amounts to be paid by Customer are due and payable thirty (30) days after Customer’s receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Service and Premium Services ordered (less any applicable credits and deductions and plus any applicable shipping and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium’s bank account or the instrument enabling immediate collection of the entire amount due is received. All payments not made by Customer when due will be subject to late charges of the maximum amount permitted under the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

Taxes.

All Service will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer may provide Tanium with a primary place of use for the Service. This address will be used as the "shipped to address" on all invoices. If Customer does not provide a primary place of use then Customer’s purchase order “ship to address” will be used for these purposes.

Maintenance; Systems Information; Premium Services.

Definition. The term, “Maintenance”, means, with respect to the Service, the support and maintenance described below in Section 6.2 that are provided during the Service Period.
Geographic limitations may apply.

Maintenance.

General. During the Service Period, Tanium shall provide Customer with reasonable support for the person(s) designated by customer that may contact Tanium for Maintenance ("Technical Support Contact(s)"). Customer may contact Tanium for Maintenance Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium shall use good faith efforts to work with Customer during Customer’s normal business hours in the time zone in which the Customer is located. Customer may designate up to a maximum of two (2) Technical Support Contacts.

Contacting Tanium. Customer may contact Tanium for Maintenance by:

- submitting a request via the Tanium Support Portal;
- emailing support@tanium.com; or
- calling Telephone Support (1 510 900 9443).

6.2.4 Customer’s Obligations. All Customer requests made to Tanium for Maintenance in accordance with Section 6.2 ("Support Requests") shall be submitted by Customer to Tanium through Customer’s Technical Support Contact(s). Customer may change its designation of Technical Support Contact(s) upon written notice to Tanium.

Customer is responsible for: (1) preparing and maintaining their systems (e.g., multi-factor authentication) and facilities in accordance with the Documentation and specifications of the appropriate suppliers; (2) securing all required permits, inspections, and licenses necessary to use the Service; and (3) complying with all applicable laws while using the Service.

Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data. Customer acknowledges and agrees that Customer is solely responsible for the function, performance, and results achieved in using or accessing content such as sensors, scripts, packages, actions, and ‘Saved Questions’ that Tanium may make available to Customer in connection with Maintenance.

Systems Information. During the term of the Agreement, Customer may provide to Tanium or the Service collects information including, but not limited to, performance and analytics information relating to Customer’s use of Tanium’s products and services, metadata relating to Customer’s networks and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, "Systems Information").

Customer agrees that Tanium may use Systems Information to provide the Service and Premium Services and to research, develop, and improve Tanium’s products and services, sales analytics, and, on an anonymized basis, for marketing purposes (the "Permitted Purpose"). To the extent Systems Information constitutes Customer’s Confidential Information, Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality). For clarity, any data that is derived by Tanium from its use of the Systems Information for the Permitted Purpose, such that the Customer cannot be identified from the derived data, is not considered Customer’s Confidential Information.
Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists on its systems or are processed by the Service. To the extent that Tanium obtains Personal Data in connection with providing the Service or the Premium Services, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at http://www.tanium.com/dpa. Because Customer’s endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose. In addition, Tanium may process, use or disclose such Personal Data only: (i) in furtherance of its obligations pursuant to this Agreement; (ii) as required or permitted by law; (iii) as directed or instructed by Customer; or (iv) with prior informed consent of the data subject to whom the Personal Data pertains. As between Customer and Tanium, the foregoing states Tanium’s entire obligation with respect to Personal Data.

**Premium Services.** The term, "Premium Services", means, collectively, any product training purchased by Customer and provided by Tanium with respect to the Service ("Training") or any Premium Onsite Support or Enterprise Services Resource procured by Customer and provided by Tanium in accordance with Appendix A. All Premium Services are provided in accordance with, and governed by, the terms and conditions of this Agreement.

**Limited Warranty; Disclaimer.**

**Limited Warranty.** During the Warranty Period, Tanium warrants that (i) the Service will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Service prior to delivery to Customer for viruses, Trojan horses, and other malicious code. The "Warranty Period" means ninety (90) days from the Effective Date. If the Service Period is less than ninety (90) days, the Warranty Period will be for the length of the Service Period. The foregoing warranties apply only to the Service provided to Customer during the Warranty Period and are solely for the benefit of Customer. Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Service, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Service. This warranty is contingent upon the proper installation and use of the Service as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Service if not operated in a manner recommended in the Documentation. Any modification to the Service by Customer or any third party may void Tanium’s warranties under this Section.

In addition, Tanium warrants that any Premium Services will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer’s sole remedy will be to terminate the applicable Premium Services and receive a refund of any prepaid unused fees for such non-conforming Premium Services.

**Warranty Disclaimer.** EXCEPT AS PROVIDED IN THIS SECTION, THE SERVICE AND PREMIUM SERVICES ARE PROVIDED ON AN "AS AVAILABLE, "AS-IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICE AND PREMIUM SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE SERVICE OR PREMIUM SERVICES WILL MEET CUSTOMER’S
REQUIREMENTS, OR WILL CAUSE CUSTOMER TO BE COMPLIANT WITH APPLICABLE LAW; THAT CUSTOMER’S USE OF THE SERVICE OR PREMIUM SERVICES WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS; THAT THE OPERATION OF THE SERVICE OR PREMIUM SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE SERVICE OR PREMIUM SERVICES WILL BE CORRECTED. TANIUM DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE PERFORMANCE OR RESULTS OF THE SERVICE OR PREMIUM SERVICES. TANIUM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, SCRIPTS, CONTENT, OR OTHER TECHNOLOGIES. NO ORAL OR WRITTEN INFORMATION OR ADVICE, INCLUDING, BUT NOT LIMITED TO, SUGGESTIONS, ROUTINES, SCRIPTS OR QUERIES, PROVIDED BY TANIUM SHALL CREATE ANY ADDITIONAL TANIUM WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF WARRANTIES OR TANIUM’S LIABILITY OR OBLIGATIONS UNDER THIS AGREEMENT. TANIUM HAS NO RESPONSIBILITY OR LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE SERVICE OR PREMIUM SERVICES. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer’s remedies will be limited to the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer) and 9 (Limitation of Liability).

Integrations with Third-Party Software. Customer acknowledges that the Service may contain features designed to interoperate with third-party software, that Tanium reserves the right to remove or alter any such Service features, and that any such removal or alteration does not entitle Customer to any refund, credit, or other compensation.

Indemnities. If a third party claims that Customer’s licensed use of the Service in compliance with the terms of this Agreement infringes a United States (i) patent, (ii) copyright, or (iii) trade secret of that third party, Tanium, at its sole cost and expense, will have the right to intervene to defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Tanium. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to either: (i) procure for Customer the right or license to continue to use the Service; or (ii) modify the Service to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Service, prorated for use over the remaining unused Service Period. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (the "Excluded Claims"): (i) the use or combination of the Service with any third-party or Customer hardware, software, products, data or other materials; (ii) modification or alteration of the Service by anyone other than Tanium; (iii) Customer’s failure to implement any workaround that would have avoided the claim; (iv) Customer’s use of the Service in breach of or excess of the rights granted in this Agreement; (v) any third-party components; or (vi) a business method or process that is inherent to Customer’s business. The provisions of this Section state Customer’s sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its Suppliers for any claim of intellectual property infringement arising out of or relating to the Service and/or
this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly
disclaimed. A party seeking indemnification under this Agreement shall promptly notify the
indemnifying party in writing of such claim, permit the indemnifying party authority to control the defense
or settlement of such claim, and provide the indemnifying party with reasonable assistance in connection
therewith. The indemnified party may participate in the defense at its sole cost. Customer shall be
responsible for determining whether the Service adheres to any applicable laws to which it is subject and
otherwise meets its business needs.

**Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT
SHALL TANIUM OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR
ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES,
WHICH THE PARTIES EXPRESSLY AGREE INCLUDE, WITHOUT LIMITATION AND
REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR LOST PROFITS,
LOST DATA, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, AND/OR
COST OF REPLACEMENT GOODS OR SERVICES, OR ANY OTHER DAMAGES ARISING OUT
OF OR RELATED TO THE SERVICE, THE PREMIUM SERVICES, OR THIS AGREEMENT,
INCLUDING, BUT NOT LIMITED TO, ANY ACTION OR ITEMS DISCLAIMED IN SECTION 7
LIMITED WARRANTY; DISCLAIMER), EVEN IF TANIUM HAS BEEN ADVISED OF THE
POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY
OF TANIUM AND ITS SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES,
AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IS LIMITED
TO THE FEES PAID BY CUSTOMER FOR THE PURCHASE ORDER(S) GIVING RISE TO SUCH
CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT.
THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMERS CAN IMPLEMENT BACK-UP
PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT
THEMSELVES IF AN ERROR IN THE SERVICE OR PREMIUM SERVICES CAUSES
COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER
AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES
THAT WITHOUT CUSTOMER’S AGREEMENT TO THESE TERMS, THE FEE CHARGED FOR
THE SERVICE WOULD BE HIGHER. THE FOREGOING LIMITATION OF LIABILITY
SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM
LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR
WHICH LIABILITY CANNOT BE EXCLUDED BY LAW. No action, regardless of form, arising
out of any of the transactions under this Agreement may be brought by Customer more than six (6) years
after such action accrued. In the event Tanium makes a refund pursuant to an express remedy under this
Agreement, any such monies refunded by Tanium will be applied to the measure of damages subsequently
awarded by the court, if any.

**Confidentiality.** Each party agrees to hold the other party’s (and that of its affiliates disclosed in
connection with this Agreement) Confidential Information in confidence using the same degree of care
that it uses to protect the confidentiality of its own confidential information of like kind (at all time
exercising at least a commercially reasonable degree of care in the protection of such Confidential
Information), and not to make each other’s Confidential Information available in any form to any third
party (other than their authorized agents) or to use each other’s Confidential Information for any purpose
other than as specified in this Agreement (subject, in all cases, to the rights granted to Tanium in Section
11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other
party is not disclosed, used or distributed by its employees, agents, or consultants in violation of the
provisions of this Agreement. In addition, Customer shall ensure that any Managing Party will hold
Tanium’s Confidential Information in
confidence and otherwise comply with this Section. "Confidential Information" shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other or its affiliates in connection with this Agreement which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Service. Each party’s Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information disclosed or made available by one party or its affiliates to other party or its affiliates in connection with this Agreement which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party’s Confidential Information; or (iv) is approved for release by the disclosing party in writing. In the event the parties executed a non-disclosure agreement related to Customer’s prospective license of the Service, the terms of this Section 10 (Confidentiality) will supersede such non-disclosure agreement after the Effective Date.


Evaluation Software. This Section only applies to Services designated by Tanium as "Evaluation Services". Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Services for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following delivery of the Evaluation Services ("Evaluation Period"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Services in a non-production environment. Customer bears the sole risk of using the Evaluation Services. Tanium provides the Evaluation Services to Customer "AS-IS" and gives no representation, warranty, indemnity, guarantee or condition of any kind. To the maximum extent permitted by law, Tanium’s total aggregate liability and that of its Suppliers is expressly limited to five hundred dollars ($500) for any and all damages regardless of the nature of the claim or theory of liability. Because the Evaluation Services are provided "AS-IS," Tanium is not obligated to provide support for them. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Services.

Feedback. Customer may provide suggestions, comments, or other feedback (collectively, "Feedback") to Tanium with respect to its products and services, including the Service and Premium Services. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, worldwide, transferable, royalty-free license (including the right to sublicense) to use the Feedback in connection with Tanium’s business, including enhancement of the Service. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

Beta Software. If the Service released to Customer has been identified by Tanium as "Beta Software," then the provisions of Section 11.1 (Evaluation Software) will apply, in addition to this Section 11.3. Customer is under no obligation to use any Beta Software; doing so is in Customer’s sole discretion. Because Beta Software can be at various stages of development, operation and use of the Beta Software may be unpredictable. Customer acknowledges and agrees that: (1) Beta
Software has not been fully tested; (2) use or operation of Beta Software should not occur in a production environment; (3) Customer’s use of Beta Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (4) Customer will inform its personnel regarding the nature of the Beta Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide support for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) or release(s) of the Beta Software that it received from Tanium.

**Governing Law/Jurisdiction.** This Agreement will be governed by and construed in accordance with the Federal laws in force in the United States. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

**General.** This Agreement, together with the Schedules and any exhibits attached hereto, the Data Processing Addendum, appendices, and the AUP, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation pre-printed terms and conditions on Customer’s purchase order, with respect to the subject matter of this Agreement, all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. All notices, demands, or consents given under this Agreement will be in writing, signed by or on behalf of the party giving notice, and addressed to Tanium, “Attention Legal Department”, at the address identified on the Quote, or to Customer, at the contact information Customer provided when purchasing the Service and Premium Services. Notices will be considered when delivered personally, or three (3) days after deposit in the mail (registered mail), or one (1) day after being sent by overnight courier. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5.1 (Fees and Expenses; Delivery and Taxes), 6.3 (Systems Information), 9 (Limitation of Liability), 10 (Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), and Customer’s indemnity obligations hereunder. Tanium may assign any of its rights or obligations hereunder as it deems necessary.

**Export.** Customer acknowledges that the Service, which contains encryption, is subject to the export, import, economic sanctions, and trade restriction laws, regulations and requirements of the United States and other countries including European Union regulations. Tanium will reasonably cooperate, in Tanium’s discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer agrees and acknowledges that it is Customer’s ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale, including Customers importation of the Service into other countries. Without limiting the foregoing, Customer agrees that it will not export, re-export, re-transfer, or provide access to the
Service in contravention of the foregoing, or provide the Service to any person, in any jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer will not export to, or use the Service or Premium Services in, any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government. Customer shall defend, indemnify, and hold harmless Tanium from and against all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys’ fees and expenses) arising out of or relating to any claim the Service was imported, exported, accessed, or otherwise shipped or transported by Customer in violation of applicable laws, rules and regulations as described in this Section.

U.S. Government Rights. The Service is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of any agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

Audit. During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer’s use of the Service ("Audit"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer’s deployment of the Service. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer’s normal business hours and are subject to Government security requirements. Customer will immediately remit payment for any Service deployed in excess of the Service licenses purchased by Customer under this Agreement.

Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

Construction. This Agreement has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Agreement.

Appendix A

Premium Onsite Support and Enterprise Services Resources

Premium Onsite Support Services.

General. Tanium Premium Onsite Support Services may be obtained from Tanium at its then-current list price or a mutually negotiated price in accordance with the GSA Schedule Pricelist. Premium Onsite Support consists of a fixed number of onsite support visits to be provided by a qualified Tanium Technical Account Manager ("TAM"). Unless otherwise set forth in the Agreement or Schedule, each unit of Premium Onsite Support will entitle Customer to a maximum number of site visits during the relevant premium support term, subject to Government security requirements, the length of which is specified in the Agreement or Schedule ("Premium Support Term"). A site visit will generally be based on an eight (8) hour workday, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business workday. If Customer purchases Premium Onsite Support Services, Tanium will perform the support services for Customer in accordance with the following terms and conditions.
During the site visits, the TAM may:

- act as a primary Tanium console operator in a staff augmentation capacity for the Customer;
- help plan, communicate and monitor the status, health and challenges associated with installation and deployment of components of the Service in Customer’s environment;
- provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;
- maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;
- track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Service within the customer’s environment;
- observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives; and
- independently undertake tuning and configuration of the Tanium system as well as provide more advanced technical support.

The TAM will not and the Customer shall ensure that its personnel do not request that the TAM:

- create custom content such as sensors, packages, and ‘Saved Questions’ for the Service;
- execute an action (e.g., deploying a patch) using the Service without the advance written review and approval by a designated Customer representative;
- use the Service to perform any incident response services;
- use any destructive content (e.g., file delete action) on behalf of the Customer; or
- act in a capacity to directly support the underlying operating system, hardware, network or other involved hardware or software on which the Tanium instance is running or dependent.

In addition, Tanium will designate a lead onsite TAM during the Premium Support Term ("Lead OTAM") where Tanium and Customer agree that the level of support and/or necessary access and privileges require the TAM to be a named individual. The Lead OTAM will be the primary TAM supporting Customer during the Premium Support Term. Tanium and Customer will cooperate to select a Lead OTAM who will be eligible for all necessary access and privileges to perform the support services described herein. Customer acknowledges and agrees that the timeline for the Lead OTAM to onboard at Customer’s location is approximately sixty (60) to ninety (90) days from the order date ("On-Boarding Period"). During the On-Boarding Period, Tanium will assign an interim support resource, which may be an interim Lead OTAM or other available TAM, to facilitate the support services. In any event, site visits for all resources will be scheduled by phone, email, or through the Tanium’s TAM scheduling tool. Customer may not be able to schedule a site visit for specific days due to paid-time-off, illness, holidays, training, vacations or meetings. Even on days when a TAM is not available for a site visit, Customer may obtain TAM support through interim resources using the TAM scheduling tool or through Tanium’s standard Technical Account Management procedures set forth in the Agreement. The interim TAM will support Customer until the Lead OTAM commences or returns, as applicable, or a new Lead OTAM is designated by Tanium.

TAMs will work with Customer to schedule site visits. Scheduling may be accomplished by planning visits one day at a time or by designating regular office hours on a recurring basis. If the LeadOTAM is unavailable or has not yet been designated, an interim lead or other TAM resource will conduct site visit(s). Customer bears the ultimate responsibility to schedule the TAM site visits. No refunds for Premium Onsite Support Services will be provided because Customer did not schedule visits.
or was unable to provide access, materials, credentials, escorts or anything else necessary to conduct the
support services described herein during the Premium Support Term.

**Customer Responsibilities.** While Tanium endeavors to complete Support Services in a reasonable period of time, certain factors are beyond Tanium’s control, including Force Majeure Events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which components of the Service is or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Service. In addition, Customer is responsible for providing the TAM or Lead OTAM with all access, materials, credentials, escorts, or anything else necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act in as the final Tanium Action Approver for all Tanium Actions submitted by the Lead OTAM who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

**Scope and Progress Meeting.** Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Premium Onsite Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the Lead OTAM. Customer’s representative and the Lead OTAM will meet once a week to discuss the status and progress of all work related to the Premium Onsite Support Services.

**Remote Support.** Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant Premium Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Support Services, Customer will provide such access in accordance with Government security requirements as follows:

Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer’s Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer’s Tanium environment. Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium’s onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer’s

VPN client software and/or VPN
infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.

**Enterprise Support Services Resources.**

*General.* Tanium Enterprise Support Services Resources may be obtained from Tanium at its then-current list price or mutually negotiated price during the relevant Enterprise Support Services term, the length as specified in the Agreement or Schedule ("ESR Support Term"). The Enterprise Support Services Resource ("ESR") will be available to provide Enterprise Support Services for a specified period of time, as determined by Tanium, during the ESR Support Term, which may consist of remote and onsite support. If applicable, unless otherwise set forth in the Agreement or Schedule, Tanium and Customer will determine the number of site visits required during the ESR Support Term. A site visit will generally be based on an eight (8) hour workday, during normal business hours, but a particular visit may vary based on the specific needs of the Customer that can reasonably be accomplished in a business workday. If Customer purchases Tanium Enterprise Support Services, Tanium will provide an ESR to Customer in accordance with the following terms and conditions.

*The ESR may:*

act as a primary Tanium console operator in a staff augmentation capacity for the Customer;
help plan, communicate and monitor the status, health and challenges associated with installation and deployment of components of the Service in Customer’s environment;
provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;
maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;
track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding the Service within the customer’s environment; and
observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives.

*The ESR will not and the Customer shall ensure that its personnel do not request that an ESR:*

create custom content such as sensors, packages, and ‘Saved Questions’ for the Service;
execute an action (e.g., deploying a patch) using the Service without the advance written review and approval by a designated Customer representative;
use the Service to perform any incident response services;
use any destructive content (e.g., file delete action) on behalf of the Customer;
act in a capacity to directly support the underlying operating system, hardware, network or other involved hardware or software on which the Tanium instance is running or dependent;
or change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without direct instruction from the assigned primary TAM or such delegate as assigned by said primary TAM.

Customer acknowledges and agrees that the timeline for the ESR to on-board at Customer’s location is approximately thirty (30) to ninety (90) days from the order date ("On-Boarding Period").
During the On-Boarding Period, Tanium will assign an interim support resource, which may be the TAM, to facilitate the Enterprise Support Services until the parties agree upon the individual to be placed as the ESR. Tanium and Customer will work together in good faith to select the ESR. In the event Customer rejects the ESR candidate or delays in the selection of a reasonable candidate Tanium has offered for consideration, Tanium will assign an interim ESR. The ESR will work during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the ESR’s employment with Tanium end, Tanium may provide to Customer an interim support resource that will support Customer until the ESR returns or a new ESR is designated by Tanium through the ESR Support Term. In all instances, an interim support resource will provide Enterprise Support Services remotely and may be a shared resource.

Customer acknowledges that any delay in the selection of an ESR candidate may: (1) result in Customer not being able to have its desired individual perform the Enterprise Support Services; (2) result in the use of an interim support resource; and (3) hinder the performance of the Enterprise Support Services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the ESR Support Term. Customer will not receive any refunds or credits for any period in which an interim support resource is utilized.

**Customer Responsibilities.** While Tanium endeavors to complete Enterprise Support Services in a reasonable period of time, certain factors are beyond Tanium’s control, including Force Majeure Events and delays caused by third parties and Customer. Tanium shall not be responsible for any delays or liabilities resulting from such factors. In addition to any Customer responsibilities set forth in the Agreement, to facilitate prompt and efficient completion of the Enterprise Support Services, Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the components of the Service is or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Service. In addition, Customer is responsible for providing the ESR with all access, materials, credentials, escorts, or any other thing necessary to conduct the Support Services described herein.

In addition, Customer will assign an action reviewer/approver to act in as the final Tanium Action Approver for all Tanium Actions submitted by the ESR who will have final approval authority for all actions issued in the Tanium console; and enable action approver within the Tanium console and enforce the use thereof.

**Scope and Progress Meeting.** Tanium and Customer will develop a mutually acceptable work plan for any services that are beyond the scope of Enterprise Support Services set forth above. Customer will appoint a senior-level technology professional to serve as a liaison with the ESR. Customer’s representative and the ESR will meet once a week to discuss the status and progress of all work related to the Enterprise Support Services.

**Remote Support.** Certain Support Services may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Enterprise Support Services, Customer will provide such access as follows:
Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of Customer’s Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Support Services.

Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer’s Tanium environment.

Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium’s onsite and remote resources.

Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer’s VPN client software and/or VPN infrastructure fails to allow Tanium access to perform Support Services, Customer agrees to pay for any increased costs resulting from such failure.
EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

Scope. This Rider and the attached Tenable Public Sector LLC (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et. seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

Termination. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods,

Tenable Confidential and Proprietary
Signature and Cover Page
Tenable Master Agreement
epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.), or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A - TENABLE MASTER AGREEMENT

This Attachment A - Tenable Master Agreement consists of the following:

The main body of the Master Agreement which encompasses all of the general terms and conditions under which Tenable transacts business;

Schedule A (Software), which applies to the purchase of Tenable on-premises Software solutions (i.e., Tenable.io On-Prem, Security Center, Nessus Agents, Nessus Professional, etc.);

*Please note that Hosted Solutions do come with an on premises component

Schedule B (Hosted Services), which applies to Tenable’s SaaS solutions (i.e., Tenable.io); and

Schedule C (Professional Services), which applies to all training, installation and consulting services.

TENABLE MASTER AGREEMENT

This Master Agreement (this “Agreement”) is made by and between Tenable (as defined below), and the Ordering Activity under GSA Schedule Contracts (“Customer” or “Ordering Activity”). Hereinafter, each of Tenable and Customer may be referred to collectively as the “Parties” or individually as a “Party”.

Definitions.

“Affiliate” means any entity that controls, is controlled by, or is under common control with a Party. “Control” shall mean: (1) ownership (either directly or indirectly) of greater than fifty percent (50%) of the voting equity or other controlling equity of another entity; or (2) power of one entity to direct the management or policies of another entity, by contract or otherwise.

“Documentation” means the then-current official user manuals and/or documentation for the Products available at docs.tenable.com.

“Hosted Services” are a type of service offered through the Tenable.io (SaaS) platform and include Scans and access to and use of the hosted environment (the “Hosted Environment”).

“Product(s)” means any of the products that Tenable offers, including Software, Hosted Services, Support Services and Professional Services.

“Professional Services” means services purchased, including consulting services which are relevant to the implementation and configurations of Tenable Products as well as on-site or virtual training courses. Generally, Professional Services are defined either in a separate SOW or a Services Brief. Professional Services do not include the Hosted Services or Support Services.

“Scan(s)” are a function performed by the Software and/or the Hosted Services on Scan Targets, which are conducted in order to provide data to Customer regarding its network security. “PCI Scans” are a specific type of Scan designed to assess compliance with the Payment Card Industry Data Security Standard. “Scan Data” is the resulting information created by the Scan. “Scan Target(s)” are the targets or subjects of a Scan.

“Services Brief” means the document which outlines Tenable’s basic, pre-packaged, non-customized, installation, or training Professional Services offered under a Tenable SKU and which do not require a separate SOW. For the avoidance of doubt, Customer may purchase commercial off the shelf SKU-based Professional Services without executing a separate Statement of Work. A “SOW” or “Statement of Work” shall further describe Professional Services, the terms of which may be customized and which shall require execution by the Parties.

“Software” means each software product made available by Tenable under this Agreement for download. Software includes patches, updates, improvements, additions, enhancements and other modifications or revised versions of the same that may be provided to Customer by Tenable from time to time.

“Tenable” means Tenable Public Sector LLC, if Customer is an agency or instrumentality of the United States Government, a commercial entity operating predominately as a federal systems integrator for eventual sale or resale or for the benefit of the United States Government, or an agency or instrumentality of a State or local government within the United States (Tenable Public Sector LLC is a Delaware limited liability company having offices at 7021 Columbia Gateway Drive, Suite 500, Columbia, MD 21046).

Delivery. Delivery of Tenable Products (“Delivery”) shall be deemed to occur on the date of availability for electronic download or electronic access. Tenable has no duty to provide installation services for Tenable Products unless installation services are purchased separately.

Term. This Agreement shall commence upon the Effective Date and continue until terminated in accordance with the terms set forth herein.

License Term. The “License Term” is the term of the license or subscription for Products as set forth in the applicable purchase order.

Products. Pursuant to this Agreement, Customer may receive the right to use various Products. Terms
related to Customer’s use of Software are described in Schedule A (Software). Terms related to Customer’s use of Hosted Services are described in Schedule B (Hosted Services). Terms related to the provision of Professional Services are described in Schedule C (Professional Services). For each Product, Customer will have the right to use the corresponding Documentation.

Licensing Model. Product licenses shall be in accordance with the terms of the applicable licensing model as set forth in the Order and the purchase order, which may include limitations on Scan Targets, License Term, the number of users, seats, licenses and/or types of modules licensed. Product licenses shall commence upon Delivery and shall be either perpetual or subscription in nature. If Customer exceeds the license restrictions, Tenable shall promptly invoice Customer for an upgraded license to allow for all actual or additional usage.

Restrictions on Use. Customer shall not directly or indirectly: (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive, obtain or modify the source code of the Products; (ii) reproduce, modify, translate or create derivative works of all or any part of the Products; (iii) remove, alter or obscure any proprietary notice, labels, or marks on the Products; (iv) without Tenable’s prior written consent use the Products in a service bureau, application service provider or similar capacity; or (v) use the Products to gather information from Nessus Home scanners. Customer may not use the Products to manage or gather information from Scan Targets not owned or hosted by Customer.

Intellectual Property in Products. This Agreement does not transfer to Customer any title to or any ownership right or interest in the Products. Any rights in the Products not expressly granted in this Agreement are reserved by Tenable. If Customer provides Tenable with any comments, suggestions, or other feedback regarding the Product, Customer hereby assigns to Tenable all right, title and interest in and to such feedback. Tenable acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

Customer System Requirements. In order to use the Products, Customer must meet or exceed the specifications found in the Tenable General Requirements document.

Product Features. Tenable reserves the right to withdraw features from future versions of the Products provided that: (i) the core functionality of the affected Product remains the same; or (ii) Customer is offered access to a product or service providing materially similar functionality as the functionality removed from the affected Product. The preceding remedies under this Section 4(f) are the sole remedies available if Tenable withdraws features from the Products.

Telemetry. Customer agrees to provide certain necessary Scan information, which may include the number of Scan Targets managed with the Product for billing purposes, behavioral or statistical purposes such as whether or not certain features in the Product are utilized, or other relevant information (“Technical Data”). Tenable may use Technical Data for reasonable business purposes, including product support, license validation and research and development. Tenable agrees to only disclose Technical Data which has been properly anonymized.

Support. Tenable shall provide Customer with support services (the “Support Services”) in accordance with Tenable’s then current Technical Support Plan and consistent with Tenable’s Product Lifecycle Policy, each of which is available at http://static.tenable.com/prod_docs/tenable_slas.html (or a successor location). The Support Services include bug fixes, updates (including new vulnerability plug-ins), or enhancements that Tenable makes generally available to users of the Products. The Support Services also include the provision of new minor (Example: 1.1.x to 1.2.x, etc.) and major version releases of the Products (Example: 1.x to 2.x, etc.).

Support Fees. Standard Support Services for Products licensed for a finite License Term will be provided at no additional charge beyond the license fee for the duration of the License Term. Support Services for Products licensed on a perpetual basis must be purchased separately. In all cases, premium support may be purchased at an additional charge. If during the course of a perpetual license Customer terminates or fails to renew the Support Services, Customer may, at any time during the term of this Agreement, request that Tenable reinstate the Support Services provided that Customer pays for the lapsed Support Services in an amount equal to the total fees Customer would have paid for the Support Services between the time Customer’s Support Services lapsed and the then-current date.

Confidentiality. Definition. “Confidential Information” means information learned or disclosed by a Party under this Agreement that should reasonably be assumed to be confidential or proprietary, including the Products. Confidential Information will remain the property of the disclosing Party, and the receiving Party will not be deemed by virtue of this Agreement or any access to the Confidential Information to have acquired any right, title or interest in or to the Confidential Information.

Obligations. Each Party agrees to only use the Confidential Information in connection with this Agreement or a purchase hereunder. The receiving Party agrees to hold the disclosing Party’s Confidential Information confidential and to use at least the same level of protection against unauthorized disclosure or use as the receiving Party normally uses to protect its own information of a similar character, but in no event, less than a reasonable degree of care. Each Party may share Confidential Information with its Affiliates or authorized contractors in the performance of its duties under this Agreement; provided, however, each Party shall be responsible to ensure that such Affiliate or authorized contractors are bound by obligations of confidentiality at least as stringent as those set forth in this Agreement.

Exclusions. Confidential Information shall not include information that: (i) is already known to the receiving Party free of any confidentiality obligation; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is rightfully received by the receiving Party from a third party without any restriction or confidentiality; or (iv) is independently developed by the receiving Party without reference to the Confidential Information. Furthermore, if Customer intentionally or unintentionally requests or performs scans on third party Scan Targets, Customer agrees that Tenable may provide all relevant information to the owner of the Scan Targets of such unlawful or impermissible scanning as well as to relevant legal authorities, and such disclosure shall not be considered a breach of confidentiality.

Information Not to be Disclosed. The Parties agree not to disclose to each other any sensitive, non-public, personally identifiable information (such as social security numbers, personal credit card information or health care data, etc.) which may be the subject of any data privacy regulations as well as any Personal Data of an EU Data Subject as such terms are defined under the European Union General Data Protection Regulation (together, hereinafter, “PII”). Tenable does not require the transmission or processing of any such PII in order to perform its duties under this Agreement or sell any Products hereunder. If Customer inadvertently or unintentionally discloses any PII to Tenable, Customer shall identify to Tenable that it has disclosed PII and Tenable shall promptly notify the owner of such PII and destroy such PII.

Legal Disclosures. Remedies. The receiving Party may disclose Confidential Information if required to do so by law provided the receiving Party shall promptly notify the disclosing Party so that the disclosing Party may seek any appropriate protective order and/or take any other action to prevent or limit such disclosure. If required hereunder, the receiving Party shall furnish only that portion of the Confidential Information disclosure of which is legally required. The receiving Party will notify the disclosing Party promptly
of any unauthorized use or disclosure of the disclosing Party’s Confidential Information. Tenable recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

Representations and Warranties; Disclaimer.

Warranty of Authority. The Parties hereby represent and warrant that they have the full power and authority to enter into this Agreement.

Antivirus Warranty. Tenable represents it has taken commercially reasonable efforts to ensure that the Products, at the time of delivery, are free from any known and undisclosed virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Products to become inoperable or incapable of being used in the manner for which it was designed or in accordance with the Documentation.

Warranty Disclaimer. If Customer’s use of the Products is, or in Tenable’s opinion is likely to be, the subject of an infringement claim, Tenable may, in its sole discretion and expense: (i) modify or replace the infringing Products as necessary to avoid infringement, provided that the replacement Products are substantially similar in functionality; (ii) procure the right for Customer to continue using the infringing Products; or (iii) terminate this Agreement and, upon Customer’s return or certified destruction of the infringing Product, provide Customer a pro-rata refund calculated as follows: (x) for infringing Products licensed on a subscription basis, the refund shall consist of any prepaid but unused fees for the remainder of the applicable License Term; or (y) for infringing Software licensed on a perpetual basis, the refund shall consist of a straight line depreciation of the license fee based on a three (3) year useful life. This Section 9 is Customer’s sole and exclusive remedy with respect to any claim of intellectual property infringement.

Exclusions. Tenable shall have no liability with respect to a third party intellectual property infringement claim arising out of: (i) modifications of the Product made to conform with Customer’s specifications; (ii) modifications of the Product made by anyone other than Tenable or a Tenable authorized third party; (iii) Customer’s use of the Product in combination with other products or services not provided by Tenable; (iv) Customer’s failure to use any updated versions of the Product made available by Tenable; or (v) Customer’s use of the Product in a manner not permitted by this Agreement or otherwise not in accordance with the Documentation. Product warranties and associated warranty periods are set forth in the relevant Schedules attached hereto.

Antivirus Warranty. Tenable represents it has taken commercially reasonable efforts to ensure that the Products, at the time of delivery, are free from any known and undisclosed virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design that would erase data or programming or otherwise cause the Products to become inoperable or incapable of being used in the manner for which it was designed or in accordance with the Documentation.

Warranty Disclaimer. If Customer’s use of the Products is, or in Tenable’s opinion is likely to be, the subject of an infringement claim, Tenable may, in its sole discretion and expense: (i) modify or replace the infringing Products as necessary to avoid infringement, provided that the replacement Products are substantially similar in functionality; (ii) procure the right for Customer to continue using the infringing Products; or (iii) terminate this Agreement and, upon Customer’s return or certified destruction of the infringing Product, provide Customer a pro-rata refund calculated as follows: (x) for infringing Products licensed on a subscription basis, the refund shall consist of any prepaid but unused fees for the remainder of the applicable License Term; or (y) for infringing Software licensed on a perpetual basis, the refund shall consist of a straight line depreciation of the license fee based on a three (3) year useful life. This Section 9 is Customer’s sole and exclusive remedy with respect to any claim of intellectual property infringement.

Exclusions. Tenable shall have no liability with respect to a third party intellectual property infringement claim arising out of: (i) modifications of the Product made to conform with Customer’s specifications; (ii) modifications of the Product made by anyone other than Tenable or a Tenable authorized third party; (iii) Customer’s use of the Product in combination with other products or services not provided by Tenable; (iv) Customer’s failure to use any updated versions of the Product made available by Tenable; or (v) Customer’s use of the Product in a manner not permitted by this Agreement or otherwise not in accordance with the Documentation. Product warranties and associated warranty periods are set forth in the relevant Schedules attached hereto.
then only Customer’s Agent (and not Customer) will be permitted to contact Tenable Support Services. Tenable shall have the right to withdraw its consent to the use of any Customer’s Agent in its reasonable discretion.

Notices. Any legal notices or other communication pursuant to this Agreement must be in writing, in English, and will be deemed to have been duly given when delivered if delivered personally or sent by recognized overnight express courier. All notices to Tenable must be sent to the address described in this Agreement to the attention of the Legal Department (unless otherwise specified by Tenable). All notices Tenable sends to Customer shall be at the physical address referenced in this Agreement (or otherwise provided to Tenable). Tenable may provide notices with regard to Products via the email address Customer provided during Product registration and Customer hereby consents to receive such communications from Tenable in an electronic form.

Assignment. Neither Party may assign or otherwise transfer this Agreement without the other Party’s prior written consent, which will not be unreasonably withheld.

Reserved. General. This Agreement, together with the underlying GSA Schedule Contract, Schedule pricelist and applicable purchase order, constitutes the entire agreement between the Parties, and supersedes all other prior or contemporaneous communications between the Parties (whether written or oral) relating to the subject matter of this Agreement. No Customer document or purchase order shall modify or supersede this Agreement, unless expressly agreed to in writing by both parties. The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. If any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties will substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the Parties. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. Customer agrees that Tenable may use Customer’s name or logo in a customer list. Customer may not use Tenable’s name or logo without prior written consent and in accordance with Tenable’s guidelines. No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the Party may have under this Agreement. The Parties are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the Parties. This Agreement is not intended nor will it be interpreted to confer any benefit, right or privilege in any person or entity not a party to this Agreement. Any party who is not a party to this Agreement has no right under any law to enforce any term of this Agreement. Any provision of this Agreement that imposes or contemplates continuing obligations on a party and any section which by its nature is intended to survive will survive the expiration or termination of this Agreement, including Sections 3, 4, 9 and 11.

Government Entities. This Section 15 shall only apply to Government Customers, as defined below.

If Customer is an agency or instrumentality of a sovereign government (a “Government Customer”), all Government Customer end users acquire the rights to use and/or access the Products and/or Services with only those rights set forth herein (consistent with 48 C.F.R. 12.212). The terms and conditions of this Agreement govern Government Customer’s use and disclosure of the Products and supersedes any conflicting terms and conditions that may be applicable through the Government Customer’s procurement regulations. If this Agreement fails to meet the Government Customer’s needs or is inconsistent in any way with federal law, the government must return the Product, unused, to Tenable. If Customer is prohibited by law, regulation, or relevant attorney general opinion from agreeing to any clause of this Agreement (collectively, “Restrictions”), the Agreement shall be modified to the extent required under such Restrictions. Each of the components that constitute the Product is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212.

SCHEDULE A: SOFTWARE
This Schedule for Tenable Software (this “Schedule”) is subject to and made part of the Agreement.

General. This Schedule governs Customer’s license of Software.

License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable license to use the Software (in object code form only) solely for Customer’s own internal business purposes. Customer’s right to install such Software is limited to use with the computers or machines for which the Software is registered for use. Customer is permitted to make one copy of the Software for backup or archival purposes.

Warranty. Tenable warrants that the Software shall materially conform to the Documentation for a period of sixty (60) days after Delivery. Customer’s sole and exclusive remedy for breach of this warranty shall be for Tenable to, at its sole option: (i) use commercially reasonable efforts to modify or correct the Software such that in all material respects it conforms to the functionality described in the Documentation; or (ii) if Tenable is unable to restore such functionality within a reasonable period of time, Customer shall be entitled to a refund for the non-confirming Software.

Open Source and Third Party Software. Any code or other intellectual property included as part of the Software that was licensed to Tenable by third parties that is not marked as copyrighted by Tenable is subject to other license terms that are specified in the Documentation available on Tenable’s website at https://docs.tenable.com/licenseddeclarations/ (or a successor location). Customer agrees to be bound by such other license terms.

Audit Rights. Subject to applicable Government security requirements, Tenable may, by itself or through a third party independent auditor, audit Customer’s usage of the Software to confirm compliance with this Agreement or the applicable Ordering Document. Tenable shall: (i) provide Customer with reasonable advance notice of the audit; (ii) not request such audit more than once per year; and (iii) not unreasonably interfere with Customer’s business activities when conducting the audit.

SCHEDULE B: HOSTED SERVICES
This Schedule for Tenable Hosted Services (this “Schedule”) is subject to and made part of the Agreement.

General. This Schedule governs Customer’s purchase and use of the Hosted Services.
License; Right to Use. Subject to the terms of the Agreement, Tenable grants Customer for the duration of the License Term a non-exclusive, non-transferable, non-sublicensable right to access the Hosted Environment and use those modules of the Hosted Services set forth on a valid Ordering Document solely for Customer’s own internal business purposes.

Warranty. Tenable warrants that the Hosted Services will materially comply with the functionality described in the Documentation. Customer’s exclusive remedy for breach of this warranty shall be for Tenable to use commercially reasonable efforts to modify the Hosted Services to provide in all material respects the functionality described in the Documentation. If Tenable is unable to restore such functionality within sixty (60) days, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of any prepaid but unused fees for the nonconforming Hosted Services. Tenable shall have no obligation with respect to a warranty claim hereunder unless Customer notifies Tenable of such claim within thirty (30) days of the date the underlying condition first arose. This warranty shall only apply if the applicable Hosted Service has been utilized in accordance with the Agreement and the Documentation.

Acknowledgements. Customer authorizes Tenable to perform the Scans, including accessing the Scan Targets in the context of the Scans. Customer understands and acknowledges that the Scans may originate or appear to originate from a Tenable URL which could cause Customer (or the owner of the Scan Targets) to believe they are under attack. Customer agrees not to pursue any claims against Tenable as a result of any access to Scan Targets when such access was made in connection with an authorized Scan unless such a claim is based on the gross negligence or willful misconduct of Tenable.

Usage Requirements. Customer must provide current and accurate information in all submissions made in connection with the Hosted Services, including registration information and the location of the Scan Targets to be Scanned. Tenable may, in its reasonable discretion, temporarily suspend access of certain users of the Hosted Services. Customer agrees to safeguard and maintain the confidentiality of all user names and passwords. Customer further agrees to use best efforts to ensure that no unauthorized parties have access to the Hosted Services through Customer’s account and/or log-in credentials. Customer is responsible for compliance with this Agreement and all use of the Hosted Services through Customer’s account.

PCI Scans. Tenable makes no guarantee that a successful completion of a PCI Scan will make Customer compliant with the Payment Card Industry Data Security Standard.

Data Retention Policy. Tenable will maintain Customer Scan data stored in the Hosted Environment for a period of not less than one year from the Scan date. Customer acknowledges that Tenable is in no way responsible for any of Customer’s data retention compliance requirements. Tenable’s data retention policy with respect to PCI Scans will match then-current requirements set forth by the PCI Security Standards Council.

Service Level Agreement. Tenable commits to make access to the Hosted Environment available in accordance with Tenable’s then current service level agreement, available at http://static.tenable.com/prod_docs/Service_Level_Commitment.pdf (or a successor location).

SCHEDULE C: PROFESSIONAL SERVICES

This Schedule for Tenable Professional Services is subject to and made part of the Agreement.

General. The Parties may agree, from time to time, on the purchase and sale of Tenable Professional Services. Professional Services shall be as further described in a separate SOW or Services Brief. No SOW shall be binding upon the Parties until it has been executed by both Parties. Except as otherwise agreed to by the Parties in writing, all Services Briefs or signed SOWs will be governed by this Agreement. In the event of inconsistency between the Agreement and a signed SOW, the signed SOW shall govern.

Type of Services. Tenable offers a range of Professional Services; provided, however, unless otherwise agreed upon in writing, Tenable does not offer creation of custom intellectual property. Tenable is not obligated to provide any Professional Services except as mutually agreed in a Services Brief or SOW.

Deliverables. “Deliverable(s)” means the reports, analysis, codes, scripts slides, documents, examples and other written materials or work results provided as part of the Professional Services.

Intellectual Property Rights. Grant of License in Deliverables. Tenable grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Agreement or SOW) perpetual right to use, copy and create derivative works from the Deliverables (without the right to sublicense) for Customer’s own business operations, as contemplated in the applicable SOW or Services Brief, as well as any other business operations, subject to Customer’s internal business operations, as contemplated by the applicable SOW or Services Brief. Tenable’s data retention policy with respect to PCI Scans will match then-current requirements set forth by the PCI Security Standards Council.

Reservation of Rights. Except for the rights expressly granted herein to Customer, Tenable expressly reserve all other rights in and to the Professional Services and Deliverables. Notwithstanding anything to the contrary in this Schedule, nothing shall prevent Tenable from providing similar Professional Services to other customers and nothing in this Schedule shall be construed to provide any intellectual property rights whatsoever in the Products (or any modifications or enhancements thereto) that Tenable develops or makes generally available for sale to its customers.

Pre-Existing Materials. Any pre-existing materials, proprietary item or intellectual property rights of either Party which is disclosed or used in performing the Professional Services shall remain fully vested in such Party. Nothing in this Schedule shall transfer any rights whatsoever in Tenable’s Products. Customer hereby grants to Tenable the intellectual property rights (if any) required for Tenable to perform the Professional Services.

Warranty. Tenable warrants that all Professional Services shall be performed in a professional manner and in accordance with industry standards. Tenable further warrants for a period of ten (10) days from the service completion date that the Professional Services shall materially conform to with the applicable SOW or Services Brief. If Customer provides written notice of a non-conformity during this warranty period, Tenable shall promptly confirm the non-conformity and upon confirmation, Tenable’s entire liability and Customer’s exclusive remedy shall be for Tenable to use commercially reasonable efforts to re-perform the Professional Services within a reasonable amount of time. If Tenable is unable to reperform the Professional Services, then Tenable may elect to refund amounts paid by Customer for the non-conforming Professional Services.

Scheduling; Cancellation. Professional Services must be scheduled within three (3) months of the date of the Ordering Document under which such Professional Services were purchased and completed within six (6) months of the of the Ordering Document. Tenable shall have no obligation to perform the Professional Services if Customer or Customer’s designated attendees do not attend a scheduled training session or cancel a Professional Services engagement without providing proper notice. Customer must provide Tenable at least ten (10) business days’ notice to reschedule any Professional Services.

Customer Responsibilities. For Professional Services occurring on Customer’s site, Tenable agrees to comply with applicable and reasonable security procedures provided Customer provides Tenable with such written procedures in advance. Some of the Professional Services may require Customer to have specialized knowledge or meet particular software or hardware requirements (for example,
appropriate computers or appliances, stable Internet connection or up-to-date web browsers or operating system, etc.). If technical issues arise during the Professional Services, Tenable will use commercially reasonable efforts to resolve such issues, but will have no liability based on Customer’s failure to meet technical requirements.

Changes. Either party may request that a change be made to the Professional Services. Tenable reserves the right to charge a fee for any material changes to the Professional Services. No changes shall be binding unless executed by both Parties.

Non-Solicitation. During the term that Professional Services are being provided and for a period of one (1) year after their completion, Customers will not, either directly or indirectly, solicit for employment any person employed by Tenable or any of its Affiliates that have provided Customer Professional Services under this Agreement. For the avoidance of doubt, this restriction shall not prevent Customer from hiring based on a response to Customer’s advertising in good faith to the general public a position or vacancy to which an employee or worker of Tenable responds, provided that no such advertisement shall be intended to specifically target Tenable personnel.

### Tenable.sc & Tenable.io SKUs

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### Agent SKUs

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EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)
1. **Scope.** This Rider and the attached Thycotic Software ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.202(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded.
Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504, 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

THYCOTIC SOFTWARE

THYCOTIC SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

Use of the Product and Support

Subject to the terms and conditions of this Agreement and the applicable ordering document, Thycotic hereby grants to Ordering Activity a perpetual, non-exclusive, royalty-free license to use the Product for its operational purposes. The Product is available immediately on
installation. The use of the Product is available to the number of users and edition set forth on the applicable ordering document issued by Ordering Activity. The rights and licenses granted under this Agreement may be used by or on behalf of any Affiliate of Ordering Activity; provided that the number of users and edition of any license is not exceeded. “Affiliate” means, with respect to the applicable party, any corporation, company, partnership, trust, sole proprietorship or other entity or individual which: (a) is owned, controlled or managed by such party, in whole or in part (b) owns, controls or manages such party, in whole or in part, or (c) is under common ownership or control with such party, in whole or in part.

Ordering Activity acknowledges and agrees that the Product is subject to the export control laws and regulations of the United States ("Export Controls"), including the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Control, and agrees to the extent applicable, to comply with the Export Controls. Ordering Activity further agrees that (i) Ordering Activity is not an entity restricted or otherwise prohibited by the Export Controls; (ii) the Product will not be exported, re-exported or otherwise transferred to any country subject to a United States trade embargo, or to a national or resident thereof; and (iii) the Product will not be exported, re-exported, or transferred to an end-user engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

Upon Ordering Activity’s issuance of an ordering document for the applicable support fees, Thycotic shall provide telephone, e-mail, and remote assistance support services for the Product ("Support"). Support shall be available Monday through Friday between the hours of 7am - 7pm US Eastern Time ("Business Hours") excluding major US Public Holidays. All Support requests shall receive a response within twenty-four (24) hours during Business Hours. Support shall entitle Ordering Activity to receive all new releases (both minor and major) of the Product ("Upgrades") which Upgrades on receipt by Ordering Activity or its Affiliates shall automatically be licensed to Ordering Activity and its Affiliates under the same terms as the Product.

Account responsibility

Ordering Activity is responsible for Ordering Activity’s use of the Product. Ordering Activity is responsible for maintaining the confidentiality of any password for the Product provided to Ordering Activity.

Reserved.

Limited Warranty

Thycotic represents and warrants to Ordering Activity that:

The Product and Support shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other governmental requirements;

The Product will perform in compliance with applicable performance specifications set forth in its documentation for a period of one (1) year following the date of Ordering Activity’s purchase of the Product pursuant to Section 1. If new Upgrades of the Product are provided to Ordering Activity, the foregoing representations and warranties in the immediately preceding sentence shall apply to such Upgrades for one (1) year following the date of Ordering Activity’s receipt of the Upgrades;

The Product, including Upgrades, does not and shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware;

To the extent that the Product contains any third party software (“Third Party Software”), Thycotic has the right to grant Ordering Activity and its Affiliates the license to use the Third Party Software with the Product pursuant to the terms and conditions of this Agreement without violating the rights of any third party.

All Support and any other services (collectively, “Services”) shall be performed in a professional manner and with the standard of care and diligence in the industry (but no less than a reasonable standard of care and diligence), as well as industry standards (but no less than reasonable standards) of documentation, methodology, and control.

If the Product or Services do not comply with any of the representations and warranties set forth above, Thycotic shall, at its own expense, promptly correct the Product and/or Service, as applicable, so that it complies with all representations and warranties or replace the Product and/or Service with comparable new software or a new Service that complies with all representations and warranties. Where it is impractical to perform one of the foregoing remedies (including, without limitation, if Thycotic fails to perform such remedies within thirty (30) days of Ordering Activity’s delivery of written notice to Thycotic), Ordering Activity may terminate this Agreement upon delivery of written notice to Thycotic. Upon such termination, Thycotic shall refund the fees paid for the Product, and refund the applicable fees for the unused term of any Services and for Services not delivered in accordance with this Agreement (including any Services that do not comply with applicable representations and warranties).

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE PRODUCT AND SERVICES ARE PROVIDED TO ORDERING ACTIVITY ON AN “AS-IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS WITHOUT ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

Reserved.

Reserved.

Reserved.
Service Level Agreement (SLA)

Thycotic will use commercially reasonable efforts to provide Support as per the availability defined in Section 1. In the event Thycotic does not provide Support as defined in Section 1, the Ordering Activity will be eligible to receive a Service Credit as described below.

Definitions

“Service Year” is the preceding 365 days from the date of an SLA claim.

“Unavailable” means that the Service was not available to Ordering Activity or its Affiliates due to Support being unavailable or non-responsive.

The “Eligible Credit Period” is a single month, and refers to the monthly billing cycle in which the most recent Unavailable event included in the SLA claim occurred.

A “Service Credit” is a dollar credit, calculated as set forth below, that Thycotic may credit back to Ordering Activity.

Service Commitments and Service Credits

If Support is Unavailable for the Ordering Activity and its Affiliates during the Service Year, then that Ordering Activity is eligible to receive a Service Credit equal to 10% of the License fees paid for Support for the Service Year. To file a claim, the Ordering Activity does not have to wait 365 days from the day they started using the service or 365 days from their last successful claim. The Ordering Activity can file a claim any time an Unavailable event occurs. Thycotic will apply any Service Credits only against future payments otherwise due from Ordering Activity. Service Credits shall not entitle Ordering Activity to any refund or other payment from Thycotic. A Service Credit will be applicable and issued only if the credit amount for the applicable Service Year is greater than one dollar ($1 USD). Service Credits may not be transferred or applied to any other customer. Unless otherwise provided in the Agreement, the Ordering Activity’s sole and exclusive remedy for any Unavailable Support is the receipt of a Service Credit or termination of Ordering Activity use of the Product.

Credit Request and Payment Procedures

To receive a Service Credit, Ordering Activity must submit a request by sending an e-mail message to sales@thycotic.com. To be eligible, the credit request must (i) include Ordering Activity domain name in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each “Unavailable” incident; (iii) include any call or email logs (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (iv) be received by Thycotic within thirty (30) business days of the last reported incident in the SLA claim. If the Unavailable event is confirmed by Thycotic, which confirmation will not be unreasonably withheld or delayed, then Thycotic will issue the Service Credit to Ordering Activity on the next billing cycle following the Service Year in which the request occurred. Ordering Activity’s failure to provide the request and other information as required above will disqualify Ordering Activity from receiving a Service Credit.

SLA Exclusions

The Service Commitment does not apply to any Unavailability, suspension or termination of Support: (i) that result from non-adherence to the terms of the Agreement by Ordering Activity or its Affiliates; (ii) caused by factors outside of Thycotic’s reasonable control, including any force majeure event or Internet access or related problems; provided, that, if any force majeure event occurs that affects the performance of Thycotic under this Agreement, Thycotic will give prompt written notice to Ordering Activity and use commercially reasonable best efforts to avoid or remove the cause of non-performance and to perform with dispatch once the interfering conditions created by the force majeure event are removed or cease. (iii) that result from any actions or inactions of Ordering Activity, its Affiliates or any third party; (iv) that result from Ordering Activity equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Thycotic’s direct control); (v) arising from Thycotic’s suspension and termination of Ordering Activity’s right to use Support in accordance with the Agreement (collectively, the “SLA Exclusions”). If availability is impacted by factors other than those explicitly listed in this section, Thycotic may issue a Service Credit considering such factors in Thycotic’s sole discretion.

Indemnification

Subject to 28 U.S.C. § 516, Thycotic shall defend, indemnify and hold Ordering Activity and its Affiliates, and the directors, officers, employees and agents of each (collectively, “Ordering Activity Indemnitees”), harmless from and against any demands, claims and actions by third parties, and all liabilities, judgments, damages, fines, penalties, costs and expenses (including actual and reasonable attorneys’ fees) incurred in connection therewith (individually and collectively, “Liabilities”), resulting from (or alleged to result from) (a) any criminal or other intentional wrongful act or omission or any act or omission of gross negligence or willful misconduct of Thycotic or its employees, agents or subcontractors; or (b) the Product in the form provided violating or infringing any copyright, trademark, patent, trade secret, data privacy right or any other proprietary rights of any third person valid under the laws of the United States or any country in which the Product is used (“Intellectual Property Rights”). Thycotic is not obligated under this section to the extent any third party claim arises from a Ordering Activity Indemnitee's breach of this Agreement or (with respect to claims related to clause (b) of this section) use of the Product in combination with any software, data, process or technology not supplied by Thycotic (where there would be no claim, but for such combination), or a Ordering Activity Indemnitee’s negligence or willful misconduct.

Indemnification Procedure. The Ordering Activity must (i) give Thycotic prompt written notice of any such claim to avoid actual prejudice provided that the failure to notify Thycotic shall not relieve Thycotic from any liability Thycotic may have to the Ordering Activity hereunder, except to the extent such failure is prejudicial to the defense of any claims; (ii) afford Thycotic control over the defense of any such claim so long as Thycotic promptly undertakes such defense to avoid actual prejudice to the Ordering Activity with competent
counsel reasonably acceptable to Ordering Activity, and under any settlement, Thycotic shall not be entitled to commit the Ordering Activity to the payment of any monetary amounts that will not be paid by Thycotic; (iii) Thycotic shall not enter into any settlement or compromise, or consent to the entry of any judgment, that includes, or in connection with which the Ordering Activity would be required to incur or admit liability, obligation, or culpability without the Ordering Activity’s advance written consent; and (iv) the Ordering Activity provides reasonable cooperation to Thycotic in the defense of any such claim, at the cost and expense of Thycotic. If Thycotic fails to assume the defense of a claim subject to indemnification under this Agreement within 15 days of the Ordering Activity’s notice thereof, or if within such 15-day period actual prejudice may occur if action is not taken, then at Thycotic’s cost and expense, the Ordering Activity may undertake the defense or settlement of such claim. Notwithstanding any other provision herein or otherwise to the contrary, the obligations of Thycotic and Ordering Activity under this Section 12 shall survive termination of this Agreement indefinitely and shall be without dollar limit.

Intellectual Property Rights Claims. In addition to, and not in limitation of the foregoing, if the Product becomes, or in Thycotic’s reasonable opinion based on the advice of experienced and knowledgeable legal counsel, is likely to become, the subject of a claim that intellectual property rights to the Product violates or infringes any Intellectual Property Rights, Thycotic may, at its option and expense, either: (i) procure for Ordering Activity the right to continue exercising its rights hereunder to the Product or (ii) replace or modify the Product so that it becomes noninfringing but remains functionally equivalent. If neither of the foregoing alternatives provide an adequate remedy in Thycotic’s or Ordering Activity’s reasonable judgment, then Ordering Activity may terminate all or any part of the use by Ordering Activity of the Product and Thycotic will equitably refund the prorated amounts paid by Ordering Activity for the terminated use of the Product that Ordering Activity will no longer receive under this Agreement.

Reserved.

Reserved.

**ADDITIONAL PRODUCT DESCRIPTIONS:**

The following line items are priced via a calculation as outlined below:

<table>
<thead>
<tr>
<th>PART NUMBER</th>
<th>DESCRIPTION</th>
<th>ADDITIONAL DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SS-SPT-1YR</td>
<td>Secret Server Installed - Support - 1 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-2YR</td>
<td>Secret Server Installed - Support - 2 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 2 year prepaid maintenance support renewals, multiply full year support cost result by 2. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-3YR</td>
<td>Secret Server Installed - Support - 3 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 3 year prepaid maintenance support renewals, multiply full year support cost result by 2.7. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-4YR</td>
<td>Secret Server Installed - Support - 4 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 4 year prepaid maintenance support renewals, multiply full year support cost result by 3.5. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SPT-5YR</td>
<td>Secret Server Installed - Support - 5 Year</td>
<td>To Calculate: add up the Secret Server Edition license cost for the customer with the Secret Server user license cost to determine perpetual spend. Multiply perpetual spend by 22% to determine full year support cost. For 5 year prepaid maintenance support renewals, multiply full year support cost result by 4.25. For renewals, reach out to EC America.</td>
</tr>
<tr>
<td>SS-SUB-ENT</td>
<td>Secret Server Install-Sub-Enterprise</td>
<td>Yearly subscription for the ENT edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ENT subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>SS-SUB-ETP</td>
<td>Secret Server Install-Sub-Enterprise Plus</td>
<td>Yearly subscription for the ETP edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the ETP subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>Plan Code</td>
<td>Plan Name</td>
<td>Description</td>
</tr>
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<td>------------</td>
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</tr>
<tr>
<td>SS-SUB-PRO</td>
<td>Secret Server Install-Sub-Pro</td>
<td>Yearly subscription for the PRO edition of Secret Server Installed. To calculate price for customer, add perpetual software license for edition and users. Multiply this total by 22% (0.22) times 3 to get the price for support. Then add support total and previous total. Divide that result by 3 to get average cost per year. Type that result as the price for the PRO subscription line on the quote. For support and users, put zero price on the quote because they are now included in the edition price.</td>
</tr>
<tr>
<td>SS-SUB-USR</td>
<td>Secret Server Installed - Sub - User Count</td>
<td>Yearly subscription for the user count in all Secret Server Installed Subscriptions. Enter the number of users in the quantity field. User Price is included in the edition price calculation.</td>
</tr>
</tbody>
</table>
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached TIBCO Software Federal, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

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**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

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violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504, 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**TIBCO SOFTWARE FEDERAL, INC.**
TIBCO SOFTWARE FEDERAL, INC. LICENSE, WARRANTY AND SUPPORT TERMS

END USER LICENSE AGREEMENT FOR U.S. FEDERAL GOVERNMENT BUSINESS ("AGREEMENT")

PLEASE READ CAREFULLY: THIS AGREEMENT IS PROVIDED PURSUANT TO SECTION 12.212 OF THE FEDERAL ACQUISITION REGULATION (FAR), AND IS APPLICABLE TO TIBCO SOFTWARE LICENSES, EQUIPMENT, CLOUD OR HOSTED SERVICES (INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS THE "PRODUCTS") ACQUIRED BY OR ON BEHALF OF UNITED STATES FEDERAL GOVERNMENT DEPARTMENTS, AGENCIES, ADMINISTRATIONS, OR OTHER INSTRUMENTALITIES ("GOVERNMENT" or "GOVERNMENT END USERS"), OR BY CONTRACTORS ON BEHALF OF, FOR TRANSFER OR RESALE TO, OR FOR THE BENEFIT OF GOVERNMENT END USERS (COLLECTIVELY, WITH GOVERNMENT END USERS, "GOVERNMENT CUSTOMER"). THIS AGREEMENT SHALL ALSO APPLY TO ANY MAINTENANCE OR CONSULTING SERVICES ("SERVICES") ACQUIRED FROM TIBCO SOFTWARE FEDERAL, INC. ("TSFI") RELATING TO THE PRODUCTS. NOTWITHSTANDING THE FOREGOING, IF PRODUCTS AND/OR SERVICES ARE BEING ACQUIRED FROM TSFI PURSUANT TO A NEGOTIATED AGREEMENT, THAT NEGOTIATED AGREEMENT SHALL CONTROL.

1. The following shall govern your use of the Products and Services, except to the extent all or any portion are (a) subject to a separate written, duly executed agreement, or (b) are contrary to applicable Federal law. In the event any provision of this Agreement is contrary to or unenforceable under applicable Federal law, the Federal law shall control. For Government End Users, this Agreement supersedes and replaces any shrink wrap, click wrap, or click through terms ("Automated Terms") that may be presented with Products or Services and any such Automated Terms shall not apply.

2. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in Appendix A. "Order Form" means any written agreement, or a web store or website order or registration requesting Products or Services.

3. Alpha, Beta, Developer Evaluation and Evaluation Licenses. If the Products are provided or accessed at no charge for demonstration or evaluation purposes or for alpha or beta testing, then, subject to the license grant in Section 4 below and to the terms and conditions of this Agreement, (a) use of the Products shall be solely for such purposes, (b) the Products shall not be used or deployed in a production or development environment, and (c) such use shall automatically terminate upon the earlier of (i) thirty (30) days from the date TSFI grants the right to install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended. If the Products are provided or accessed for Developer Evaluation, (a) use of the Products solely shall be for development evaluation purposes, (b) such use shall not be in a Production environment and (c) such use shall automatically terminate upon the earlier of (i) ninety (90) days from the date TSFI grants the right to receive, install or access the Product, (ii) TSFI’s notice of termination of such no charge use, or (iii) access to the Cloud or the Hosted Services has ended.

4. License Grant. The Products are the property of TIBCO Software Inc. ("TIBCO") or its licensors and are protected by copyright and other laws. TSFI is a subsidiary of TIBCO. While TIBCO continues to own or have license rights to the Products, TSFI is authorized to and hereby grants you a limited, non-transferable (except as permitted herein), non-exclusive license, subject to the terms and conditions of this Agreement, to use the Number of Units set forth in the Order Form solely for your internal business use.

5. License Term. The term of each license for a Product shall be either perpetual or limited as designated on an Order Form. If a Product is licensed on a limited term basis, then, unless otherwise set forth in an Order Form, the term shall commence on the Purchase Date and have the following duration:

   Alpha, Beta and Evaluation - thirty (30) days
   Developer Evaluation – ninety (90) days
   Hosted Services - one (1) year
   Cloud - one (1) year
   Software purchases on a term limited basis - one (1) year

   If you originally registered to download or access a Product for Alpha, Beta or Evaluation purposes, upon re-registration you may be permitted one (1) additional term. On expiration of a limited term, you must immediately cease using and return or destroy all copies of the Products and related Confidential Information.

6. Delivery. Products are delivered electronically, and delivery deemed complete when duly made available to you.

7. Equipment Purchase.

   A. Purchase. When we issue you a quotation and accept your Purchase Order for the purchase of Equipment, we agree, subject to the terms and conditions of this Agreement, to sell you the Equipment described therein. We transfer all title and risk to the hardware component of the Equipment when we or our agent ships the Equipment. For a feature, conversion or upgrade involving the removal of parts in connection with the Equipment, which parts become our property, or for the replacement of Equipment or components thereof pursuant to the Equipment Maintenance Program Guide, the return of the Equipment or parts forms part of your consider to us and we reserve all rights under applicable law regarding said Equipment or parts.

   B. Equipment Delivery. For delivery of the TIBCO Messaging Appliance™, title is deemed to transfer upon delivery by our agent to our designated freight carrier, FCA Ontario, Canada (Incoterms 2000). For delivery of all other Equipment, title is deemed to transfer upon delivery by us to our designated freight carrier, FCA TIBCO’s premises (Incoterms 2000). All freight, insurance and other shipping
expenses shall be paid to the freight carrier by you. Any shipping or handling charges to be paid by you shall be as identified on the accepted Purchase Order. Delivery is subject to the availability of Equipment.

8. Hosted Services. We shall use commercially reasonable efforts to make the Hosted Services you have purchased available 24 hours a day, 7 days a week, except for: (a) planned downtime under our direct control (of which we shall give at least 8 hours notice via the Hosted Services and which we shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific Standard Time Friday to 3:00 a.m. Pacific Standard Time Monday), (b) to the extent we are notified by third party service providers of planned downtime (of which we shall provide such notice to you prior to the Hosted services as soon as we can reasonably do so), or (c) any unavailability caused by circumstances beyond our reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, internet service or third party hosting provider failures or delays (“Force Majeure”). Hosted Services are provided in accordance with applicable laws and government regulations.

9. Cloud. Provisioning of the Cloud will be confirmed electronically and delivery deemed complete when such confirmation is made available to you. Provisioning of the Cloud requires an account be established for you in TIBCOmmunity. You agree to and accept the Terms of Use for TIBCOmmunity (http://www.tibcommunity.com/themes/tibcotucon/resources/html/terms_of_use.html) if you use the credentials to access the TIBCOmmunity site EXCEPT that any provision of the Terms of Use for TIBCOmmunity that is contrary to, or unenforceable against a Government End User under, applicable Federal law shall be of no effect for Government End Users; for Government End Users, Federal law shall apply regardless of any choice of law or venue language in the TIBCOmmunity Terms of Use. Certain Software Products may be provided for installation by you and are provided solely to enable the functionality of the Cloud, and may not be used for any other purpose. You are solely responsible for procuring your own account with the applicable TIBCO- approved third party service provider (“Provider”) for the Cloud and for the technical operation of the content of your account.


A. In connection with your use of Hosted Services or a Cloud, you shall, in addition to the Restrictions below (i) be responsible for your use's compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and lawfulness of any information by which you acquire and disclose your data, (iii) not store or transmit material in violation of third-party privacy rights, (iv) not sell, resell, rent or lease the Hosted Services or Cloud, (v) use reasonable efforts to prevent unauthorized access to or use of the Hosted Services or Cloud, and notify us promptly of any such unauthorized access or use, (vi) not interfere with or disrupt the integrity or performance of any Provider services or third-party data contained there, (vii) not attempt to gain unauthorized access to the Hosted Services, Cloud or our related systems or networks, and (viii) use the Hosted Services or Cloud only in accordance with any applicable Documentation and all applicable laws and government regulations. Hosted Services or the Cloud may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls or number of users, third party terms of use, etc., specified in the applicable Documentation, web store or web site. In the event that you receive any notice claiming that our content in connection with the Hosted Services, Cloud or any Provider services violates a third party’s rights including, without limitation, notices pursuant to the Digital Millennium Copyright Act, you will promptly forward such notice to us, with a courtesy copy to TIBCO’s General Counsel.

B. You will not use Hosted Services or the Cloud to promote any illegal activities or post any materials in violation of any law. In addition, in using and accessing Hosted Services or the Cloud, you shall not use any third party software in connection with a Provider’s or TIBCO service, in any manner that requires, pursuant to the license applicable to such software, that any Provider or TIBCO property or services be: (i) disclosed or distributed in source code form; (ii) made available free of charge to recipients; or (c) modifiable without restriction by recipients. No software or content provided by you or your users in connection with your use of Hosted Services or the Cloud may contain any malicious or hidden mechanism or code for the purpose of damage or corrupting the Hosted Services, Cloud or the Provider service.

C. You are solely responsible for adequate security, protection and backup of your data and content. Except as required by applicable law, we are not responsible for Provider services, unauthorized access to your data or content, or the deletion, destruction, damage, loss or failure to store any of your content or other data that you submit or use in Hosted Services or the Cloud.


To the extent consistent with the provisions of FAR 52.227-19 (Commercial Computer Software License), the following restrictions shall apply to Government End Users. Where a restriction is inconsistent with the provisions of FAR 52.227-19, the FAR provisions shall control and the restriction shall not apply to Government End Users. For other customers, the restrictions shall apply.

A. You shall not (a) make more copies than the Number of Units (except for a reasonable number of copies for archival and disaster recovery purposes) or use any unlicensed versions of the Software; (b) use any Software not listed in an Order Form, even if such unlicensed software is made available to you as part of the general delivery mechanism for the Products; (c) provide access to the Products to anyone other than employees, contractors, or consultants who agree in writing to be bound by terms at least as protective of TIBCO as those in this Agreement; (d) sublicense, transfer, assign, distribute to any third party, pledge, lease, rent, or commercially share the Products or any of your rights under this Agreement (for the purposes of the foregoing a change in control of your company is deemed to be an assignment); (e) use the Products for purposes of providing a service bureau, including, without limitation, providing third-party hosting, or third-party application integration or application service provider-type services, or any similar services; (f) use the Products in connection with ultrahazardous activities, or any activity for which failure of the Products might result in death or serious bodily injury to you or a third party; or (g) directly or indirectly, in whole or in part, modify, translate, reverse engineer, decrypt, decompile, disassemble, make error corrections to, create derivative works based on, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Products. You may engage in such conduct as is necessary to ensure the interoperability of the Software as required by law, provided that prior to commencing any decompilation or reverse engineering of any Software, you agree to observe strict obligations of confidentiality and provide us reasonable advance written notice and the opportunity to assist or conduct such activity on your behalf and at your expense.

B. Any additional license parameters applicable to particular Products are set forth in Appendix B.
12. Proprietary Notices. The Products, Documentation and Materials are proprietary to TIBCO and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. TIBCO and its licensors shall retain ownership in the Products, Documentation and Materials; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All proprietary notices incorporated in or affixed to any Products, Documentation or Materials shall be duplicated by you on all copies of the Products, Documentation, or Material, as applicable, and shall not be altered, removed or obliterated.

13. Extraordinary Corporate Event. For Government End Users, the rights contained at FAR 52.227-19 shall apply in lieu of the following provision. For customers other than Government End Users, to the extent you or your successors or assigns enter into an Extraordinary Corporate Event after the Purchase Date, this Agreement shall not apply to those additional users, divisions or entities which were added to your organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to this Agreement by way of a written amendment signed by our respective duly authorized officers.


A. If you acquired Maintenance from a TIBCO authorized third party, Section 14(B) does not apply. THE TERMS OF ANY MAINTENANCE SERVICES OR RELATED WARRANTY SHALL BE AS AGREED BY AND BETWEEN YOU AND THE TIBCO AUTHORIZED THIRD PARTY. WE PROVIDE NO WARRANTY TO YOU WITH RESPECT TO MAINTENANCE SERVICES PROVIDED BY ANY THIRD PARTY.

B. Maintenance, if ordered (or if included in Cloud or Hosted Services), is provided under the policies set forth in the Maintenance Program Guide attached as Appendix C for Products other than Equipment, and at Appendix D for Equipment.

C. Any Updates provided by us or by our authorized resellers or distributors (if applicable) are subject to the terms and conditions of this Agreement. To receive Maintenance, all Products must be properly licensed and Maintenance fees paid. We are under no obligation to provide Maintenance in the event that Maintenance fees have not been paid when properly due and owing.


A. You may procure installation, configuration, training or other consulting or support services ("Consulting Services") either through a Purchase Order issued against a Consulting Services quotation, or through a work order executed by authorized representative of both parties ("Work Order"). Consulting Services available under this Agreement are limited to those defined as Commercial Items in FAR 2.101, Commercial Item definition at (5) and (6).

B. We hereby grant you a nonexclusive license to use the Materials (and a reasonable number of copies thereof) solely for your internal operations in conjunction with your use of the Products. Materials obtained during your attendance at or from your purchase of virtual training courses, unless otherwise agreed in an Order Form, are limited to the one (1) copy received by each attendee and may not be duplicated.

C. In the event that you are purchasing a license to specific training course content as set forth in an Order Form, the content of each such training course shall constitute a Product for the purpose of this Agreement. Subject to your payment of fees due, you are granted a limited, non-transferable and non-exclusive license to use, modify, translate, create derivative works from, reproduce and distribute the Product solely for your internal business use: provided, however, that the copyright notices and any other legends of ownership are reproduced on each complete or partial copy of such Product. We retain all right, title and interest in the Product, excluding your Confidential Information. All complete or partial copies of the Product in any form shall be subject to the same terms as the original copy. The term of each license and level of annual Maintenance for the Product shall be as set forth in the Order Form.

16. Limited Warranty.

The following Limited Warranty provisions shall apply to Government End Users to the extent permitted by applicable Federal law, including FAR 12.404(b)(2); to the extent that these limitations are not permitted or are unenforceable under applicable Federal law, they shall be of no force or effect for Government End Users. For all other customers, the following Limited Warranty provisions shall apply.

A. If you obtained Software directly from us, we warrant for a period of thirty (30) days from the Purchase Date that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will substantially conform to its Documentation. This limited warranty extends to you personally and is not transferable. Your sole and exclusive remedy and the entire liability of TIBCO and its licensors under this limited warranty will be, at our option, to repair or replace (with respect to the affected Software product), or refund the Software license fee. In the event of a refund, this Agreement shall terminate solely with respect to the affected Software product, and you shall immediately cease all use of and return or destroy all copies of such Software.

B. THIS WARRANTY DOES NOT APPLY TO ANY SOFTWARE WHICH (I) IS LICENSED FOR ALPHA, BETA, EVALUATION, TESTING OR DEMONSTRATION PURPOSES FOR WHICH WE DID NOT RECEIVE A LICENSE FEE; (II) HAS BEEN ALTERED OR MODIFIED (UNLESS BY US); (III) HAS NOT BEEN INSTALLED, OPERATED, REPAIRED, OR MAINTAINED IN ACCORDANCE WITH INSTRUCTIONS SUPPLIED BY US; (IV) HAS BEEN SUBJECTED TO ABNORMAL PHYSICAL OR ELECTRICAL STRESS, MISUSE, NEGLIGENCE, OR ACCIDENT; OR (V) IS USED IN VIOLATION OF ANY OTHER TERM OF THIS AGREEMENT.

C. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING,
This third party software is provided "as is", is subject to the terms of the third party license, and may only be used with the products with which it is provided to you. Such third party software is provided solely as an accommodation to you and you are under no obligation to use such third party software. No warranty is made regarding the results of any products or services, that the products will operate without errors, problems or interruptions, that errors or bugs will be corrected, or that the product functionality or services will meet your requirements. No TIBCO dealer, distributor, agent or employee is authorized to make any modifications, extensions or additions to this warranty on TSFI's or TIBCO's behalf.

17. Indemnity. For Government End Users, claims that Products infringe any patent, copyright or trade secret shall be subject to the provisions of FAR 52.227-2 and 52.227-3.

For customers other than Government End Users, if you obtained the Software from us directly, then we agree at our own expense to defend or, at our option, to settle, any claim or action brought against you to the extent it is based on a claim that the unmodified Software infringes any patent issued by the United States, Canada, Australia, Japan, or any member of the European Union, or any copyright, or any trade secret of a third party. We will indemnify and hold you harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against you in a final judgment provided that you promptly notify us in writing of such claim, we have the exclusive right to control such defense and/or settlement, and you provide reasonable assistance (at our expense) in the defense thereof. In no event shall you settle any claim, action or proceeding without our prior written approval. In the event of any such claim, litigation or threat thereof, we, at our sole option and expense, shall (a) procure for you the right to continue to use the Software, or (b) replace or modify the Software with functionally equivalent software. If such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized equivalent software. If such license or modification is not commercially reasonable (in our sole reasonable opinion), we may cancel this Agreement with respect to the affected Software product upon sixty days prior written notice to you and refund to you the unamortized portion of the associated license fees paid by you to us based on a five-year straight-line depreciation. This Section states our entire liability with respect to the infringement of any intellectual property rights, and you hereby expressly waive any other liabilities or obligations we have with respect thereto. The foregoing indemnity shall not apply to the extent that (x) any claim is based on or attributable to modifications made by you to the Software, or portions thereof, (y) such claim would have been avoided by use of the then-current release version of the Software, or (z) your continued allegedly infringing activity after being provided with modifications that would have avoided the alleged infringement.

18. Limitation of Liability.

For government end users, the following limitations of liability shall apply only to the extent permitted under applicable federal law. To the extent that these provisions are inconsistent with applicable federal law, they shall be of no force or effect with regard to government end users.

For customers who are not government end users, the following shall apply:

A. Except as provided under the indemnity above; or in connection with the misappropriation of the other party's intellectual property, including, without limitation, trade secrets; damages for bodily injury, death, damage to real or tangible personal property; or intentional or gross negligence (the "excluded matters"), in no event will either party or TIBCO's licensors be liable for any loss or unavailability of or damage to data, lost revenue, lost profits, failure to realize expected savings, deferral of revenues, business interruption, downtime costs, or any other indirect, incidental, consequential, special, punitive, exemplary or similar type of damages arising out of this agreement, the use or the inability to use the products, or the provision of any maintenance, consulting services, even if a party has been advised or was aware or should have been aware of the possibility of such costs, expenses or damages.

B. Except for the excluded matters, in no event shall a party's liability to the other, whether in contract, tort (including, active or passive negligence), breach of warranty, claims by third parties or otherwise, exceed the greater of fifty thousand dollars ($50,000 USD) or the price paid by you under the applicable order form. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair or prejudice the U.S. Government's right to EXPRESS remedies provided in the Agreement.

C. The foregoing limitations shall apply even if the above-stated remedy or limited warranty fails of its essential purpose, because some states or jurisdictions do not allow limitation or exclusion of consequential or incidental damages; the above limitation may not apply to you. To the extent allowed by local law, these limitations will apply regardless of the basis of liability, including negligence, misrepresentation, breach of any kind, or any other claims in contract, tort or otherwise.


For Government End Users, confidentiality obligations shall be pursuant to the Freedom of Information Act and other applicable Federal law, and Sections 19A through 19E, below, shall not apply. TIBCO software products delivered under this Agreement constitute commercial computer software products as defined in the FAR and are delivered with no greater than the rights identified in FAR 52.227-19; data delivered under this Agreement constitutes Limited Rights data, and was developed at private expense, embodies trade secrets, or are commercial or financial and confidential or privileged. Pursuant to FAR 52.227-14(g) (Alternate II, DEC 2007), these
data may be reproduced by the Government with the express limitation that they will not, without written permission of TSFI, be used for purposes of manufacture nor disclosed outside the Government.

For customers other than Government End Users, the following provisions shall apply:

A. “Confidential Information” means any information disclosed by either party, whether or not marked, including, without limitation, the terms of this Agreement; the Products; Materials; individual contact information provided by either party; Product or related performance test results derived by you, including but not limited to benchmark test results; and your Protected Data (as defined in Section B below) and Output. Each party agrees to protect Confidential Information in the same manner as it protects its own Confidential Information (but using no less than a reasonable degree of protection) and shall only disclose Confidential Information to those with a need to know that information and who have agreed in writing to be bound by terms at least as protective as those contained in this Agreement. Information will not be deemed Confidential Information if (i) available to the public other than by a breach of a confidentiality obligation, (ii) rightfully received from a third party not in breach of a confidentiality obligation, (iii) independently developed by one party without use of the Confidential Information of the other; (iv) known to the recipient at the time of disclosure (other than under a separate confidentiality obligation); or (v) produced in compliance with applicable law or court order, provided the other party is given reasonable advance notice of the obligation to produce Confidential Information. Each party agrees to indemnify the other for any damages (including reasonable expenses) the other may sustain resulting from the unauthorized use and/or disclosure of the other’s Confidential Information. The parties further agree that money damages would not be a sufficient remedy for a breach of confidentiality. The parties shall be entitled to seek injunctive or other equitable relief without the necessity of posting a bond even if otherwise normally required. Such injunctive or equitable relief shall not be the exclusive remedy for any breach of confidentiality, but shall be in addition to all other rights and remedies available at law or in equity.

B. To the extent we are exposed to individual personal data owned or otherwise held by you during the provision of Hosted Services, Cloud, or Services, which is subject to various data protection laws and/or regulations (“Protected Data”), we agree to treat such Protected Data in accordance with the Customer Privacy and Security Statement set forth at http://www.tibco.com/resources/data_protection_statement.pdf. The policies and procedures set forth in the Statement are in place to meet our obligations for the protection, integrity and confidentiality of any Protected Data which exceed our standard obligations to safeguard Confidential Information.

C. Confidential Information shall remain the sole property of the disclosing party, and each party acknowledges and agrees that it does not acquire any rights therein. Use by a recipient of Confidential Information for the purposes contemplated under this Agreement, including, but not limited to, any configuration or use by you of Products or Materials shall not affect or diminish the disclosing party’s rights, title and interest in and to Confidential Information.

D. We may use any individual contact information provided by you or your users for support, product information and other business-to-business communications in connection with this Agreement. In the event you or your users wish to opt-out from receiving such communications, you or your users should do so on the web store or website page where you originally submitted provided your information or at http://forms2.tibco.com/unsubscribe/u/5042/768537d8eeb3af538448782d1fa356e. Please note that communications may still be transmitted after the opt-out request has been submitted but before it has been processed.

E. You acknowledge and agree that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, “know-how” or techniques contained therein) that you provide to us about our Products or their performance (collectively, “Feedback”) shall not be deemed as your Confidential Information and may be used, disclosed, disseminated and/or published by us for any purpose, including developing, manufacturing and marketing products incorporating Feedback, without obligation of any kind to you, and you waive any rights whatsoever in and to Feedback.

20. Export. Products, Documentation, Materials and related technical data, are subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations and may be subject to export or import regulations of other countries. You agree that you will not nor permit your users to export or re-export the Licenseor Software, Documentation and Materials in any form in violation of applicable export or import laws.

21. Government Use. The Products and Services are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use by the Government is restricted according to the terms of this Agreement. NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THIS AGREEMENT, AND AS REQUIRED BY FAR 12.302(b), THE FOLLOWING PROVISIONS FOUND AT FAR 52.212-4 SHALL APPLY:

(1) Assignments; (2) Disputes;
(3) Payment (except as provided in subpart 32.11); (4) Invoice;
(5) Other compliances; and
(6) Compliance with laws unique to Government contracts.

22. Entire Agreement. For Government End Users, to the extent permitted by applicable Federal law and regulation, this Agreement constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to occur, with or without reference, under the terms of this Agreement, unless expressly superseded by a signed written agreement between the parties.

For other customers, this Agreement, and any terms which are incorporated by written reference (including written reference to information contained in a URL, Documentation or reference policy) constitutes the entire agreement between the parties with respect to the use of the Products and Services, and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter hereof. All orders of Products or Services by you to us shall be deemed to
none of the terms of the Order Form (other than the product names, Number of Units, level of Maintenance, description of Consulting Services, and fees due in connection therewith) shall apply for any reason or purpose whatsoever, regardless of any statement on any Order Form to the contrary.

Neither the license to use granted in this Agreement nor the obligation to pay license fees are dependent upon the performance by any party of any Consulting Services or the supply of any other software program or product.

23. Termination.

Between TSFI and Government End Users, termination shall be pursuant to FAR 52.212-4(i) (Termination for the Government’s convenience) and 52.212(m) (Termination for cause); no other termination rights shall apply, including paragraphs 23(A) through (F).

For customers other than Government End Users:

A. This Agreement and all Order Forms shall automatically terminate if: (i) either party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on the Equipment (where we are lessor) and is not released or satisfied within ten (10) days thereafter, or (iii) where we are lessor or in a Purchase where payment in full to us has not been made, if a receiver is appointed in any proceeding or action to which you are a party with authority to take possession or control of the Equipment. In all cases, the Equipment shall be promptly returned to us and not be treated as your asset.

B. Maintenance or Consulting Services may be terminated: (i) by either party upon a default of the other, such default remaining uncured for fifteen (15) days from written notice from the non-defaulting party; (ii) upon the filing for bankruptcy or insolvency of the other party, (iii) by either party upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance term; or (iv) by you for Consulting Services, upon ten (10) days prior written notice or (e) by us for Consulting Services upon thirty (30) days prior written notice. Termination of Maintenance or Consulting Services shall not terminate this Agreement.

C. A Cloud will terminate if or when your or our agreement for services with a Provider is terminated or otherwise expires for any reason. In the event of a termination of your Provider services, by Provider, in connection with a Cloud, without cause (where you are not in breach), to the extent you have pre-paid us fees for the Cloud, you may submit written notice requesting a refund, such notice to include evidence of Provider’s termination without cause (e.g. a copy of Provider’s notice of termination). Following receipt of such written notice, we will refund the pre-paid unearned pro-rata portion, from the date we received your notice, for the remaining Cloud term, or in the case of multiple Cloud purchases, each remaining term.

In the event of a termination, for any reason, of TIBCO Provider service accounts upon which we rely to provide Hosted Services or the Cloud, to the extent you have pre-paid us fees for Hosted Services or Cloud to us, we will refund, as of the date of notice of termination from Provider to us, for the unearned pro-rata portion of the prepaid fees.

D. You may terminate this Agreement in its entirety at any time, in regard to Software, by destroying all copies of the Software. We may terminate this Agreement at any time, in regard to Software provided to you for evaluation or alpha/beta purposes. In the case of an evaluation of Equipment, where we exercise our right to terminate the Lease for a reason other than your breach of the Agreement, and you have pre-paid fees for the month in which our termination occurs, we will refund the unearned monthly pro-rated fee to you within thirty (30) days following our receipt of the returned Equipment.

E. If a license, Cloud, or Hosted Services under this Agreement terminates or expires, or upon termination of this Agreement in its entirety for any reason, you shall (i) cease using the Products, Documentation, and related Confidential Information, and (ii) return or notify us in writing within thirty (30) days after termination that you have destroyed such Software, Documentation, related Confidential Information, and all copies thereof, whether or not modified or merged into other materials.

F. Termination of this Agreement, any license, Cloud, or Hosted Services, or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve you of your obligation to pay all fees that have accrued or are otherwise owed by you under this Agreement. Except as set forth in sections entitled “Termination”, “Limited Warranty” or “Indemnity”, all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. The parties’ rights and obligations under this section and sections entitled “Limited Warranty”, “Indemnity”, “Limitation of Liability”, “Proprietary Notices”, “Confidentiality”, “General”, “Governing Law” and your warranties in connection with Hosted Services and the Cloud, shall survive the expiration or earlier termination of this Agreement.

24. Open Source Software. If you use any third party software not supplied by us, including any open source software, in conjunction with any Product, you must ensure that such use does not require any of the following, pursuant to the terms of such software: (i) disclosure or distribution of any Product in source code form; or (ii) licensing of any Product for the purpose of making derivative works; or (iii) redistribution of any Product at no charge. For the avoidance of doubt, you may not combine Product with any software licensed under any version or derivative of the GNU General Public License (“GPL”) in any manner that could cause, or could be interpreted or asserted to cause, the Product or any modifications to the Product to become subject to the terms of the GPL.

25. Special Product Provisions. Software products TIBCO BusinessEvents®, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager and TIBCO® ActiveFulfillment (and each of the foregoing, when included in any Bundle or Embedded/ Bundled Products) are subject to a restricted license and contain third party proprietary code that may only use in conjunction with the Software and may be subject to additional terms as set forth in Appendix B.

A. As between TSFI and the Government, interest in connection with this Agreement shall be pursuant to the provisions of FAR 52.212-4(i)(6).

B. As between TSFI and other customers: All payments of fees due shall be made in U.S. dollars, net 30 from Purchase Date or, for any other amounts coming due hereafter, net 30 from our invoice. Fees do not include sales, use, withholding, value-added or similar taxes, and you agree to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of our income tax. You agree to pay all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts. Except as set forth in the sections entitled “Limited Warranty”, “Indemnity” and “Termination” all fees paid under or in connection with this Agreement are non-refundable and no right of set-off exists. A service charge of one and one-half percent (1 ½%) per month will be applied to all invoices that are not paid on time. No delay in the performance of any obligation by either party, excepting all obligations to make payment, shall constitute a breach of this Agreement to the extent caused by Force Majeure.

C. You hereby grant us and our independent auditors the right to audit your compliance with this Agreement and report any results to our licensors. You agree to provide reasonable assistance to ensure a complete and accurate audit by us and our independent auditors. If any portion of this Agreement is found to be void or unenforceable, the remaining provisions shall remain in full force and effect. All notices related to this Agreement shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in the Order Form. A copy of any notice of default, breach or termination shall also be sent to that party’s General Counsel.

27. Governing Law. For Government End Users, this Agreement shall be governed by applicable Federal law, including but not limited to the Contract Disputes Act of 1978 as amended, with venue in the Federal courts of competent jurisdiction. For other customers, to the extent permitted by law, this Agreement shall be governed by and construed in accordance with the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are excluded from application hereto.

Addenda:

Appendix A Definitions
Appendix B Product Parameters
Appendix C Product Maintenance
Appendix D Equipment Maintenance

TSFI EULA Appendix A -- Definitions

"Academic Bundle" means a Bundle which is licensed to an accredited education institution solely for educational use, teaching and individual student or faculty non-funded research purposes in Non-Production. Use in Production, or for the purpose of funded research or any classes offered electronically via the internet or otherwise (i.e.: "on-line" classes) is prohibited. For the purposes of an Academic Bundle, Licensee may provide access to the Licensor Software products by students who are Named Users, subject to such Named Users agreeing to be bound by terms at least as protective of Licensor as the terms of this Agreement.

"Affiliates" means entities, regardless of corporate status, controlled by, controlling or under common control with Licensor or Licensee, respectively, or officers, directors, shareholders, employees or agents of any of the foregoing.

"Broker" means the component within the applicable Site Copy which schedules work for Engines in a GridServer® or FabricServer® environment. GridServer environment means at least one TIBCO DataSynapse GridServer® Broker and a pool of servers with the TIBCO DataSynapse GridServer® Engine executing grid services. FabricServer environment means at least one TIBCO DataSynapse FabricServer® Broker and a pool of servers with the TIBCO DataSynapse FabricServer® Engine managing enterprise applications.

"Bundle" means a collection of Licensor Software, listed in Licensor's quotation or price book, to be sold together under a collective name such as “XXX Bundle” which consists of X, Y and Z. The Licensor Software which comprises a Bundle must be used in accordance with any specific license restrictions imposed in this Agreement and solely in conjunction with the components of the Bundle; provided that a Bundle component may be accessed by or communicate with other Licensor Software separately licensed by Licensee. In no event may the Licensor Software which comprises a Bundle be used on a standalone basis. A "Bundle" is sold at a discount to the cost of licensing the individual components due to the restrictions imposed on the use of the Bundle by this section and any specific license restrictions imposed by this Agreement. If the terms of this Agreement with regard to a Bundle are breached, such breach must be cured within ten (10) days of Licensor notifying Licensee in writing of the breach. In addition to the foregoing, where Bundle is used as the Unit type, Licensee's use is limited to the Number of Units and Unit type for each component which comprises the Bundle, as set forth in the bill of material for such Bundle.

"CICS Region" means a subdivided mainframe address space managed by CICS for resource allocation, resource sharing, and transaction execution, of which the resource definitions include the TIBCO EMS Client for z/OS.

"Cloud" means an internet based computing service offered by a Licensor approved third party, which permits users to make use of a hosted hardware and software environment, which includes, among other components, Licensor Software set forth in an Order Form.

" Concurrent Users" means the number of Authorized Users that are simultaneously logged in to the Licensor Software at any single point in time.
"Connection" means any network link or session established with Licensor software, directly or indirectly to any other entity, including but not limited to software, firmware or hardware. For TIBCO Rendezvous® and TIBCO SmartSockets®, "Connection" means any network protocol link established with such Licensor Software (directly or indirectly) to any other entity, including but not limited to software, firmware or hardware.

For TIBCO ActiveSpaces®, "Connection" means any session established directly or indirectly to a TIBCO ActiveSpaces® Metaspace cluster instance.

For TIBCO DataSynapse Federator™, "Connection" means a web service session established to a TIBCO DataSynapse GridServer® Manager Instance or a TIBCO DataSynapse FabricServer® Manager Instance; for TIBCO DataSynapse™ Analytics or TIBCO® Cloud Analytics, a database session established to a TIBCO DataSynapse GridServer® Broker reporting database or TIBCO Silver® Fabric Manager reporting database; and for TIBCO® Data Quality Service Engine Named Application, any link or session established directly or indirectly (through any other middleware application) which calls to a named third party software application.

"Consumer Price Index" means (unless otherwise set forth in this Agreement or an Order Form) the United States Department of Labor - Consumer Price Index for All Urban Consumers (CPI-U).

"Connected Processor" means any processor that produces information consumed by the relevant Licensor Software product (excluding processors on devices such as routers, switches, proxies, HTTP or application servers configured to substantially pass-through information or messages to Licensor Software).

"CPU" means a chip that contains a collection of one or more cores on which the program is running. Regardless of the number of cores, each chip counts as one (1) CPU. This definition pertains solely to the TIBCO LogLogic Product Line and does not affect, nor is it affected by, the Processor Unit Type or Processor counting policy.

"Developer" means a Named User of a Licensor Software product other than for use only in Non-Production.

"Development License" for TIBCO Spotfire® Developer or TIBCO Spotfire DecisionSite® Developer means use by a Developer in accordance with the Documentation in Non-Production for the purposes of configuring analyses created with TIBCO Spotfire products and/or extending the TIBCO Spotfire product platform. The Development License includes the right to use resulting developments in conjunction with Licensee’s right to use Licensor Software for Production purposes.

"Documentation" means text material that accompanies an item of Licensor Software on delivery, describing how to make use of that software. "Engines" means for GridServer products a single thread that processes tasks or services in a first in, first out (FIFO) queue, and for FabricServer products a single agent that manages the deployment and performance of an application. Typically, only a single engine runs on a single cpu/core so that the number of engines in the grid is the same as the number of cpu's/cores in a GridServer or FabricServer environment.

"Enablement License" means for use in connection with and for up to the Number of Units licensed of the TIBCO DataSynapse™ Licensor Software which contains the word “Edition” in the product name, and if a) an Application Enablement License, a license to deploy JavaEE applications, built on the applicable third party application server, or b) for an Enterprise Enablement License, a license to deploy or integrate with the applicable third party application, or in connection with Command Lind, to deploy custom or external applications. Enablement Licenses do not include Engines required for running third party applications or any integration software to mesh or permit the Licensor Software to function with such third party applications.

"Enterprise" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Enterprise in the Order Form, to be deployed by Licensee until the Enterprise Term Expiration Date set forth in the Order Form, (the "Enterprise Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Enterprise Term, Licensee's right to deploy shall not extend to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Enterprise Term, written notice of the Number of Units deployed at the end of the Enterprise Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Enterprise Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on an Enterprise basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Equipment" means a hardware appliance, obtained from or through Licensor, in which Licensor has caused the Licensor Software to be embedded, and which is listed on an Order Form under License Type "Lease" or "Purchase". Equipment shall have the same meaning as Licensor Software where Licensor Software is or has been used elsewhere in this Agreement. Licensor Software embedded in the Equipment is licensed solely to enable the Equipment to function in accordance with its Documentation.

"Extraordinary Corporate Event" means a corporate transaction which results in Licensee divesting business operations and related assets to another or new entity, or acquiring, being acquired by, merged, or otherwise combined with another entity or into another entity's legal or corporate structure (including an acquisition of all or substantially all of the assets of another entity) which, prior to the corporate transaction, was not part of the Licensee or its legal or corporate structure.

"Fixed Partitioning" means a mechanism for allocating processing resources on a multi-Physical Processor machine, such that the Licensor Software is limited to running on a fixed isolated subset of the Physical Processor(s), e.g. physical partitioning and fixed (hard) processor affinity.
"GB RAM" means total number of Gigabyte's of Random Access Memory (RAM) on one or more servers where the Licensor Software is installed or otherwise accessed by Licensee. For the foregoing, server(s) means a physical or virtual computer with measurable amounts of RAM.

"Hosted Services" means online, internet based computing services provided by Licensor.

"Instance" means the smallest functionally-complete copy of Licensor Software. For the avoidance of doubt, the various components of one single Instance may be deployed on a single Server or separately spanning multiple Servers.

For TIBCO Rendezvous®, "Instance" means a TIBCO Rendezvous® daemon, where each daemon is an operating system process with a unique process id.

"License Type" means the environment(s) in which the Licensor Software may be used (including without limitation, Production and/or Non-Production, Cloud or Hosted Services.

"Licensor Software" means the most current, generally available, object code version (or, in the case of Cloud, a machine and or disk image) of the Licensor's product on all supported Platforms then currently available, including Documentation and any subsequent Updates (as defined in the Maintenance Program Guide located at http://www.tibco.com/services/support/default.jsp) provided under Maintenance. Licensor Software does not include multiple Platforms if the software product is licensed on a Platform specific basis as designated in the Licensor Software product name or listed in an Order Form or purchase order. Licensor Software includes TIBCO Spotfire® Web-Based Training products and excludes TIBCO® Data Quality Postal Directory(ies) as set forth in an Order Form. Where the terms "TIBCO Software", "Spotfire Software", "TIBCO Spotfire Software", or "Software" (in connection with a Licensor click-wrap End User License Agreement, or Licensor acquired company license agreements) are being or have been used, they shall have the same meaning as Licensor Software.

"Managed Endpoints" means the number of Processors running instances of TIBCO ActiveMatrix BusinessWorks™ or other third party service implementations (e.g. Java or .NET components) that are being managed by TIBCO ActiveMatrix® Policy Manager.

"Materials" means any tangible or intangible information, design, specification, instruction or data (and any modifications, adaptations, derivative works or enhancements) provided by Licensor during the performance of Consulting Services which incorporates, reinforces or is used to apply Licensor's configuration or implementation methodologies, processes and know-how to Licensee's use of the Licensor Software, excluding Output.

"Module" means Licensor Software that is licensed to add functionality or capabilities in conjunction with an underlying Licensor Software product and may only be used in conjunction with the relevant underlying Licensor Software product. So long as Licensee holds a valid license in the underlying Licensor Software product, Licensee may use a reasonable number of copies of the Module to support the same business as the underlying Licensor Software product, but subject to any applicable site, Project or other business limitations or restrictions applicable to the underlying Licensor Software product. Licensee's right to utilize Modules shall terminate automatically upon termination of the license in the underlying Licensor Software product.

"MSU" means Millions of Service Units per hour, based on the then current MSU rating established by IBM for IBM and IBM compatible hardware which is used for software pricing (not necessarily a direct indication of relative processor capacity) as set forth in IBM's generally available Large System Performance Reference.

"Named User" means an identifiable individual, not necessarily named at the time of a license grant, designated by Licensee to access the Licensor Software, regardless of whether or not the individual is actively using the Licensor Software at any given time. An individual shall only be designated as a Named User on the earlier of a) he or she is authorized by Licensee to access the Licensor Software or b) once he or she has accessed the Licensor Software. In the case of TIBCO Formvine®, identifiable individuals will be counted as Named Users in accordance with the TIBCO Formvine® Licensor Software product Documentation. In the case of TIBCO® Nimbus Control, Named Users account types are further defined in the TIBCO® Nimbus Control Licensor Software product Documentation in the section entitled "Summary of User Rights".

"Non-Production" means a non-operational environment into which the Licensor Software may be installed, which is not processing live data, which is not running any operations of the Licensee and which has not been deployed to permit any users to access live data. Non-Production environments include development, hot standby, high-availability, and test environments.

"Number of Units" means the cumulative number of copies of Licensor Software licensed for use by type of Unit, as set forth in this Agreement, an Order Form or in a purchase order, and including, if applicable, the current number of copies as reported by Licensee upon expiration of a Project or Enterprise Term.

"Orders" mean the total number of unique transactions submitted, stored in and counted by the applicable Licensor Software product during a period. Unless otherwise agreed, this period shall equal one (1) year from the Effective Date. The number of Orders shall reset to zero on each anniversary of the Effective Date. In no event shall the total number of Orders during a one (1) year period exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Order Form" means any written order for Licensor Software or services, including, without limitation, a purchase order, Work Order, Statement of Work, Order Form or other form of ordering document delivered to Licensor, which is subject to, and incorporates by reference, the terms and conditions of this Agreement, and to which no other terms shall apply.

"Output" means Confidential Information of Licensee that has been input in the Materials for Licensee's use of the Licensor Software.

"Physical Processor" means the smallest physical electronic circuit which is capable of reading and executing computer programs and providing results as output e.g. a CPU (socket), core, or thread.
"Platform" means for each discrete Licensor Software product, the operating system, hardware and/or environments (whether virtual or physical), upon which each product is supported, as set forth in its Documentation, or as specifically identified in the Licensor Software product name.

"Postal Directory" means a copy of the applicable product installed on a single Server.

"Processor" means a licensing Unit type for the Licensor Software, based on the count of Virtual and/or Physical Processors as described in the TIBCO Processor Licensing Policy.

"Processor Bundle" means the Number of Units as determined by the number of Processors on which the Licensor Software licensed as a Bundle is licensed to run.

"Processor Source Locked" means the number of Processors the Licensor Software is installed on multiplied by the number of instances of a source system or database regardless of how many Processors are used by the source system or databases.

"Product Lines" means sets of products and services determined by Licensor from time to time that are (a) attributed to a particular Licensor product family, or (b) made available under separate purchase or license models, in the case of either (a) or (b), as set forth in a Licensor product family’s then current list price. Licensor does not permit aggregation of products, services, purchase or license models and cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.

"Production" means an operational environment into which the licensed Licensor Software has been installed, which is processing live data and which has been deployed so that the intended users of the environment are able to access the live data.

"Project" means (unless otherwise set forth in an Order Form) an unlimited Number of Units of the Licensor Software, where the Number of Units is identified as Project in the Order Form, to be deployed by Licensee until the Project Term Expiration Date set forth in the Order Form, (the "Project Term"), at which time, the Number of Units then deployed in Production and Non-Production use by Licensee becomes fixed and Licensee may not thereafter deploy additional Units. During the Project Term, Licensee’s right to deploy an unlimited Number of Units does not extend beyond the scope of the Project set forth in the Order Form, or to any Extraordinary Corporate Event. Licensee hereby agrees to provide Licensor, within sixty (60) days after the end of the Project Term, with written notice of the Number of Units deployed at the end of the Project Term by Unit and License Type. In the event Licensee elects to renew Maintenance (subject to any termination provisions in this Agreement), then during the Project Term and each annual renewal thereafter, Licensor agrees the annual Maintenance fee for the Licensor Software licensed on a Project basis shall not increase by more than the percentage rate change in the Consumer Price Index for the twelve month period immediately preceding each anniversary date of Maintenance.

"Purchase" means when used in connection with "Equipment", the purchase of the hardware appliance, where Licensor transfers title of the hardware appliance to Licensee. The Licensor Software is licensed under the terms of this Agreement and not sold. Licensor (or a third party) owns the Licensor Software.

"Read-only User" means an identifiable individual, not necessarily named at the time of license grant and regardless of whether the individual is actively using the Licensor Software at any given time, designated by Licensee to access the Licensor Software for the sole purpose of searching for and viewing data.

"Record" means a unique data item stored in and counted by the applicable Licensor Software product. The total number of Records shall in no event exceed the Number of Units set forth in the Order Form, unless Licensee purchases additional Units.

"Server" means a single computer performing common services for multiple other machines.

"Server Instance" means a computer with one (1) CPU, unless otherwise agreed in writing, performing common services for multiple other machines.

"Site Copy" means the number of copies of the Licensor Software licensed for use at the physical location of the Licensee entity signing an Order Form or as otherwise specifically designated as the site location in an Order Form.

"Spare" means a unit of Equipment identified by use of the word “Spare” in its product name, which is kept in storage at the same location as Equipment in productive use. In the event Equipment in productive use becomes inoperable, Licensee may set up and configure a Spare for productive use, until the original Equipment becomes operational again, but in no event for a period greater than three (3) months, without first obtaining Licensor’s written consent.

"Third Party Software" means third-party software identified by its company and/or product name, the provision of which by Licensor is made solely as an accommodation and in lieu of Licensee purchasing a license to Third Party Software directly from the third party vendor.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"TIBCO Processor Licensing Policy" means the document published by TIBCO from time to time which explains how to count Virtual and/or Physical Processors in order to determine the number of Processors.

"Trading Partner" means an entity or individual with whom the Licensee engages in accordance with this Agreement in electronic commerce by means of Licensor Software and, in the case of TIBCO® KPSA, TIBCO® KxDR and TIBCO Kabira® Licensor Software
products, an individual with whom Licensee engages to provide services, which may include, electronic commerce and or general service activation and provisioning of wireline and wireless packages for the exchange of data and content.

"Unit" means a license restriction describing the manner in which a copy (or multiple copies) of the Licensor Software may be deployed (including, without limitation, Processor, Named User, Connected Processor, and Processor Source Locked) and is the mechanism used to determine the Number of Units licensed under this Agreement, an Order Form or a purchase order.

"User" means an employee of Licensee who is authorized by Licensee to use the Licensor Software in accordance with this Agreement. The number of Licensee computers on which the Licensor Software is installed shall not exceed (but may be less than) the number of licensed Users.

"Virtualized Environment" means an operating system environment where multiple Virtual Machines can run on a single physical machine or cluster, sharing the physical machine resources. In a Virtualized Environment, a Virtual Processor can run on only one Physical Processor at a time.

"Virtual Machine" means a software implementation of a machine that executes programs like a physical machine. An essential characteristic of a Virtual Machine is that the software running inside of the Virtual Machine is limited to the resources and abstractions provided by the Virtual Machine. The processing capacity of a Virtual Machine is measured in Virtual Processors.

"Virtual Processor" means a simulation of a Physical Processor that is serially time-multiplexed across one or more Physical Processors. Special Provisions Regarding Processor Licensing:

Certain Licensor Software is licensed by the Unit type "Processor." The following describes how to calculate the number of Processor Units which should be licensed in a Virtualized Environment and in all other environments.

Calculation

The number of Processor Units of Licensor Software required to be licensed shall be calculated as follows:

1. In a Virtualized Environment, the number of Virtual Processors shall be calculated by following the steps below:
   1. For each Virtual Machine running the Licensor Software, the number of Virtual Processors shall be counted in increments of whole numbers. For clarification, the lowest unit of measurement for Virtual Processors is one; any fraction shall be rounded upward to the next whole number.
   2. If the number of Virtual Processors of a Virtual Machine can increase or decrease, then for the purpose of counting Virtual Processors, the number of Virtual Processors shall be the maximum whole number of Virtual Processors that could ever be assigned to the Virtual Machine running the Licensor Software.
   3. Add the total number of Virtual Processors across all Virtual Machines within the entire Virtualized Environment that runs the Licensor Software.

2. In all other environments (e.g. running on physical machine(s) or if a Virtual Processor can run on more than one Physical Processor at a time), the number of Physical Processors shall be calculated by following the steps below:
   1. For each Licensor Software, the relevant partition boundary shall be set:
      (a) where the allocation is defined by Fixed Partitioning, to include all Physical Processors that could ever execute the Licensor Software. (b) where the allocation is not defined by Fixed Partitioning, to include all Physical Processors on the physical machine.
   2. Count the total number of Physical Processors for the relevant partition boundary for each physical machine, and aggregate the counts across all physical machines within the entire environment that runs the Licensor Software.
   3. For all environments, if multi-threading is enabled for the underlying physical cores, then the total count of Physical Processors or Virtual Processors, as the case may be, shall be multiplied by 0.5.

4. Any fraction shall be rounded upward to the next whole number.

The above calculation yields the total number of Processor Units required to be licensed for the Licensor Software.

Appendix B – License Parameters

Effective April 1, 2012 – To the extent that TIBCO products contain Java SE, use of the Java SE Commercial Features for any commercial or production purpose requires a separate license from Oracle. "Commercial Features" means those features identified Table 1-1 (Commercial Features in Java SE Product Editions) of the Java SE documentation accessible at http://www.oracle.com/technetwork/java/javase/documentation/index.html.

Effective January 20, 2012 – TIBCO Formvine®
The module of the Licensor Software called TIBCO Formvine® Project Tools allows Licensor to create and manage TIBCO Formvine® projects, and to view, edit and export the data gathered through a Formvine® project's online form. Only the number of Named Users listed in an accepted Order Form which includes the Licensor Product named TIBCO Formvine® Project Tools shall be entitled to use the "Project Tools" as defined in the Documentation.

The module of the Licensor Software called TIBCO Formvine® Integration Add-on allows software other than TIBCO Formvine® Project Tools to exchange information with the TIBCO Formvine® Server by way of the server's application programming interfaces ("Formvine® APIs"). Only to the extent that an accepted Order Form includes the Licensor Product named TIBCO Formvine® Integration Add-on, shall Licensee have rights to use software other than the licensed TIBCO Formvine® Project Tools in conjunction with the Formvine® APIs.

Effective July 1, 2010 – The following definition of Processor is being retired and will only apply to contracts entered into on or before November 30, 2011:

"Processor" means a central processing unit ("CPU") on which the Licensor Software is licensed to run. For purposes of counting Processors on multicore chips, the number of Processors is the number of CPUs times the number of cores multiplied by .75.

Effective July 1, 2010 - TIBCO Foresight™ HIPAA Validator® Desktop; TIBCO Foresight™ Community Manager®; TIBCO Foresight™ Instream®; TIBCO Foresight™ Transaction Insight®; TIBCO BusinessConnect™ EDI Protocol HIPAA Edition powered by Instream® ("Editorial Content Products")

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Effective July 1, 2010 – The following Licensor Software products are each licensed for the sole purpose set forth below:

TIBCO® KPSA – Mobile for provisioning and activating telecommunication services and mobile access networks (such as GSM, EDGE, UMTS, GPRS, and HSPDA) each for Licensee's mobile telecommunications subscribers. TIBCO® KPSA – Broadband – for provisioning and activating telecommunication services and broadband access networks (such as DSL, optical fiber, and WiMAX) each for Licensee's broadband subscribers. TIBCO® KPSA Load Balancer – Mobile – for distributing traffic across TIBCO KPSA – Mobile nodes. TIBCO® KPSA Load Balancer – Broadband – for distributing traffic across TIBCO KPSA – Broadband nodes. TIBCO® KxDR – Mobile – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by mobile network elements and service platforms serving Licensee's mobile subscribers. TIBCO® KxDR – Broadband – for mediation of service usage detail records ("xDRs"), including but not limited to call and transmission detail records, that are generated by broadband network elements and service platforms serving Licensee's broadband subscribers. TIBCO® KPSA – Order Management – for managing the end-to-end lifecycle of Licensee's customer requests for the delivery of telecommunication products as captured from order entry systems (including the provisioning and activation of telecommunication services and mobile or broadband access networks).

Effective May 27, 2010 - Licensor Software products TIBCO BusinessEvents™, TIBCO Collaborative Information Manager™, TIBCO ActiveMatrix® Service Performance Manager, TIBCO® ActiveFulfillment, TIBCO LogLogic® Enterprise Virtual Appliance, TIBCO LogLogic® Compliance Manager, TIBCO LogLogic® Security Event Manager Appliances, TIBCO LogLogic® Log Management Enterprise Appliances (including but not limited to TIBCO LogLogic LX Appliances and TIBCO LogLogic® ST Appliances) and TIBCO LogLogic® Log Management Mid-Market Appliances(TIBCO LogLogic® MX Appliances), (and each of the foregoing when included in a
Bundle or as Embedded/Bundled products) are subject to a restricted license and contain third party proprietary code that Licensee or Partner can only use in conjunction with the Licensor Software.

Effective May 1, 2010 – TIBCO DataSynapse™ Analytics is an Embedded/Bundled product, which includes, in part, TIBCO Spotfire® Web Player and TIBCO Spotfire® Professional as bundled Licensor Software. In addition to Embedded/Bundled Products restrictions, Licensee’s use of these bundled products in connection with TIBCO Spotfire® Analytics is limited to 25 Named Users of TIBCO Spotfire Web Player, 5 Named Users of TIBCO Spotfire Professional.

Effective February 18, 2010 – All TIBCO iProcess Spotfire® Add-on Web User is licensed solely to increase the number of TIBCO Spotfire® Web Player Named Users included in and for use in connection with the TIBCO iProcess Spotfire® Add-on Bundle. TIBCO iProcess Spotfire Add-on Web User may be used solely in connection with the TIBCO iProcess Spotfire Add-on Bundle.

Effective May 12, 2009 – All TIBCO Spotfire® Application Data Services products shall be used exclusively with TIBCO Spotfire® Analytics Server or TIBCO Spotfire® Server and shall only be accessed via ODBC or JDBC.

Effective February 18, 2006 – All TIBCO BusinessPartner / Effective October 17, 2006 – TIBCO BusinessConnect Remote - Licensee may sublicense to third parties ("Partners") up to the total Number of Units of TIBCO BusinessPartner or TIBCO BusinessConnect Remote, provided that for every such sublicense, the Number of Units Licensee is licensed to use shall be reduced by the same number, and provided further that prior to delivery of TIBCO BusinessPartner or TIBCO BusinessConnect Remote to a Partner, such Partner agrees in writing (a) to be bound by terms and conditions at least as protective of Licensor as the terms of this Agreement, (b) that TIBCO BusinessPartner or TIBCO BusinessConnect Remote be used solely to communicate with Licensee’s implementation of TIBCO BusinessConnect, and (c) for such Partner to direct all technical support and Maintenance questions directly to Licensee. Licensee agrees to keep records of the Partners to which it distributes TIBCO BusinessPartner or TIBCO BusinessConnect Remote, and to provide Licensor the names thereof (with an address and contact name) within sixty (60) days of the end of each calendar quarter.

TSFI EULA Appendix C – Maintenance Program Guide

1 Overview

TIBCO is dedicated to the success of our customers by providing timely responses to problems with TIBCO software products. TIBCO's highly skilled support engineers are well versed in TIBCO's software products. TIBCO's support services group is a global organization that uses a "follow-the-sun" model to ensure that support is available whenever it is needed. Support centers are located around the world to support all the TIBCO product lines.

In the event you have contracted for Maintenance Services at the Bronze Level, the supported time zone assigned for Service Hours will be based on the TIBCO software delivery address for your company.

All Equipment Maintenance is subject to the terms of the Equipment Maintenance Program (Appendix D).

2 Maintenance Service Levels

2.1 TIBCO Maintenance Service Levels

<table>
<thead>
<tr>
<th>MAINTENANCE LEVEL</th>
<th>Updates Only</th>
<th>Bronze (includes Updates)</th>
<th>Silver (includes Updates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Hours:</td>
<td>N/A</td>
<td>9am-5pm, Monday-Friday</td>
<td>24 Hours/Day, 7 Days/Week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Service hours are based</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>on PST, EST, CST, CET,</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>MST, GMT, GMT+5:30,</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>GMT+8:00, GMT+9:00, DST, AEST</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>time zones. Based on the</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>time zone you are assigned,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>services hours exclude</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>holidays in the U.S.,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>California, U.K.,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A.P.A.C. and Japan.</td>
<td></td>
</tr>
<tr>
<td>Initial Response:</td>
<td>N/A</td>
<td>Severity 1 &amp; 2: 4 Business</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hours</td>
<td></td>
</tr>
</tbody>
</table>
### 2.2 Spotfire, DataSynapse, and Foresight Maintenance Service Levels

<table>
<thead>
<tr>
<th>MAINTENANCE LEVEL</th>
<th>Bronze term (includes Updates)</th>
<th>Silver (includes Updates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Hours:</td>
<td>9am-5pm, Monday-Friday</td>
<td>24 Hours/Day, 7 Days/Week</td>
</tr>
<tr>
<td></td>
<td>Service Hours are based on CET, UTT/GMT, GMT+5:30, GMT+8:00, GMT+9:00, and EST time zones. Based on the time zone you are assigned, services hours exclude holidays in the U.S., Sweden and Japan.</td>
<td></td>
</tr>
<tr>
<td>Initial Response:</td>
<td>Severity 1 &amp; 2: 4 Business Hours</td>
<td>Severity 1 &amp; 2: 4 hours</td>
</tr>
<tr>
<td>Number of Contacts:</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

### 3 Maintenance

For the purpose of any license or maintenance agreement under which Maintenance is provided, as used below, “Licensor Software,” shall include “TIBCO Software,” “Spotfire Software” or “Software” as defined in any such agreement. “Customer,” as used below, shall have the same meaning as defined for the customer company entity licensed to use the Licensor Software in any such agreement.

#### 3.1 Severity Level Definitions

“Severity 1” is an emergency production situation where the Licensor Software is totally inoperable or fails catastrophically and there is no workaround;

“Severity 2” is a detrimental situation (and there is no workaround) where (a) performance degrades substantially under reasonable loads causing a severe impact on use, (b) the Licensor Software is usable but materially incomplete; or (c) one or more mainline functions or commands is inoperable;

“Severity 3” is where the Licensor Software is usable, but does not provide a function in the most convenient manner; and

“Severity 4” is a minor problem or documentation error, which is reasonably correctable by a documentation change or by a future maintenance release from TIBCO.

#### 3.2 Scope

TIBCO will use commercially reasonable efforts to resolve matters according to the problem Severity (“Maintenance”) level determined by TIBCO. All communications will be in English. Customer will use commercially reasonable efforts to provide: (a) a detailed problem description; (b) a method for repeatedly reproducing the problem; and (c) reasonably continuous access to a Customer authorized contact. During the Maintenance term, Customer authorized contacts as applicable for the Maintenance level selected in Customer’s order, and which are registered at TIBCO’s support website: https://support.tibco.com/esupport/, may notify TIBCO’s Technical Assistance Center of an error, defect, or malfunction in the Licensor Software. Maintenance includes the right to use Updates (as defined below) as replacements for existing copies, whether provided under Maintenance, Warranty or which are provided for any other reason by TIBCO, or TIBCO’s their respective authorized resellers or distributors (if applicable); Updates are subject to Customer’s license agreement limitations and restrictions. “Updates” means Licensor Software bug fixes, enhancements, and upgrades, if and when made generally available by TIBCO under Maintenance to Customers for a specific Licensor Software product. Subject to the quantity of Licensor Software licensed and payment of any applicable Maintenance fees, Customer’s right to use Updates extends to any supported Platform then currently available for each discrete Licensor Software product under Maintenance. Updates may include new or additional Platforms that are deemed (at TIBCO’s sole discretion) to have no more than a minimum different in price, features and functionality from previously available Platforms. TIBCO will notify Customer in writing in the event that Maintenance is materially affected by TIBCO licensor(s). TIBCO will provide Maintenance for a release version of the Licensor Software products for at least (a) six months after a new release version is generally available, but in no event for more than (b)(i) two years from the general availability of a Licensor Software release version or (b)(ii) one year from the general availability of a subsequent release version, whichever of (b)(i) or (b)(ii) is later, after which Maintenance shall be discontinued for that release version.

#### 3.3 Limits

Customer must purchase the same service level of Maintenance for all quantities of Licensor Software products that it has licensed from TIBCO or any other third party. Unless otherwise stated in an Order Form, each license grant is incremental to all prior license grants.
and consequently each grant is subject to additional Maintenance, if purchased. For the avoidance of doubt, Maintenance fees are based on cumulative license fees paid. Maintenance does not include support for any non-TIBCO software, custom configuration, product modification, new products and functionality for which TIBCO is charging an additional license fee, services at a Customer site, any work product provided under Consulting Services or for Licensor Software products with non-matching service levels. TIBCO reserves the right to make fixes only to the most current version of the relevant Licensor Software, and may elect, at its discretion, to make fixes generally available for minor release versions or the latest service pack for a supported version.

3.4 Perpetual Term Licenses
The initial Maintenance term shall be for one year commencing on the effective date of the applicable Customer order, unless otherwise stated in the relevant Order Form. In the event Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance will be renewed for successive one (1) year terms and the annual Maintenance fee for the first renewal term shall not increase by more than the percentage rate change in the Consumer Price Index for the 12 month period immediately preceding the anniversary date of Maintenance. Maintenance fees for subsequently acquired Licensor Software will be prorated to expire with the then-current annual Maintenance term.

3.5 Limited Term Licenses
The initial Maintenance term shall be for one (1) year commencing on the effective date of the applicable Order Form. During the license term, and in the event the Customer elects to renew Maintenance (subject to any rights of termination as set forth in a contract with TIBCO), Maintenance may be renewed for successive one year terms, and the annual Maintenance fee for the first renewal term shall be equal to the annual Maintenance fee for the initial term.

3.6 Reinstatement of Maintenance
Reinstatement of Maintenance is subject to payment of Maintenance fees for any period during which Maintenance had lapsed.

3.7 Non-Continuous Coverage
In the event Customer elects not to maintain continuous Maintenance, TIBCO may, at its discretion, refuse to provide any Maintenance to Customer until payment for the period of discontinuity is made current.

3.8 Discontinued Support for Prior Release Version
When a prior version goes out of Maintenance, it means that fixes will no longer be generally available for that version. Support will continue to accept problem reports for that prior version, and when feasible, will attempt to provide Customer with reasonable assistance to troubleshoot and resolve the problem. Engineering will only evaluate reported issues in the supported versions of the Licensor Software product.

When a Customer:

- encounters a known defect, which is already corrected in the most current or a supported version of the Licensor Software, the Customer will need to upgrade to the most current or supported version of the Licensor Software to obtain the fix; or
- discovers an unknown defect, engineering will make the fix in the most current version of the Licensor Software and the Customer will need to upgrade to that version to obtain the fix.

Additionally, with typically 12 months prior notice, TIBCO may announce the end of support (i.e. stop accepting SRs) on significantly older versions by publishing a Late Breaking News (LBN) article on the TIBCO Support Web site (https://support.tibco.com/esupport/). Even in such a case, access to the knowledge base of the older versions is always available to a Customer currently under Maintenance. A Customer may submit a service request via the TIBCO Support Web to request a product version be included under the TIBCO Extended Support Program.

3.9 Product End-of-Life
Notwithstanding 3.2 above, Customers are provided advance written notice (up to twelve months) when Licensor Software is to be retired. This information is published as “Retirement Notices” under the Late Breaking News (LBN) section of the TIBCO Support Web.

3.10 TIBCO Extended Support Program
TIBCO is pleased to offer customers extended Maintenance on certain Licensor software product versions. The scope and terms of extended Maintenance:

Include
- The ability to submit service requests for eligible product versions.
- TIBCO assistance providing workarounds and existing fixes for issues reported; staging of issues by TIBCO will be on the latest version of eligible product(s).
- Maintenance service level initial response and target resolution times are according to customers’ existing Maintenance service level.

Exclude
- Enhancements, service packs, or defect corrections
- Support for new platforms (database versions, operating system versions, TIBCO infrastructure products, etc.)
- Back porting of any fixes (including, but not limited to, bug or security fixes) from later product versions
- Partners participating in the TIBCO Partner Network or any other TIBCO Partner program.

Extended Maintenance is subject to eligibility requirements. Please contact your TIBCO Sales Account Executive or the TIBCO Maintenance Renewal team at renewals@tibco.com for more information and to obtain the then current list of product versions currently supported under extended Maintenance.
TIBCO reserves the right, at its discretion, without notice of any kind, to change products and product versions included in any extended Maintenance product version list. Changes to the extended Maintenance product version list will have no impact during any Maintenance term for which TIBCO Extended Support Program Maintenance fees have already been paid.

3.11 Virtualized Environments Support
Although TIBCO does not include all virtualization environments in our product test plans, and subject to there being no more than minimal differences in price, features, functionality and quantity, we will provide Maintenance for Licensor Software in any Virtualized Environment if the following criteria are met:

The operating system running in the Virtualized Environment is supported by TIBCO for Licensor Software version in question, and
The Virtualized Environment being used is officially certified and approved by the operating system vendor in question, and
The Virtualized Environment presents a true image of the native operating system.

TIBCO does not make any claims for the performance of Licensor Software running in a Virtualized Environment nor can we make any recommendations for optimal configuration of the Virtualized Environment in question.

Should it become necessary to engage the Virtualized Environment vendor, it will be the responsibility of the Customer to open a service request with their vendor. TIBCO Support will provide reasonable assistance to the Customer or vendor as it relates to the use and understanding of Licensor Software in the case at hand.

4 TIBCO Support Web

It is recommended that the Customer establish and maintain an internal support organization to provide front line support services to their users and that all authorized contacts be trained on the TIBCO software products in classes provided by TIBCO Education, as reasonably required by TIBCO to enable the customer to support licensed TIBCO software products.

Step 1: Identify the assigned contacts within your company. Review your maintenance agreement to see how many contacts are authorized.

Step 2: Register assigned contacts and one management-level individual (for verification and escalation) by sending an email to support@tibco.com. Be sure to include the name, email address, physical address and phone number of each contact.

All contacts will be registered with our call tracking system and given access to TIBCO Support Web.

Step 3: Have all assigned contacts view the Support Overview Presentation as well as review the “Support Policies” section within TIBCO Support Web.

Additional information about Getting Started can be found at http://www.tibco.com/services/support/getting-started/default.jsp.

4.1 Opening a Service Request

There are two ways to report a problem:

TIBCO Support Web (preferred method). Cases reported online are automatically entered into TIBCO’s Call Tracking system and assigned a Service Request (SR) number. TIBCO requires that all Severity 1 cases be followed up with a phone call to our Technical Assistance Center (TAC) to ensure immediate attention to your issue.

Phone. Each TIBCO customer is assigned a regional Technical Assistance Center (TAC) that they can contact to request support via phone. The support line phone number for each regional TAC in the America’s, EMEA and APAC is published on the TIBCO Support Web. A service request will be created in TIBCO’s call tracking system and an SR number is provided.

4.2 Processing a Service Request

Once a service request is submitted, the TAC specialist will review, access and assign the appropriate severity level. All severity 3 and 4 calls will be assigned to the appropriate product and workgroup where our technical support engineers will start working on the call on a First in – First out (FIFO) basis. TAC will notify support managers of any SRs that are assigned to Severity 1 or 2, so that they are handled in an escalated manner. The TIBCO Support Engineer will communicate with the customer until the issue is resolved. Depending on the nature of a Service Request, a Service Request can be resolved by a Support Engineer or logged by a Support Engineer as bugs/enhancements with product engineering.

TIBCO support level and responsibilities:

- First level (Technical Assistance Center):
  Review Service Requests reported by Web, Email or phone from a customer authorized contact
  Validate customer maintenance status, product entitlement and check for any special handling required.
  Identify type of request, problem definition, configuration, products, product versions and platforms.
  Determine severity of the problem and execute any escalation procedures necessary.
  Direct problems for resolution to workgroups

- Second level (Product Support):
  Confirm problem and configuration used by the customer
  Evaluate against known problems or issues
  Stage the problem
Reproduce problems and provide workarounds
Escalate to engineering where required to develop patches and fixes
Keep the SR updated at all times within the Call Tracking system
Keep the customer Authorized Contact updated on the progress

- Third level (Engineering):
  Develop fixes as needed
  Test and verify functionality and performance
  Update the source code control system as needed
  Ensure patches and fixes are incorporated into a future product release

4.3 Escalations

Special procedures apply to Service Request escalations. An escalated issue is generally one of the following:

No response to a problem reported, within the designated time given by the call response coordinator or technical engineer
Response times out of severity guidelines
Customer dissatisfaction with Service Request resolution you've been given

North and South America  +1.650.846.5789
EMEA (Europe, Middle East, and Africa) +44(0).870.909.3889
Asia and Australia  +61.2.4379.9322 or 1.800.184.237 (within Australia only)

The above telephone numbers provide access to a TIBCO Support Manager. This phone number is to be used if or when a customer is dissatisfied with the progress of problem resolution, or wants the problem reported brought to the attention of TIBCO's management. If voicemail is reached, the customer should leave a message containing the company name, a contact telephone number, and estimated severity level for the issue. The voice mail will trigger an immediate page to a Support Manager, who will contact customer at the number left in the message.
4.4 TIBCO Support Web Login

4.5 Creating, Updating and Tracking a Service Request

4.6 User Profile
Authorized contacts are able to change their login password, update their phone numbers, select their time zone and subscribe to Product FAQ’s and LBN in this section.
4.8 Product FAQs

4.9 Customer Project Profile

Each customer is encouraged to submit and maintain a detailed project profile that gives details about their TIBCO software implementation.

4.10 Additional Features

Solution Subscription feature: By updating your User Profile, you now have the ability to receive notifications on any FAQ and/or LBN material we publish. This means that you can get the latest information about a known issue or the availability of hot fixes as soon as it is announced on any product of your choice. Please note that when you subscribe to a product, you will receive information published for that product as well as information published under the ‘All Products’ category.

Reporting Capabilities: Generate basic reports on your service requests and download them in .csv or Excel format. This feature and its help function can be found in the upper right hand corner of the Support Web.
Customer Satisfaction Survey: It is our goal to continuously improve the services we provide and a key part of this process is to hear how we are doing from our customers. The valuable input we receive will help us spotlight areas where we need to focus more attention. Customer Satisfaction Surveys are being conducted using the telephone by our global TAC team. They will contact customers who have recently completed a service request and will collect feedback on satisfaction measured on a 5-point scale (5-very satisfied; 1-Very Dissatisfied). Results will be shared with our support team as well as be made available on the Support Web for our customers to view. Authorized contacts can access the TIBCO Support Overview presentation, which provides useful information about TIBCO's support model, support centers around the world, how service requests are processed, escalation mechanisms available, and much more.

5 TIBCO Spotfire Customer Support
Spotfire and S-Plus customers can submit technical support requests via the TIBCO Support Web portal. The Support Web site allows customers to create, track, and update your product Service Requests (SRs), Enhancement Requests, Knowledge base, Late Breaking News items and more. Customers with accounts on the TIBCO Support Web may login and submit Service Requests today.

6 TIBCO Foresight Customer Support
TIBCO Foresight customers can submit technical support requests via email to fssupport@tibco.com. Customers may also contact our support group directly by phone at 1.800.669.5006 (U.S. and Canada) or +1 614.791.1600 (Outside U.S. and Canada). The TIBCO Foresight support staff will then assign a tracking number if the email or phone call cannot be answered immediately. This tracking number allows the customer the ability to reference any and all enhancements and fixes targeted for the product.

7 Product Download Site
The electronic software delivery service found at http://download.tibco.com/tibco/ provides confirmed internet delivery and tracking of software and documentation packages to authorized customers. Use of this system requires a secure username and password. This service provides authorized users with a customized portal to access their TIBCO product entitlements. Customers can view products they have purchased (excluding products purchased from a TIBCO web store site), as well as products they have obtained for evaluation purposes (excluding products downloaded or obtained for evaluation from another TIBCO web site). Customers with a current maintenance contract will automatically be entitled to download new releases, product updates and service pack releases, during their active maintenance period. Additional information is available on the TIBCO Support Web at "Product Updates" under the “Support Policies” section. Any software downloaded from this site may only be used in accordance with the terms and conditions of your license agreement with TIBCO Software Inc.

8 tibbr® Support
tibbr® Support Customers are entitled to Maintenance Service for tibbr® at the Silver Maintenance Level unless otherwise stated in an Ordering Document, as well as access to the tibbr® Support Program, as described below, irrespective of the service level of Maintenance for any other Licensor Software products which Customer might have licensed and provided that all tibbr® Product Line Licensor Software products licensed by Customer are subject to tibbr® Support.

8.1 tibbr® Support Program
This Program is intended to support Customers through the adoption of tibbr® within their organization. As part of this Program, Customers will be supported in their ongoing usage of tibbr® with responses to questions regarding technical issues, usage best practices and how to best implement the product.

The tibbr® Support Program is provided by TIBCO upon Customer’s request, subject to availability of resources and on a reasonable effort basis. TIBCO will make reasonable endeavours to meet Customer’s requests for assistance but provides no assurance that this service will be delivered on specific dates. TIBCO reserves the right to modify, reduce or increase the tasks included in the Program. Service Requests can be opened either through the TIBCO Support Web or by phone.

TSFI EULA Appendix D – Equipment Maintenance Program Guide

1. Overview
This Equipment Maintenance Program Guide (“Equipment MPG”) sets forth the terms and conditions by which TIBCO shall provide, and its customers shall receive, Maintenance for Equipment.

Maintenance services are optional and are available at the Bronze and Silver levels. Software Maintenance is determined by the level of Equipment Maintenance purchased, i.e. Maintenance levels for Equipment Software must be equal to the Maintenance levels for the corresponding Equipment, e.g. Silver level Equipment Maintenance will include Silver level Software Maintenance for the Equipment Software.

Maintenance for Equipment Software is subject to the Maintenance Program Guide located at Appendix C (“MPG”). In the event of a conflict between the MPG and this Equipment MPG, where such conflict pertains to Equipment, this Equipment MPG shall prevail.

Solely as used in this Equipment MPG, “Agreement” means this Equipment MPG, the MPG and any agreement currently in effect between Customer and TIBCO related to the Equipment.

2. Equipment Maintenance Service Levels
3. Equipment Maintenance Terms and Conditions

3.1. Equipment Maintenance - Scope. This Section 3 applies to Maintenance of Equipment, specifically excluding Maintenance for the TIBCO Messaging Appliance™ ("TMA"), and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below. TMA Maintenance terms are set forth in Section 4 below.

3.2. Equipment/Component Repair or Replacement Protection. During the Maintenance term, for all Equipment Maintenance levels, and subject to Customer’s compliance with the Agreement, TIBCO shall, at its sole option, either repair or replace the covered Equipment or component thereof that TIBCO can confirm is causing an error.

3.3. Contacting Support; Troubleshooting. Upon discovering an error, Customer must promptly first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the Equipment. Prior to scheduling Equipment replacement or repair, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in Section 6 below.

3.4. On-site Equipment Repair Process.

3.4.1. On-site repair support is available solely for TIBCO LogLogic® Security Event Manager ("SEM") and TIBCO LogLogic® Security Event Viewer ("SEV") Customers in the United States and Europe.

3.4.2. If TIBCO determines that the Equipment or component thereof may be repaired at Customer’s location, TIBCO will endeavor to dispatch a TIBCO (or TIBCO-contracted) technician to the Customer’s location by the next business day; provided, however, that Customer must immediately notify TIBCO in writing in advance if the Equipment is located in an area with restricted access which may require a technician with special qualifications. In such instance, TIBCO will use commercially reasonable efforts to locate and contract, if necessary and at Customer’s expense, a technician with such special qualifications; provided that Customer understands and agrees that any reasonable delay or failure in procuring such technician shall not constitute a breach of the Agreement.

3.5. Equipment Replacement – Processes and Procedures. Except as otherwise provided in Section 3.4 above, TIBCO will take all commercially reasonable steps to replace the Equipment or component thereof, as applicable; provided that Customers follow the return material authorization ("RMA") procedure described in this Section 3.5. In the event that TIBCO recommends replacement of a component, TIBCO will provide Customer with instructions for the removal of the component and the installation of the replacement component.

3.5.1. Customer must obtain an RMA from TIBCO prior to returning any Equipment to TIBCO.
Customer may request an RMA by telephone (1-800-957-LOGS) or by email at support@loglogic.com. Customer must provide the following information related to every Equipment or component thereof to be returned:

- Model number, and serial number, eth0 MAC address or Tag ID of the Equipment, and, if returning an Equipment component, a description of such component;
- Sender’s name, telephone, email address and fax number;
- Reason for return, i.e. a description of the error; and
- Ship-to address, including contact name, email address and phone number of the individual to receive the TIBCO replacement Equipment.

3.5.2. If the RMA is received, authorized and processed by TIBCO before 2 PM Pacific Standard Time (USA) or 2PM UK (GMT) Time, TIBCO will ship replacement Equipment: (1) on the same business day where the Equipment or component to be replaced does not require customization; and (2) within forty-eight (48) business hours where the replacement Equipment requires customization. Non-customized shipped replacement Equipment or components will be factory-default/off-the-shelf. Any shipped repaired or replaced Equipment or components may be refurbished or include refurbished components.

3.5.3. TIBCO will ship replacement Equipment for next local business day standard delivery to Customer’s location free of freight charges. Unless otherwise specified or agreed upon, factory default/off-the-shelf Equipment will be shipped with the latest Software.

3.5.4. TIBCO will provide Customer with a shipping account number or prepaid shipping label to use for purposes of returning defective Equipment or components. While Customer is not obligated to return defective Equipment or components before TIBCO will ship replacements, Customer is nonetheless required to ensure that the returned Equipment is received by, or is in transit to, TIBCO or its designee within ten (10) business days of Customer’s receipt of the replacement Equipment.

3.5.5. TIBCO strongly recommends that Customer keep all original packing material received with the Equipment for use in any Equipment return. If Customer no longer has the original packaging, Customer may request that TIBCO send them replacement packaging at Customer’s cost. Customer shall also be wholly responsible for any damage or loss of the Equipment in transit; TIBCO recommends that Customer procure sufficient insurance before shipping Equipment to TIBCO.

3.5.6. Customer acknowledges that Customer-returned Equipment shall become the property of TIBCO upon delivery to TIBCO.

3.6. Keep Your Hard Drive Option: For an annual additional fee, Customers may purchase an option to “Keep Your Hard Drive,” entitling Customer to retain the defective hard drive(s). Subject to compliance with instructions provided by TIBCO, Customer may extract and retain or destroy the original hard drives from the Equipment. In no instance may Customer transfer, connect or otherwise use any defective hard drive(s) from returned Equipment in the replacement Equipment; doing so will result in Customer’s breach of the Agreement, and will void TIBCO’s warranty obligations.

3.7. Extended Support: Extended support for Equipment is available, subject to Section 3.10 of the MPG (TIBCO Extended Support Program).

4. TMA Maintenance Terms and Conditions

4.1. TMA Maintenance – Scope. This Section 4 applies solely to the TMA, and is subject to Section 5 (Maintenance Exclusions) and Section 6 (Customer Responsibilities) set forth below.

4.2. TMA Replacement Protection. During the Maintenance term, and subject to Customer’s compliance with the terms and conditions of the Agreement, under Silver Equipment level Maintenance, TIBCO will provide a permanent replacement of the TMA. Certain features, such as interface standards, product footprint and mobility, firmware and software compatibility may not be available.

4.3. Contacting Support; Troubleshooting. When experiencing a problem, Customer must first place a call to the designated support number. TIBCO will provide basic telephone technical assistance for installation, product configuration, setup and problem resolution for the TMA. Prior to scheduling advance replacement of the TMA, TIBCO may ask Customer to provide relevant information, start diagnostic tools and perform other supporting activities outlined in this Section 4 and in Section 6 below. Customer will be required to provide a credit card number or purchase order number.

4.4. TMA Replacement – Processes and Procedures. If the problem cannot be resolved remotely, TIBCO will replace the failed TMA provided that Customers follow the procedure described below.

4.4.1. Prior to returning the failed TMA, Customer must:

a) perform all steps for self-test and trouble-shooting specified in the operating manual for the TMA;

b) provide to TIBCO, in writing, the model number, serial number, current failure symptoms, pertinent failure history and ship-to address (if applicable).

4.4.2. Promptly following completion of Customer’s obligations under Section 4.4.1, TIBCO or its authorized third party will ship the replacement TMA to Customer’s location free of freight charges. The replacement TMA will be shipped in a suitable container and include instructions for returning the failed TMA. Packaging instructions and a prepaid shipping label for the return of the failed TMA will be included in replacement TMA shipping container. At TIBCO’s discretion, TIBCO or TIBCO’s authorized third party provider may elect to collect failed TMA at your location.

4.4.3. The replacement TMA will be a new or a refurbished TMA.

4.4.4. To return the failed TMA, Customer must:
a) unless Customer will deliver the failed TMA to TIBCO in person, package the failed TMA carefully in the original shipping container, or a shipping container that prevents the TMA from being damaged while in transit to TIBCO or TIBCO’s authorized third party provider.

b) ship the failed TMA to TIBCO or TIBCO’s third party provider (as directed by TIBCO) within three (3) business days of receipt of the replacement TMA and obtain a prepaid insurance receipt to be retained by Customer as proof of shipment to TIBCO.

4.4.5. If TIBCO or TIBCO’s third party provider does not receive the failed TMA within fifteen (15) days of Customer’s receipt of the replacement TMA, TIBCO reserves the right to institute any available legal action related to the failure to return the TMA.

4.4.6. The returned TMA shall become the property of TIBCO or TIBCO’s third party provider upon receipt.

4.5. Support Limitations:

4.5.1. At TIBCO’s sole discretion, Maintenance will be provided using remote diagnosis and or other service delivery methods. Other service delivery methods, in lieu of shipping replacement Equipment, may include the overnight shipment of parts specified as Customer replaceable by TIBCO. TIBCO will determine the appropriate delivery method required.

4.6. The following services are specifically excluded from TMA Maintenance:

Diagnosis or Maintenance at the Customer site.
Set-up and installation of the replacement TMA or replacement parts at the Customer site.

5. Maintenance Exclusions

5.1. Third Parties. Customer acknowledges and agrees that TIBCO may subcontract Maintenance services for the Equipment, in TIBCO’s sole discretion, to a third-party authorized provider; TIBCO will remain responsible for ensuring that the Equipment Maintenance obligations under this Agreement are fulfilled.

5.2. Equipment Maintenance specifically excludes:

- Recovery of the operating system, other software, parameters and data.
- Troubleshooting for interconnectivity or compatibility problems.
- Services required due to failure of Customer to incorporate any system or software fix, repair, patch, or modification provided to the Customer by TIBCO.
- Services required due to failure of the Customer to take avoidance action previously advised by TIBCO.
- User preventative maintenance.
- Damage caused by failure of Customer to follow manufacturer’s recommended maintenance or operating specifications, or caused by Customer’s misuse, negligence or abuse.
- Damage caused by environmental causes at Customer’s location, such as poor ventilation, improper storage, power failures or surges.
- Damage due events outside of TIBCO’s control, including fire, flood, act of god, war or nuclear incident or terrorism.
- Data, business interruptions, obsolescence, cosmetic damage, rust, change in color, texture or finish, wear and tear, gradual deterioration or any damage that does not affect the Equipment functionality.
- Fraud or theft.
- Alteration or modification of the Equipment in any way, not specifically directed in writing by TIBCO; repairs or alterations made by an unauthorized technician or user; damages caused by combination of Software with third party hardware or software.
- Transit or relocation of Equipment by Customer, including any damages occurring while in transit or related to such relocation, and services accompanying or related to transit or relocation of the Equipment.

6. Customer Responsibilities

Customer will be required, upon TIBCO’s request, to support resolving any problem reported under Maintenance remotely by:

- Providing all information necessary for TIBCO to deliver timely and professional remote support and/or to enable TIBCO to determine the level of support eligibility.
- Starting self tests and/or other diagnostic tools and programs.
- Performing other reasonable activities to help TIBCO identify or resolve the problem.
- Customer must acknowledge receipt of replacement Equipment by signing freight carrier air bill at time of delivery.
- Customer is responsible for installing all replacement Equipment (or components thereof) in a timely manner.
- Customer is solely responsible for backing up all copies of its Licensed Software and data.
- Customer shall restore software and data on the Equipment after the repair or replacement.
- Customer is responsible for the installation of any software not provided by TIBCO with the Equipment and insures all software installed on the Equipment is appropriately licensed and compatible with the Equipment.

Where Customer is not a Government End User, Customer acknowledges that in the event that diagnosis by TIBCO reveals that the error is not caused by the Equipment that TIBCO may charge Customer the then-current GSA Schedule rate for such diagnosis.

In the event of that the Equipment or TMA is retired, Customer may need to upgrade its Equipment or TMA in order to ensure performance of the applicable Software.

7. Equipment End of Life and End of Sale:

As part of the normal product lifecycle, TIBCO will announce the date of which an Equipment will become End of Life ("EOL") which such announcement will also include a date for the End of Sale ("EOS") of such Equipment. For clarity, this Section 7 applies to EOL of
Equipment only, specifically excluding TMA. An EOL means that TIBCO will no longer provide Maintenance for such Equipment. EOS means that such Equipment will not be available for purchase.

TIBCO shall EOL an Equipment three (3) years following the EOS date, at which point all Maintenance services for such Equipment shall terminate.

TIBCO Software Inc.
Terms of Use for United States Federal Government Users

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1. TIBCO Software Inc.: Our Services to You

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You agree to (i) provide accurate, current and complete information in any registration form(s); (ii) maintain the security of your password and identification; (iii) maintain and promptly update the registration data and any other information you provide, to keep it accurate, current and complete; and (iv) accept all risks of unauthorized access to information and registration data using your password and/or identification. You are responsible for all activities that occur under your account. TIBCO will not be liable for any loss that you may incur as a result of anyone using your password or account, either with or without your knowledge. However, you could be liable for losses incurred by TIBCO or another party due to someone else using your account or password. You agree that you will not misuse or abuse account access and passwords, including, without limitation, giving access to third parties or allowing third parties to gain access to information from the Site through you. Please see our Privacy Statement for more information on the treatment of your information.

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d. infringes on any patent, trademark, trade secret, copyright, right of publicity or other proprietary right of any party;

e. constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (also known as “spamming”), chain letters, any other form of unauthorized solicitation or any form of lottery, gambling, survey or illegal or unauthorized schemes;

f. contains software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage or limit the functioning of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party;

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17. Special Admonitions for International Use

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19. Disputes

Disputes between United States Government customers and TIBCO related to these terms shall be brought in a United States Federal court or adjudicative body of competent jurisdiction.

20. Privacy Statement

We consider the privacy of our users to be paramount, and we have developed a privacy policy to protect and inform our users. Our current Privacy Statement available at http://www.tibco.com/privacy.jsp is incorporated herein by reference and made part of these Terms.

21. Disclosure

You acknowledge, consent and agree that TIBCO may access, preserve, and disclose your account information and content if required to do so by law or in a good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms; (c) respond to claims that any Content violates the rights of third-parties; (d) respond to your requests for customer service; or (e) protect the rights, property, or personal safety of TIBCO, its customers and the public.

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Legal name and address of TIBCO:

TIBCO Software Inc.
ATTN: TIBCO Software Federal, Inc.
c/o Office of General Counsel
3303 Hillview Avenue
Palo Alto, CA 94304

Please feel free to contact TIBCO to resolve a complaint regarding any aspect of service relating to the Site by writing to TIBCO at the address below, sending e-mail to tibcommunity@tibco.com or calling (877) 724-8227. Upon your request, you may have these Terms sent to you by e-mail.

23. How to Contact TIBCO: Email: tibcommunity@tibco.com
Phone: (877) 724-8227
U.S. Mail: TIBCO Software Inc.
3303 Hillview Avenue
Palo Alto, CA 94303

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(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Trend Micro Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2i, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) Government Indemnities. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

l) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary,

the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
1. **Not a Master Purchase Agreement; Agreed Definitions.**

   1.1 **Reserved**

   1.2 **Not a Master Purchase Agreement.** Ordering Activity acknowledges that this is NOT a master purchase agreement for subsequent purchases of Products, but rather, this Agreement and the underlying GSA Schedule Contract, Schedule Pricelist and applicable purchase order only applies to each instant purchase/license of Products by Ordering Activity. Each subsequent procurement/license of Products by Ordering Activity will be made subject to and conditioned on the agreement of the Parties to the then-current version of this Agreement unless otherwise agreed in a writing signed by the Parties.

   1.3 **Procurement Under This Agreement.** Ordering Activity may secure Products under this Agreement by:

   a. Procurement Through a Reseller. Reseller will provide to Ordering Activity a Quote based on prices set out in the Schedule Price List. Ordering Activity understands that if an Order is placed with a Reseller, the Reseller can place an order with Trend Micro for Products (either directly through Trend Micro or through a Trend Micro distributor) as requested by Ordering Activity. Except for the matters agreed in the first sentence of this paragraph between the Reseller and Ordering Activity, all other rights, obligations, terms, conditions, limitations, and exclusions regarding Products that are Ordered by Ordering Activity are exclusively set forth in this Agreement. All payments by Ordering Activity for Products will be made directly to the Reseller and never to Trend Micro. Ordering Activity acknowledges that each Reseller is an independent contractor and in no event or circumstance will any Reseller now or hereafter be deemed a joint venturer, partner, fiduciary or agent of Trend Micro and NO Reseller has been or will be authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, warranty, guaranty, or any otherwise contract for or act on behalf of Trend Micro or waive or renounce any right of Trend Micro or modify any right, obligation, or agreement of Ordering Activity set forth in this Agreement.

   b. **Reserved**

   1.4 **Agreed Definitions.** In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in this Agreement (that include all policies, procedures, and Trend Micro websites made a part hereof) that are referenced/incorporated herein, the initially capitalized definitions, descriptions, and clarifications shall have the meanings set forth in this Section 1.4 (each is an "**Agreed Definition**") and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

   **"Affiliate"** means as to a Party, each person that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. **"Control"** means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

   **"Appliance"** means a hardware-based appliance designed and provided by Trend Micro as a Product that inseparably combines Hardware and Integrated Software to form a single purpose, unified device that provides capabilities, features, and functionalities as set forth in its Documentation. The Hardware portion of an Appliance may be sold, leased, rented, or loaned hereunder, whereas the Hardware and Integrated Software to form a single purpose, unified device that provides capabilities, features, and functionalities as set forth elsewhere in this Agreement (that include all policies, procedures, and Trend Micro websites made a part hereof) that are referenced/incorporated herein, the initially capitalized definitions, descriptions, and clarifications shall have the meanings set forth in this Section 1.4 (each is an "**Agreed Definition**") and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

   **"Appliance Differing Terms"** shall have the meaning set forth in **Section 4.**

   **"Applicable Laws"** means all mandatory national, Federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters, and other official releases in the Territory that are applicable from time-to-time to a Party’s performance of its obligations and/or exercise of its rights hereunder, including data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

   **"Communications"** shall have the meaning set forth in **Section 9.**

   **"Ordering Activity"** means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts.

   **"Computer"** means a Virtual Machine or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, including without limitation mainframes, Servers, workstations, desktop computers, laptops, tablets, mobile devices, telecommunication devices, Internet-connected devices, and hardware products capable of operating a wide variety of productivity, entertainment, business, security, and/or other software applications.

   **"Confidential Information"** shall have the meaning set forth in **Section 10.**
“Contractor” is an independent contractor that provides services in support of Ordering Activity and/or its Affiliates with respect to any Products provided hereunder pursuant to a written agreement between such person and Ordering Activity that imposes an obligation (among other obligations) on such Contractor to fully comply with this Agreement to the extent of access to, possession of, and/or use of any Product by such person. Such Contractor (and its services) may include, but are not limited to, Contractors: (a) that provide business process support, technical support, or outsourcing services to Ordering Activity; or (b) such as AWS, Microsoft Azure, Google Marketplace/Launcher, SoftLayer, and/or Rackspace that: (i) act as host or platform for Standalone Software that was Resold by such Contractor to Ordering Activity, but licensed to Ordering Activity hereunder; and/or (ii) act as host or platform for Standalone Software licensed to Ordering Activity hereunder that was originally acquired by Ordering Activity from a different Reseller (not the Contractor) or Trend Micro, all of the foregoing for the sole access, use, and benefit of Ordering Activity and/or its Affiliates in accordance herewith.

“Controlled Technology” shall have the meaning set forth in Section 17.

“Delivery Date,” “Delivered,” and “Delivery.” The Delivery Date shall be: (a) for Software, it is the date that Software is made available by Trend Micro for electronic download by Ordering Activity, and/or (b) for Hardware, the date of actual shipment to Ordering Activity, but some Appliances may be subject to different delivery terms as notified by Trend Micro. All Products and Maintenance will be deemed for all purposes to be Delivered in the country of Trend Micro’s place of business stated in the License Certificate.

“Different Terms” shall have the meaning set forth in Section 3.

“Documentation” means the printed, electronic, and online technical documentation and operating instructions generally made available by Trend Micro for Products provided for the purpose of supporting Ordering Activity’s internal business use of such Products as authorized in Section 2.1.

“Government Agency” shall have the meaning set forth in Section 18.

“Hardware” means the hardware product that Integrated Software is embedded in or preloaded on by Trend Micro and sold as an Appliance and all Documentation therefor.

“Instance” means an image of software on a physical device or Virtual Machine that is created by executing the software’s setup or install procedure or by duplicating an existing Instance.

“Integrated Software” means the object code version of any Trend Micro-published/branded applications software that is embedded in or preloaded on Hardware by Trend Micro to form an Appliance. Integrated Software is licensed hereunder (and no right, title, or interest therein is sold) for a Subscription Period that is no longer than the life of the Appliance and is not re-deployable to replacement Hardware except as may be specifically permitted herein.

“IP Claim” means any suit, cause of action, or other legal proceeding filed/brought against Ordering Activity by a third party in the courts of law, equity, or otherwise ONLY in the Territory, that asserts that Software licensed hereunder directly infringes any patent, copyright, and/or trademark of such third party.

“License Certificate” means a written (electronic or otherwise) acceptance/entitlement confirmation issued by Trend Micro to Ordering Activity with the license/purchase of Products that confirms to Ordering Activity the Products purchased by Ordering Activity, including the applicable Licensed Capacity where applicable. The License Certificate and this Agreement forms the entire agreement between Trend Micro and Ordering Activity with respect to each Order of Products that is accepted by Trend Micro. Ordering Activity is advised to retain the License Certificate as proof of its entitlement to such Products.

“Licensed Capacity” is defined (includes quantity, licensing metric, and term of license) as and notified in the License Certificate each time Standalone Software is licensed hereunder, the number of licenses of each type of Standalone Software that Ordering Activity purchases from time-to-time and is then-validly licensed to Ordering Activity under this Agreement, based upon Trend Micro’s licensing measurement for each particular Standalone Software. The applicable licensing metrics/measurements (which may include measurement by Computer/CPU, Virtual Machine, device, node, Instance, Server, and user, as applicable) available to Ordering Activity for Standalone Software licensed hereunder will be determined and published by Trend Micro from time-to-time for each Product at https://www.trendmicro.com/en_us/about/legal/licensing-metrics.html.

“Licensing Entity” shall have the meaning set forth in Section 23.

“Maintenance” of Software shall have the meaning and description set forth in Section 5. The term Maintenance for Software does not include any PSP services or other premium, enhanced, technical, or engineering support services that may be provided by Trend Micro pursuant to a separate agreement or statement of work for additional compensation. Any maintenance or support of Hardware shall have the meaning and description set forth in applicable Appliance Differing Terms referenced in Section 4.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and/or Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“Order” means: (a) a purchase order or other ordering document issued by Ordering Activity in response to a Quote.

“Party” means only each of the persons entering into this Agreement and all other persons such as Affiliates and Contractors of each Party are third parties without rights or benefits hereunder.

“Perpetual Period” means a license granted for Standalone Software that extends for an indefinite period of time, subject to earlier termination in accordance herewith. For the avoidance of doubt, Standalone Software licensed for a Perpetual Period never includes a payment for, or a right to receive without additional fees or compensation, Maintenance for the entire Perpetual Period.
“Products” means and includes Software, Appliances (including Hardware), and Maintenance that is licensed/purchased hereunder, but does NOT include Trend Micro “software-as-a-service” and “cloud-based” service offerings that are provided under separate agreement.

“Quote(s)” means one or more documents issued by Trend Micro or its Reseller (as the case may be) to Ordering Activity specifying the Software, Appliance, and/or Maintenance that Ordering Activity seeks to obtain, the related pricing, payment terms, and Licensed Capacity and sufficient other information to complete the transaction. Each Quote shall incorporate this Agreement (specifically or by reference) as the sole basis and governing document for any procurement by Ordering Activity based on the Quote.

“Reseller” means a reseller, system integrator, service provider (such as AWS that hosts or provides platform services with respect to Software resold by it subject to this Agreement), independent software vendor, VAR, OEM or other channel partner that is authorized by Trend Micro or its distributor to secure orders for the license/sale of Products to end users, including Ordering Activity.

“Separate Modules” means any plug-in or module for Software that Trend Micro determines to be new or a different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration. Separate Modules are not included with Maintenance or Updates to existing Software.

“Server” means a computer or device (and deployed software) on a network that provides functionality, management, and/or support for other devices and/or other network resources; such as a web server, file server, a database server, or a print server.

“Software” means the object code version of Integrated Software, Standalone Software, and Test Software and includes all Documentation and Updates thereto made available to and purchased by Ordering Activity. In no event or circumstance will a source code version of any Software be offered, licensed, or otherwise provided hereunder to Ordering Activity.

“Software Limited Warranty” shall have the meaning set forth in Section 11.

“Standalone Software” means the object code version of any applications software (and Updates thereto) that is published by and is generally made available for license from Trend Micro hereunder that does not include any Hardware, nor is it licensed by Trend Micro as part of an Appliance. Standalone Software also includes Instances thereof that are licensed for deployment in a Virtual Machine environment.

“Subscription Period” means, only if available from Trend Micro for a specific version of Software, the limited term/increment of time (i.e., not a Perpetual Period) that the Software is licensed for use by Ordering Activity. Such Subscription Period may be offered by the week, month, or year (not to exceed three (3) years), during which period, the licensee has the right to use the Software (and receive Maintenance without additional cost) in accordance herewith. After expiration of the Subscription Period, a new Subscription Period or Perpetual Period license must be purchased in order to continue the use of the expired Software. Integrated Software is always licensed for the limited Subscription Period that expires and terminates at the end of such Subscription Period, unless such license is earlier terminated in accordance with this Agreement such as when the unit of Appliance on which such Software was originally installed is no longer deployed and used in accordance with the Appliance’s Documentation.

“Territory” means worldwide other than Japan, subject always to and limited by the terms, conditions, waivers, limitations, disclaimers, and exclusions in this Agreement, and present and future Applicable Laws that applies to the Products and/or the performance of either Party hereunder that prohibits or restricts Product sale, use, or access: (a) to certain technology/goods/services; (b) to specified countries; and/or (c) by defined persons.

“Test Period” shall have the meaning set forth in Section 7.1.

“Test Software” shall have the meaning set forth in Section 7.1.

“Test Use” or a ‘Test’ shall have the meaning set forth in Section 7.1.

“Third Party Technology” shall have the meaning set forth in Section 3.

“Trend Micro” means in each instance that Products are acquired under this Agreement, the Licensing Entity that provides Products in such instance as determined by application of Section 23.

“Virtual Machine” means a software container, implementation, or emulation of a Computer (i.e., a physical device) that runs its own operating system and executes application programs like a physical Computer.

“Updates” means and includes if and when generally made available by Trend Micro with respect to Software licensed hereunder that is also then-subject to paid Maintenance, new object code versions (including patches) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, websites, or other forms of computer abuse generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, revisions, patches, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, structures, and/or functionality that Trend Micro makes available to existing customers that have purchased Maintenance for such Software; provided, however, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies of the updated Software and will not increase the units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.
2. **Software License; Right to Copy; Limitations**

2.1 **Software License.** Products are protected by patent, copyright, trade secret, and/or other worldwide intellectual property Applicable Laws. On the terms and subject to Ordering Activity’s continuous compliance with the conditions set forth in this Agreement (including the License Certificate) and on the condition precedent of Ordering Activity making payment as directed in Section 1.3, Trend Micro hereby grants only to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5), a non-exclusive, non-transferable (except as may be a required in the European Union under mandatory Applicable Laws that do not permit a written waiver or limitation), non-assignable (by operation of law or otherwise), and revocable (in accordance herewith) right and license (with no right to sublicense) in the Territory to: (a) install or have installed (on Computers owned by or under the control of Ordering Activity through written agreement with a Contractor), access, and use Standalone Software only as permitted in its Documentation, each of the foregoing for the stated Subscription Period (unless the License Certificate states that such Standalone Software is being licensed for a Perpetual Period) and in such Licensed Capacity as is listed in the License Certificate; or (b) use Integrated Software (only as permitted in its Documentation) forming a part of any Appliance purchased hereunder only for such limited time (not for a Perpetual Period) as it forms a part of the unit of Appliance that it is originally shipped by Trend Micro to Ordering Activity.

2.2 **Right to Copy.** Ordering Activity shall have the right to reproduce, without additional cost, a commercially reasonable number of copies of the Standalone Software (in an unmodified form) and its Documentation that is licensed to Ordering Activity only for backup, failover, and/or, and maintaining purposes. Provided that Ordering Activity reproduces on or in such copies any and all of the copyright, trademark, patent, and other proprietary notices or markings that appear on the original copy of the Standalone Software (and Documentation). No copy of Standalone Software will be utilized for production purposes (other than backup/failover testing or archive retrieval) except for such time as the production copy of such Standalone Software is not being utilized for production use.

2.3 **Limitations/Conditions.** Except as may be specifically granted hereunder by license to Ordering Activity in this Section 2 or to the extent prohibited by or inconsistent with any Other Terms licensing identified Components to Ordering Activity, Ordering Activity agrees that such Standalone Software is being licensed for a limited time (not for a Perpetual Period) and in such Licensed Capacity as is listed in the License Certificate; or (b) use Integrated Software (only as permitted in its Documentation) forming a part of any Appliance purchased hereunder only for such limited time (not for a Perpetual Period) as it forms a part of the unit of Appliance that it is originally shipped by Trend Micro to Ordering Activity.

2.4 **Ownership.** The Parties understand and agree that all Software is licensed and not sold hereunder. The Parties agree that, as between the Parties, all Software and its Documentation, and all worldwide intellectual property rights therein or related thereto, are the exclusive property of Trend Micro, its Affiliates, and/or its or their licensors/suppliers. All rights in and to Software not expressly granted to Ordering Activity in this Agreement are reserved by Trend Micro and Ordering Activity will have no other or different rights (Other Terms) (e.g., sub-license, or otherwise privilege with respect to any Software. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Trend Micro’s existing or future patents or other intellectual property rights. Trend Micro reserves the right to take any and all reasonable steps to prevent unauthorized access to, and use of, Software by any person.

2.5 **Affiliate and/or Contractor Use.** For no more than the licensed Capacity purchased by or on behalf of Ordering Activity as evidenced in a License Certificate, Trend Micro grants Ordering Activity the right to authorize and permit (for no additional fees or amounts due Trend Micro other than the fees already payable with respect to licenses purchased by Ordering Activity): (a) Ordering Activity’s Affiliates to access, deploy, and/or utilize Products only in connection such Affiliates’s internal business operations for so long as such person remains an Affiliate of Ordering Activity; and (b) Contractors to Ordering Activity and/or its Affiliates to access, install, deploy, and/or utilize Products only in connection with the provision of services to and solely for the use and benefit of Ordering Activity and/or Affiliates in connection with their and its internal business operations and not for the benefit of any third party or such Contractor, all of the foregoing on the terms and subject to the limitations and conditions of this Agreement. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Product will be considered an authorized user of Ordering Activity under this Agreement with respect to such Product and NOT a separate or additional licensee or otherwise having any rights or deemed to be a third party beneficiary hereunder in any event or circumstance. Ordering Activity agrees at all times to require, ensure, and enforce compliance with the grants, terms, conditions, and limitations set forth in this Agreement by Ordering Activity’s Affiliates and/or Contractors having access to Products procured hereunder and, further, Ordering Activity agrees that it shall at all times be and remain legally and financially responsible to Trend Micro for the compliance and non-compliance with, or breach of, this Agreement caused by any Affiliate or Contractor. For the avoidance of doubt, since all Maintenance is to be provided by Trend Micro only to Ordering Activity, no Affiliate and/or Contractor will be entitled to request or receive Maintenance directly from Trend Micro.

2.6 **Use Exclusions.** Products are not fault-tolerant/fail-safe and are not designed, intended, suitable, or licensed hereunder for use, and may not be used, in situations or environments requiring extra safety features or functionality for fail-safe or fault-tolerant performance, such as: (a) the design, construction, operation, or maintenance of any nuclear facility, civil infrastructure, manufacturing facilities, or industrial plants; (b) aircraft navigation, communications, or operating systems; (c) air traffic control systems; (d) operation of
life-support or life-critical medical equipment; or (e) any other equipment or systems in which the circumvention, unavailability, inaccuracy, ineffectiveness, or failure of the Product could lead or contribute to death, personal injury, or physical property/environmental damage, and Trend Micro specifically excludes any right or license for any such use and disclaims any express or implied warranty/guarantee of fitness for any such use. Only as may be specifically set forth in the Documentation therefor, Trend Micro notifies Ordering Activity that no Product has been submitted for compliance testing, certification, or approval for any use by any governmental agency or consensus organization.

3. **Open Source and Third Party Technology.** The Software may come bundled or otherwise be distributed with open source or other third party software (herein “Third Party Technology”), that may be subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each “Different Terms”). Ordering Activity agrees to be bound only to the terms contained herein unless the Operating Activity executes an agreement in writing with a third party vendor.

4. **Appliances.** Several Products available hereunder are Appliances. As such, each Appliance has certain terms and conditions applicable thereto that are in addition to, or different than, those set forth herein (all are “Appliance Differing Terms”). In the event Ordering Activity is licensing/租借/leasing/renting/testing/evaluating an Appliance hereunder, Operating Activity agrees that the applicable Appliance Differing Terms are incorporated herein by reference and made a part hereof for all purposes. Appliance Differing Terms may include, among other things: a modified and/or different license grant and/or Maintenance for the Integrated Software that forms a part of the Appliance; Hardware warranty and ownership; and/or a description of available maintenance and support for Hardware and the Appliance in general. In the event of conflict between the terms and conditions in the body of this Agreement, and those Appliance Differing Terms, the applicable Appliance Differing Terms shall govern and control. Appliance Differing Terms are set forth in Exhibit A.

5. **Maintenance.** All Standalone Software licensed for a limited term Subscription Period by Trend Micro includes paid Maintenance in the price for the entire Subscription Period that is purchased by Ordering Activity. However, Standalone Software licensed for a Perpetual Period hereunder includes Maintenance only for a period of one (1) year from Delivery of the Standalone Software, thereafter, additional Maintenance then-offered by Trend Micro may be purchased for Standalone Software in one (1) year increments. The description of Maintenance and Trend Micro’s policies with respect to Standalone Software are set forth below in Exhibit B. The description of Maintenance and Trend Micro’s policies with respect to Integrated Software are set forth in the Appliance Differing Terms in Exhibit A.

6. **Applicable Laws.** To the extent applicable to Ordering Activity’s performance of its obligations and/or exercise of its rights hereunder, Ordering Activity represents (on an ongoing basis) and warrants to Trend Micro and agrees that Ordering Activity will: (1) comply with all Applicable Laws; and (2) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable in order to comply with Applicable Laws with respect hereto. If Ordering Activity at any time is in breach of or non-compliance with this Section, Ordering Activity will promptly (at no cost Trend Micro) do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any Applicable Laws.

7. **Test/Evaluation of Appliances and/or Software.**

7.1 **Test/Evaluation.** If Standalone Software or Integrated Software is provided to Company under this Agreement that has been identified by Trend Micro as “Evaluation,” “Proof-of-Concept,” “Trial,” or “Test” Software (each “Test Software”), then the provisions of this Section 7 shall apply thereto and shall supersede any conflicting term or condition of this Agreement. In each of the foregoing instances, Company is granted a royalty-free, non-transferable, limited license to install the Test Software on Computers located in the country of Delivery and owned (unless an Appliance is provided by Trend Micro in connection with Test Use) by Company and only use the Test Software for evaluation of such Test Software in a Non-Production Environment (a “Test Use” or a “Test”) that is limited to thirty (30) days from the date the Test Software is Delivered to Company (or on the date that an Appliance is shipped to Company by Trend Micro for a Test) unless otherwise agreed in writing by Trend Micro (the “Test Period”). Sections 2.1, 2.2, and 2.3 of this Agreement do not apply to Test Software, but Sections 2.3, 2.4, and 2.6 do apply to Test Software. If the Test Use involves an Appliance (and Integrated Software), the Parties agree that the applicable Appliance Differing Terms below in Exhibit A, sets forth additional and/or different terms and conditions that are applicable to the Appliance and the Integrated Software that forms a part of that Test Use during the Test Period. Company may be able to receive web or email based technical support in the country where Company is located, but otherwise support is not generally available for Test Software or Appliances.

7.2 **Exclusion; Limitation of Liability for Test Software.** TEST SOFTWARE MAY CONTAIN ERRORS OR OTHER PROBLEMS THAT COULD CAUSE SYSTEM OR OTHER FAILURES AND DATA LOSS. CONSEQUENTLY, TEST SOFTWARE IS PROVIDED TO COMPANY “AS IS, WITH ALL FAULTS.” TREND MICRO SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY, GUARANTEE, AND/OR LIABILITY TO COMPANY OF ANY KIND OR NATURE WITH RESPECT TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THIS DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO’S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THIS AGREEMENT RELATED TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED, SHALL BE LIMITED IN THE AGREEGATE TO THE SUM OF FIVE HUNDRED DOLLARS (USD$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY. Any information about the Test Software gathered from its access or use shall be used solely by Company for the test/evaluation and such information shall not be provided to any third party. Notwithstanding anything contained herein, each Party has the right to terminate any Test Use and the license herein granted at any time with or without reason with five (5) days prior written notice to the other Party. Upon expiration of the Test Period or earlier termination as set forth in this Section 7.2, Company agrees to immediately stop using the Test Software and uninstall, delete, and irretrievably destroy all copies of the Test Software and Documentation including those that may be included in any backup or archive files and shall promptly confirm same to Trend Micro in writing.

8. **Reserved.**
9. Consent to Electronic and Other Communications. Ordering Activity agrees that Trend Micro may send Ordering Activity required legal notices and other communications about Products (including Updates), other and/or new Trend Micro products and services, special offers and pricing or other similar information, customer surveys, and other requests for feedback (collectively “Communications”). Trend Micro may provide Communications via (among other methods): (a) in-person contacts by Trend Micro and/or Reseller personnel; (b) in-Product notices or email to registered email addresses of named Ordering Activity contacts; and/or (c) posted Communications on its Websites. By accepting this Agreement, Ordering Activity consents to receive all Communications through these means.

10. Reserved.

11. Limited Warranty – Software.

11.1 Limited Warranty. Trend Micro warrants to Ordering Activity only that on the initial Delivery Date of any Software licensed under this Agreement and for thirty (30) days after the Delivery Date therefor, that such Software when installed on compliant/compatible hardware and only as permitted in and in accordance with its Documentation, will substantially conform to its Documentation (the “Software Limited Warranty”). Any replacement of non-conforming Software will be warranted for the remainder of its original Software Limited Warranty period. In the event that any Software does not comply with the foregoing warranty and such non-compliance is notified to Trend Micro within the warranty period, and if Trend Micro is unable to bring any Software into conformity with the Software Limited Warranty after using commercially reasonable efforts, either Ordering Activity or Trend Micro may (at the discretion of each) immediately terminate this Agreement for convenience (by giving written notice no later than ten (10) days after the end of the Software Limited Warranty Period) only as to the non-conforming Software. In the event the license is terminated as aforesaid, the license granted to Ordering Activity to such Software shall immediately terminate. Upon receipt of Ordering Activity’s certification that it has irrevocably destroyed such terminated Software, Trend Micro shall refund to Ordering Activity all fees paid by Ordering Activity for the affected Software. The applicable limited warranty provided by Trend Micro with respect to Integrated Software forming a part of an Appliance is available as directed in Section 4.

11.2 Warranty Exclusions. The Software Limited Warranty provided in this Section 11 does not apply to and shall be void: (a) in the event of failure of any Software arising or resulting from improper installation or any modification, alteration, or addition thereto, or any problem or error in the operating system software with which the Software is installed and is designed to operate; (b) if any problem or error in the Software has resulted from improper use, misapplication, or the use of the Software with other programs or services that have similar functions or features which are incompatible with the Software; (c) is licensed as Test Software for which Trend Micro does not charge a royalty or license fee; or (d) if Trend Micro does not receive notice of a non-conformity within the applicable warranty period.

11.3 Exclusive Remedy. The Parties agree that the rights, obligations, and remedies of the Parties in this Section 11 are in lieu and satisfaction of any right of acceptance/rejection of any Software that Ordering Activity may have under Applicable Law and Ordering Activity hereby waives and renounces any right of acceptance/rejection of all Software, it being understood that Ordering Activity is relying upon its rights under this Section 11. The Parties agree that the warranties and remedies with respect to Software and Maintenance set forth in this Section 11 shall constitute Trend Micro’s sole and exclusive obligation and liability and Ordering Activity’s sole and exclusive right and remedy for the breach of or Software non-conformance with the Software Limited Warranty herein granted for any Software. ORDERING ACTIVITY UNDERSTANDS AND AGREES THAT TREND MICRO CANNOT, AND DOES NOT HEREIN, PROVIDE ANY ASSURANCE/GUARANTEE THAT THE DEPLOYMENT/USE OF ANY SOFTWARE (EITHER BY ITSELF OR IN COMBINATION WITH OTHER TREND MICRO PRODUCTS) WILL GUARANTEE/ASSURE COMPLETE/PERFECT PROTECTION FROM AND AGAINST ALL PRESENT AND FUTURE SECURITY THREATS TO ORDERING ACTIVITY’S NETWORKS, SYSTEMS, DEVICES, AND/OR DATA AND NOTHING HEREIN THIS AGREEMENT SHALL BE DEEMED TO IMPLY SUCH A GUARANTEE OR ASSURANCE.

11.4 Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, ORDERING ACTIVITY AGREES THAT TREND MICRO PROVIDES SOFTWARE “AS AVAILABLE” AND “AS IS, WITH ALL FAULTS” AND WITHOUT ANY OTHER WARRANTY OR GUARANTEE OF ANY KIND. TREND MICRO (ON BEHALF OF ITSELF AND ITS SUPPLIERS/LICENSES/RESELLERS) EXPRESSLY DISCLAIMS ANY CONDITIONS AND WARRANTIES (WHETHER STATUTORY, EXPRESS OR IMPLIED) OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR OR GENERAL PURPOSE; TITLE; QUALITY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR OTHERWISE ARISING FROM A STATUTE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES’ CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER; OR ANY WARRANTY AGAINST INTERFERENCE WITH ORDERING ACTIVITY’S QUIET ENJOYMENT OF ANY SOFTWARE. ORDERING ACTIVITY UNDERSTANDS AND AGREES THAT TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT: (a) SOFTWARE WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (b) THE FUNCTIONS AND FEATURES CONTAINED IN SOFTWARE WILL METE THE REQUIREMENTS OF ORDERING ACTIVITY OR THAT SOFTWARE WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS OF ORDERING ACTIVITY; (c) SOFTWARE, UPDATES THERETO, OR MAINTENANCE THEREOF ARE FREE OF DEFECTS, PROBLEMS, BUGS, AND ERRORS OR THAT ALL DEFECTS, PROBLEMS, BUGS OR ERRORS WILL BE DETECTED OR CORRECTED; (d) SOFTWARE WILL DETECT ONLY ANY, OR ALL SECURITY OR MALICIOUS CODE THREATS; OR (e) USE OF SOFTWARE AND UPDATES WILL KEEP ORDERING ACTIVITY’S NETWORKS OR COMPUTER SYSTEMS FREE FROM ALL VIRUSES OR OTHER MALICIOUS/UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY ATTACKS/BREACHES.

12. Reserved.

13. Reserved.

14. Privacy; Security Update.
14.1 Privacy. By using any Product or in connection with any Trend Micro Maintenance, Ordering Activity will cause certain information about Products and systems on which Products are deployed to be sent to Trend Micro owned/controlled servers strictly to improve services and functionality of the Software (e.g., to improve security scanning, malware identification and threat protection). Further information about what Trend Micro does with, and how it protects, certain information that Ordering Activity provides to Trend Micro is set forth in the Trend Micro Privacy Policy below in Exhibit C. Except where not permitted under mandatory Applicable Law in the European Economic Area (EEA), Ordering Activity hereby consents to the use and disclosure of its data in accordance with the Privacy Policy.

14.2 Security Acknowledgement. Trend Micro does not warrant or guarantee that Products will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Trend Micro does not use or want. Ordering Activity agrees that the success of security efforts and the operation and protection of its Computers, networks, and data are dependent on factors solely under Ordering Activity’s control and responsibility, including, but not limited to: (a) the design, implementation, deployment, and use of hardware and software security tools in a coordinated effort to manage security threats; (b) the selection, implementation, and enforcement of appropriate internal security policies, procedures and controls regarding access, security, encryption, use, and transmission of data; (c) development of, and ongoing enforcement of, processes and procedures for the backup and recovery of any system, software, database, and any stored data; and (d) diligently and promptly downloading and installing all Updates to Products made available to Ordering Activity.

15. Assignability/Severability. Ordering Activity and Trend Micro may not assign all or any portion of this Agreement, whether by contract, operation of law or otherwise, to any person, including any Affiliate, without written approval from the other party in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Ordering Activity agrees that if a court or other competent tribunal in any jurisdiction finds any provision of this Agreement invalid, such finding shall not affect any other provisions of the Agreement, which shall remain in full force and effect.

16. Waiver; Severability; Enforcement.

16.1 Waiver. A Party’s failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the Party agreeing to the waiver.

16.2 Severability; Enforcement. The unenforceability of any provision or provisions of this Agreement shall not impair the enforceability of any other part of this Agreement. In the event that any provision of this Agreement conflicts with the governing law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable in whole or in part by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to the minimum extent necessary to render it valid, enforceable, and insofar as possible, reflect as nearly as possible the original intentions of the Parties. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable in accordance herewith.

17. Export/Import Control. The export or re-export of Software (and related technical data and services) and/or an Appliance (collectively “Controlled Technology”) is subject to Applicable Laws with respect to the export (including “deemed export” and “deemed re-export” regulations) and import of Controlled Technology by Ordering Activity and/or its Affiliates. Ordering Activity agrees that it will at all times comply with each Applicable Law (now or hereafter in effect) that applies to direct/indirect export, re-export, or import of Controlled Technology by Ordering Activity and/or its Affiliates and/or the performance of Ordering Activity and/or its Affiliates hereunder that: (1) requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; (2) prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or (3) restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Ordering Activity represents and warrants to Trend Micro that neither Ordering Activity nor any of its Affiliates is under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or entity as defined in any Applicable Law.

18. Government Agency Use. All Products (including Software and Appliances) and accompanying Documentation have been developed solely at private expense by Trend Micro and/or its suppliers/licensors, consisting of commercially-available computer software, commercially-available hardware and appliances, and commercially-available documentation. The acquisition, deployment, duplication, disclosure, and use of Software (as Updated) by any Government Agency may be subject to mandatory Applicable Laws, however, except for the limited license granted in Section 2 above to any Software, no right, title, or interest in or to any Software (or Updates and Documentation) is granted or transferred hereunder to any Government Agency licensing such Software. If any Government Agency requires or needs greater or different rights in or to Software other than those rights that are granted in Section 2, the Parties will discuss such additional requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the Parties will enter into a specific written agreement with respect thereto. In this Section, “Government Agency” shall mean a national, Federal, provincial, state, municipal, and/or local agency or entity in the Territory that acquires Products from Trend Micro under this Agreement for use by such Government Agency.


20. Reserved.

21. No Third Party Beneficiaries. This Agreement is entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. This Agreement does not, and shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or
EXHIBIT A – APPLIANCE DIFFERING TERMS

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”) that is a Deep Discovery Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance, the Integrated Software, and/or Microsoft Components, without the need for specific reference thereto. Unless otherwise noted, any exhibits, schedules, or appendices in these Appliance Differing Terms shall reference the respective section, schedule, or exhibit of the Agreement.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“Custom Sandbox” means a secured code execution environment of the Appliance that may be optionally created by Ordering Activity to meet its specific/unique system/environmental requirements. Each Custom Sandbox requires various Microsoft Components that must be licensed, purchased, installed, and configured by Ordering Activity (and NOT Trend Micro) for Paid Use in order for Custom Sandboxing to be created, deployed, and utilized by Ordering Activity in its environment – in other words, Trend Micro does NOT sell the Appliances with Microsoft Components. Each Appliance has a fixed number of Custom Sandboxes that may be created by Ordering Activity as may be advised by Trend Micro.

“Deep Discovery Appliance” or “Appliance” as used herein these Appliance Differing Terms, only means Trend Micro’s Deep Discovery family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version of the Integrated Software. Each Appliance is composed of Hardware, Device Code, Integrated Code, and at the Ordering Activity’s option, Microsoft Components. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold; the Device Code portion is licensed by the Hardware manufacturer; the Integrated Software portion is licensed in accordance herewith by Trend Micro; and the Microsoft Components must be licensed and purchased by Ordering Activity from Microsoft and/or its resellers based on the needs and uses contemplated by Ordering Activity.

“Device Code” means any operating system, microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with the Hardware by Dell. Device Code forms a necessary part of such Hardware and provides, among other things, the necessary instructions for how the Hardware operates and communicates with other Computers. Device Code does not form part of Integrated Software and is not licensed hereunder by Trend Micro to Ordering Activity.

“Hardware” means the Dell-manufactured device (unless another manufacturer of similar capabilities has been notified to Ordering Activity that forms a part of the Appliance.

“Integrated Software” means the object code version (only) of the Trend Micro-published Deep Discovery applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term Integrated Software also includes when purchased as part of paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may optionally be used by Ordering Activity in accordance with the Documentation. Trend Micro does not license in any circumstance, and Integrated Software does not include, any Microsoft Components that may be installed on the Appliance by Ordering Activity to create Custom Sandboxing or any other third party software that may be licensed to Ordering Activity that may be installed/deployed (in accordance with the Documentation) on Custom Sandboxes to enhance the capabilities of the Appliance. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

“License Termination Event” means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software (and/or any Trend Micro-provided Microsoft Component in the case of a Test) is uninstalled from the Appliance; (2) the Appliance, Integrated Software, or Microsoft...
Component (in the case of any Trend Micro-provided Microsoft Component in connection with a Test) is used for any purpose other than as permitted in the Documentation or the Agreement; (3) any additional/different software is installed on an Appliance other than as specifically permitted by the Documentation with respect to Custom Sandboxing; (4) the Hardware is retired, removed from service, or Repurposed; (5) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Ordering Activity without permission of Trend Micro or Dell; (6) the Test Period expires if applicable; or (7) either Party provides notice of termination of a Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“Microsoft Components” means various virtualized versions of Microsoft Windows and of Microsoft Office that must be installed and configured on the Appliance in order for Custom Sandboxing to be created, deployed, and utilized by the Appliance on the election of Ordering Activity.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Operating Activity’s production environment/systems) that does not access or use live production data at any time or for any reason. Notwithstanding the foregoing, at the written request of Ordering Activity, Trend Micro may grant Ordering Activity the right to use a COPY of live production data to conduct the Test in a Non-Production Environment only on the condition that Operating Activity first agrees (in a separate written agreement with Trend Micro) that all copies of the live production data so used will be irrevocably destroyed by Ordering Activity after the Testing is complete and will in no event or circumstance be incorporated by any person back into the live production data or production environment/systems of, or otherwise used in any remediation efforts by, Ordering Activity.

“Paid Use” means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“Repurpose” means for purposes of these Appliance Differing Terms: (1) Operating Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Operating Activity installing additional/different software to the Appliance that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Operating Activity for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Operating Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Operating Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may only be deployed and used by Operating Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Operating Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Operating Activity (the “Test Period”).

3.2 Test Use – Integrated Software. If Operating Activity is permitted to receive a Test of an Appliance, Trend Micro grants Operating Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Operating Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Microsoft Components. If Operating Activity is provided any Microsoft Components that are pre-installed or otherwise made available to Operating Activity by a third party such as a Trend Micro Reseller (or a Microsoft reseller) in connection with Custom Sandboxing on the Appliance that is the subject matter of a Test Use, Operating Activity understands and agrees that: (1) any such Microsoft software is NOT part of the Integrated Software licensed by Trend Micro hereunder; (2) is NOT licensed or made available to Operating Activity by Trend Micro; and (3) Trend Micro shall have no responsibility or liability in connection therewith. Notwithstanding the foregoing, if Operating Activity is nevertheless provided an Appliance by Trend Micro for Test Use with MSDN-licensed versions (developer versions that are for use ONLY in a Non-Production Environment) of Microsoft Components installed by Trend Micro that are necessary to permit Operating Activity to confirm that the Custom Sandboxes created by Trend Micro (based on Operating Activity’s expectations/needs made known to Trend Micro) satisfy Operating Activity’s expectations/needs. On the occurrence of the foregoing, Operating Activity agrees that: (a) Operating Activity’s possession and use thereof is subject to the Agreement even though it is not Integrated Software or licensed by Trend Micro; and (b) Operating Activity’s use and possession of the Integrated Software and any use of Microsoft Components supplied by Trend Micro will terminate immediately and without notice on termination or expiration of the Test even if Operating Activity subsequently purchases an Appliance for Paid Use.

3.4 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Operating Activity agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Operating Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action would be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Operating Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the “Accessories”) supplied by Trend Micro with the Appliance and, further, Operating Activity agrees to protect the Appliance and Accessories from loss or physical damage. Operating Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories. Operating Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Operating Activity’s custody unless such damage resulted from actions of Trend Micro, its employees, or agents.
3.6 Test Use Warranty/Representation Disclaimer. TRENDS MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREUNDER “AS IS, WITH ALL FAULTS.” FURTHER, TRENDS MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO: THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, ACTIVITY HEREUNDER "AS IS, WITH ALL FAULTS." FURTHER, TRENDS MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO: THE IMPLIED WARRANTIES OF MERCHANTIBILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TRENDS MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY'S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TRENDS MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS ARISING FROM OR IN CONNECTION WITH THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGGREGATE FOR ALL CLAIMS AND CAUSES OF ACTION, TO THE SUM OF FIVE HUNDRED DOLLARS (USD$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

3.7 Test Use License - Termination. Ordering Activity's possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.7.1 Integrated Software and Other Software – Test Use. On termination of any Test, Ordering Activity covenants and agrees that it will immediately uninstall and irretrievably destroy (without retention of any copies thereof of any kind) the Integrated Software and Microsoft Components, if any. Ordering Activity agrees that it will provide to Trend Micro, if requested, an unqualified certification of irretrievable destruction of the Integrated Software and Microsoft Components, if any, in accordance with the Agreement. For the avoidance of doubt, the foregoing obligation of destruction of the Integrated Software and Microsoft Components on the occurrence of a Termination Event shall apply even if Ordering Activity decides to purchase the Appliance used for Test Use.

3.7.2 Hardware Return. Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.7.3 Purchase of Unit of Appliance Tested. Ordering Activity understands and agrees that if, after the completion of a Test or otherwise, the Ordering Activity decides to acquire/purchase for Paid Use the unit of Appliance that is being used for a Test Use by Ordering Activity, Ordering Activity agrees that it will uninstall the Integrated Software and all Microsoft Components and enter into the Agreement anew by issuance of its Order with respect to such Paid Use before the Integrated Software can be reinstalled in the Appliance. After acceptance of Ordering Activity's Order by Trend Micro by issuance of a License Certificate, Microsoft Components may only be installed on the Appliance by Ordering Activity after it has separately purchased and purchased the appropriate Microsoft Components from Microsoft and/or its resellers since Trend Micro has no ability or right to sell/license/provide any Microsoft Components to Ordering Activity (or any other person) in connection with a Paid Use of an Appliance.

3.8 Acknowledgement. The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.9 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identity/contact information of Ordering Activity’s systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

3.10 Benchmarking. Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; provided, however, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Appliance and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 For Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software granted for Paid Use. Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-assumable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Ordering Activity solely on the unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller, and (2) only if provided as part of paid Maintenance, to (at Ordering Activity’s option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise
stated in the License Certificate. For clarity, Maintenance of the Integrated Software is included in the price of the Appliance for the first year, but renewal Maintenance must be purchased by Ordering Activity each year thereafter in order to continue to receive such Maintenance unless Ordering Activity has purchased a Subscription Period license to such Integrated Software as evidenced on the License Certificate for a period of two (2) years or less, in which event Maintenance is included for the duration of the Subscription Period. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period. Trend Micro agrees that it will continue performance under the Agreement during the pendency of any claim for breach of contract that Trend Micro may have against Ordering Activity.

4.2 Documentation. Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original materials provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.3 Custom Sandboxing. Ordering Activity understands and agrees that while the Integrated Software/Deep Discovery Appliance gives Ordering Activity the option to create Custom Sandboxes that meet Ordering Activity’s specific system requirements, the Integrated Software when shipped to Ordering Activity as part of the Appliance does NOT include ANY licensed Microsoft Components that are licensed to Ordering Activity by Trend Micro under the Agreement; provided, however, if the Appliance is delivered to Ordering Activity by any third party (such as a Reseller) with any Microsoft Components installed, then Ordering Activity understands and agrees that such components are NOT licensed hereunder or otherwise provided to Ordering Activity by or on behalf of Trend Micro and are not part of the Integrated Software. While Trend Micro may provide information (including the number and types/versions/editions of Microsoft Components necessary to create the Custom Sandboxes) and instructions to Ordering Activity in the Documentation regarding the creation and configuration of Custom Sandboxes in Ordering Activity’s Appliance, Ordering Activity acknowledges and agrees that it is solely Ordering Activity’s responsibility to purchase and compliancy license (based on such things as Ordering Activity’s intended use and/ or FAD) Microsoft Components necessary for Ordering Activity’s creation/deployment of Custom Sandboxing. Further to the foregoing, Ordering Activity agrees that no Trend Micro employee (such as a sales engineer or sales executive) is trained or authorized to provide Ordering Activity with any information or guidance on any of Microsoft’s licensing/policies/rules/requirements for Microsoft Components and, Ordering Activity further agrees that, Ordering Activity will not rely on any information on Microsoft Components that may nevertheless be gratuitously provided to Ordering Activity by any such individual. Except for the Integrated Software licensed under the Agreement, Ordering Activity covenants that Ordering Activity will separately obtain and maintain all rights and licenses necessary for each third party software component (whether Microsoft Components or products of another software publisher) Ordering Activity installs or accesses in connection with its creation of Custom Sandboxing.

4.4 Additional License Rights/Limitations. The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will not: (1) remove, add, or substitute any third party software from or to the Appliance except and only to the extent permitted in the Documentation with respect to the creation of Custom Sandboxing; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) notwithstanding anything contained in the Agreement to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Deep Discovery Appliance is inoperative/unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

4.5 Paid Use License Warranty – Integrated Software. For Paid Use licensees of Integrated Software, Trend Micro warrants only to Ordering Activity that for one (1) year following Ordering Activity’s first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including “ReadMe” files and release notes that may be made available therewith. The Parties expressly acknowledge that Ordering Activity’s exclusive remedy for non-conformance with the foregoing warranty and Trend Micro’s sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

4.6 Maintenance of Integrated Software. When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 No Trend Micro Hardware Warranty. Notwithstanding anything to the contrary in the Agreement, since the Hardware is manufactured and warranted by Dell and Trend Micro is only acting as a OEM reseller thereof, Trend Micro makes no representation, warranty, or guarantee of any kind or nature with respect to Hardware (or its Device Code). INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR SPECIFIC PURPOSE, TITLE, OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED BY TREND MICRO. IN ADDITION, THE PARTIES AGREE THAT SECTION 13 OF THE AGREEMENT (INTELLECTUAL PROPERTY INDEMNITY) DOES NOT APPLY TO HARDWARE (OR ITS DEVICE CODE).

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity’s intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a
License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.

5.4 Paid Use Title; Hardware Ownership; Assignment. Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro’s (or its manufacturer’s or systems integrator’s) dock when loaded onto the first carrier for shipment to Ordering Activity. For the avoidance of doubt, transfer of title to the Hardware also includes the transfer of Dell’s then-current Limited Hardware Warranty and on-site support contract referenced in Section 5.2 above for such Hardware, and if such be necessary, Trend Micro hereby assigns contemporaneously with the transfer of title to the Hardware to Ordering Activity, and Ordering Activity hereby accepts such assignment on an ongoing basis of, the referenced Limited Hardware Warranty and on-site support contracts.

**APPLIANCE DIFFERING TERMS FOR THE TIPPINGPOINT FAMILY OF APPLIANCES EXCLUDING THE ADVANCED THREAT PROTECTION (ATP) APPLIANCE**

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”) that is a TippingPoint Appliance (as defined below), the Parties agree that such Appliance is covered under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into and in addition to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance and the Integrated Software without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, shall be the complete statement of the agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Ordering Activity by Trend Micro for Paid Use or Test Use and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom by agreement of the Parties.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“Hardware” means the Trend Micro-manufactured device (or another manufacturer if used by Trend Micro as a source for TippingPoint hardware) that forms a part of the Appliance.

“Integrated Software” means the object code version (only) of the Trend Micro-published TippingPoint applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance or the Virtual Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term “Integrated Software” shall respond when purchased as part of, paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may be used by Ordering Activity in accordance with the Documentation. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) other than as a Virtual Appliance, install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

“License Termination Event” means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software is uninstalled from the Appliance; (2) the Appliance or Integrated Software is used for any purpose other than as permitted in the Documentation or the Agreement; (3) the Hardware is retired, removed from service, or Repurposed; (4) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Ordering Activity without permission of Trend Micro; (5) the Test Period expires if applicable; or (6) either Party provides notice of termination of the Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“Paid Use” means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“Repurpose” means for purposes of these Appliance Differing Terms: (1) Ordering Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Ordering Activity installing additional/different software to the Appliance that is not in any way made available and specifically permitted by the Documentation with respect to Custom Sandboxing.

“Speed License” means (only with respect to an Appliance or Virtual Appliance that requires a Speed License in order to activate, execute, and/or use the Integrated Software forming a part of such Product) a Subscription Period entitlement to a Licensed Capacity (at a prescribed level of data throughput and/or for such time as may be stated in the applicable SKU and/or License Certificate) for an Appliance or Virtual Appliance. Ordering Activity understands that a Speed License is not required for all Appliances, but if a Speed
License is required (as made known in the Product’s Documentation and/or SKU), a Speed License must be purchased by Ordering Activity and remain active in order to execute and use the Integrated Software or otherwise make any use of the Appliance or Virtual Appliance. When and if a required Speed License is purchased by Ordering Activity, Ordering Activity will receive a registration key/activation code that, when installed by Ordering Activity, activates and causes the Integrated Software to execute and be usable in accordance with its Documentation for the level and extent of entitlement purchased by Ordering Activity. A Speed License is not Software under the Agreement, but rather, is a purchased entitlement to a Licensed Capacity for the Integrated Software and forms an integral part of the license for the Integrated Software to the extent of such entitlement.

“Test Period” shall have the meaning set forth in Section 3.1 below.

“Test Use” or a “Test” means the gratuitous right granted to Ordering Activity on the terms and subject to the conditions hereof, to conduct an evaluation, proof-of-concept, trial, or test of an Appliance and its Integrated Software only in a Non-Production Environment for a Test Period as defined in Section 7.1 of the Agreement.

“TippingPoint Appliance” or “Appliance” as used herein these Appliance Differing Terms, means Trend Micro’s TippingPoint family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version the Integrated Software, but shall not include the Advanced Threat Protection (ATP) appliance, which ATP appliance has separate Appliance Differing Terms from those of other TippingPoint appliances. Each Appliance is composed of Hardware and Integrated Software. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold and the Integrated Software portion is licensed in accordance herewith by Trend Micro. Each Appliance acquired for Paid Use that is shipped to Ordering Activity includes Hardware and Integrated Software that is installed by Trend Micro prior to delivery of the Appliance to Ordering Activity.

“Virtual Appliance” means for purposes of these Appliance Differing Terms, a version of Integrated Software containing features and functionality of a TippingPoint Appliance, but does not include (and Trend Micro does not provide) any Hardware component thereof, it being understood and agreed that Ordering Activity must supply and maintain host hardware for such Virtual Appliance in accordance with the Documentation therefor. A Virtual Appliance is governed by the Agreement as Software and by these Appliance Differing Terms as Integrated Software.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Ordering Activity for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Ordering Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Ordering Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Ordering Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Ordering Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Ordering Activity (the “Test Period”).

3.2 Test Use – Integrated Software. If Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants Ordering Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Ordering Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Ordering Activity agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may have been specifically agreed in a subsequent writing by Trend Micro, Ordering Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Ordering Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the “Accessories”) supplied by Trend Micro with the Appliance and, further, Ordering Activity agrees to protect the Appliance and Accessories from loss or physical damage. Ordering Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories and Ordering Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Ordering Activity’s custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

3.6 Test Use Warranty/Representation/Disclaimer. TREND MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREEUNDER “AS IS, WITH ALL FAULTS,” AND, FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY’S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED TO TREND MICRO’S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGREEGATE TO THE SUM OF FIVE HUNDRED DOLLARS (USD$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.
3.7 Test Use License - Termination. Ordering Activity's possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.8 Hardware Return. Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.9 Acknowledgement. The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.10 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identify/contact information of Ordering Activity's systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

3.11 Benchmarking. Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; provided, however, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Appliance and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. On the terms and subject to Ordering Activity's continuous compliance with the conditions set forth in the Agreement and on the condition precedent of Ordering Activity making payment as directed in Section 1.3 of the Agreement, Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-ensurable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to (except as referenced in and limited by Section 4.2 below with respect to Products requiring a Speed License for execution and use) activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Ordering Activity solely on the Unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity’s option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period.

4.2 Speed License for Integrated Software. Notwithstanding anything to the contrary in Section 4.1 or these Appliance Differing Terms, where an Appliance or Virtual Appliance requires a Speed License, the license for Integrated Software granted in Section 4.1 to activate, execute, and/or use the Integrated Software is subject to the condition precedent (but the license to inactively deploy is NOT subject to such condition) that Ordering Activity first purchase and keep active a Speed License in order to activate and execute the Integrated Software and use the Product in accordance with its Documentation. The lapse of a purchased Speed License shall be an additional License Termination Event under these Appliance Differing Terms for the Integrated Software or Virtual Appliance for which the Speed License has lapsed and the applicable Product will not thereafter operate unless and until a new Speed License is obtained by the Ordering Activity. For the avoidance of doubt, when an Appliance or Virtual Appliance that requires a Speed License is purchased by Ordering Activity, such Product is inactive and incapable of activation, executing any productive process, operation, or being used by Ordering Activity for any purpose unless (and only for such time as) Ordering Activity purchases and keeps active a Speed License for that Product.

4.3 Documentation. Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary notices which appear on the original material provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.4 Additional License Rights/Limitations. The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will not: (1) remove, add, or substitute any third party software to the Appliance; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) make/create a copy of the Integrated Software for backup or failover purposes for use when the Appliance is inoperative/ unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.
4.5 Paid Use License Warranty – Integrated Software. For Paid Use licenses of Integrated Software, Trend Micro warrants only to Ordering Activity that for ninety (90) days following Ordering Activity’s first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including “ReadMe” files and release notes that may be made available therewith. The Parties expressly acknowledge that Ordering Activity’s exclusive remedy for non-conformance with the foregoing warranty and Trend Micro’s sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

4.6 Maintenance of Integrated Software. When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 Trend Micro Hardware Warranty. TippingPoint Appliances are covered by the TippingPoint Product Limited Warranty located at https://tmc.tippingpoint.com/TMC/ShowDocuments?parentFolderId=gadocs&contentId=hardware_limited_warranty.pdf.

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity’s intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.

5.4 Paid Use Title; Hardware Ownership. Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro’s (or its manufacturer’s or systems integrator’s) dock when loaded onto the first carrier for shipment to Ordering Activity.

EXHIBIT B - MAINTENANCE OF TREND MICRO-BRANDED SOFTWARE LICENSED UNDER THE TREND MICRO BUSINESS SOFTWARE AND APPLIANCE AGREEMENT EFFECTIVE 1 MAY 2017 (herein these “Maintenance Terms”)

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring paid Maintenance (as defined below) of Software licensed from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”), the Parties agree that such Maintenance is provided under the Agreement and these Maintenance Terms which are ancillary to, incorporated into, and forms a part of the Agreement with respect to paid Maintenance for such Software and together the referenced documents will solely govern and control the Maintenance of such Software. In each instance in which the terms and provisions of these Maintenance Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to Maintenance of the Software, without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Maintenance Terms shall reference the respective section, schedule, attachment or exhibit of these Maintenance Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Maintenance Terms, shall be the complete statement of the agreement of the Parties with respect to any paid Maintenance made available to Ordering Activity by Trend Micro and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and Void.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Software. Any capitalized term used in these Maintenance Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“Authorized Contact” means one or more individuals appointed by Ordering Activity (consistent with Trend Micro’s Support Guide or other published policies) to act as contacts for requesting and receiving Maintenance, which Authorized Contacts will be resident in the country where Ordering Activity is resident unless otherwise notified to Trend Micro by Ordering Activity and approved by Trend Micro.

“Escalated Issue” means with respect to code-level errors/bugs in licensed Software, a request from Ordering Activity for Maintenance of Integrated Software thereto, is set forth in Section 11.1 of the Agreement.

“Separate Modules” means any plug-in, module, or other option for Software that Trend Micro determines to be new or different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration.

“Software” means for purposes of these Maintenance Terms, Standalone Software and Integrated Software, but the term does not include Device Code (except that certain virtual appliances licensed by Trend Micro (as identified in its Documentation) DO include an operating system as part of the licensed Software) or Test Software. “Device Code” means any operating system (except for certain virtual appliances as identified in its Documentation, in which event, the Trend Micro-provided operating systems is bundled with and forms a part of the Software).

“microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with any hardware that may be provided to Ordering Activity as part of an Appliance.
“Support Guide” means Trend Micro’s then-current Global Technical Support Guide for Business Customers posted from time-to-time at https://success.trendmicro.com/support-policies. The Support Guide sets out policies and procedures for Trend Micro’s provision of Maintenance to customers throughout the world other than customers located in Japan, the People’s Republic of China, Taiwan, the Republic of Korea, Hong Kong SAR, and Macau SAR. As may be made known by Trend Micro locally, such other excluded-region customers may be entitled to support from local or remote Trend Micro resources.

“Updates” means and includes if and when generally made available by Trend Micro with respect to Software licensed hereunder that is also then-subject to paid Maintenance, new object code versions (including patches and workarounds) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, ransomware, websites, or other forms of computer abuse (both known and unknown) generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, revisions, patches, workarounds, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, structures, and/or functionality that Trend Micro makes available to existing customers that have then-purchased Maintenance for such Software; provided, however, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance including its Device Code. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies of the updated Software and will not increase the Units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.

3.1 Maintenance Overview. Only when purchased by Ordering Activity, Maintenance will be provided to Ordering Activity on the terms and subject to the conditions of these Maintenance Terms and the Agreement as follows: (a) for Standalone Software licensed for a paid Subscription Period; (b) for Standalone Software licensed for a Perpetual Period: (i) for one (1) year only from the date Ordering Activity first receives the Standalone Software registration key(s), activation code(s), the Standalone Software serial number(s) or License Certificate, whichever is earlier, for newly-licensed Standalone Software, (ii) for one or more additional one (1) year periods if Maintenance is repurchased by Ordering Activity; and (c) for the first twelve (12) months from the Delivery Date for Integrated Software and subject to the conditions of these Maintenance Terms then-in-effect, Ordering Activity may purchase additional Maintenance for twelve (12) month periods for its Licensed Capacity for Software referenced in subparts (2) and (3) above, otherwise, Maintenance will lapse at the end of the paid twelve month period.

3.2 Maintenance; Maintenance Exclusions.

3.2.1 Maintenance. When purchased by Ordering Activity, Ordering Activity shall have the right to receive and Trend Micro shall provide the following to Ordering Activity’s Authorized Contacts on the terms and subject to the conditions set forth in these Maintenance Terms, the following English-language services (collectively, together with the Support Guide and other policies, procedures, and objectives made commercially-available by Trend Micro, “Maintenance”):

(a) Trend Micro will make available to Ordering Activity for downloading from Trend Micro’s website advised to Ordering Activity from time-to-time, Updates for then-licensed Software released during each paid Maintenance period.

(b) Trend Micro will accept requests from Ordering Activity’s Authorized Contacts via telephone or electronic submission in English on Trend Micro business days (except as noted below), to Trend Micro’s support personnel located within the United States only, with respect to: (1) routine, short duration initial Software installation and usage (how-to) questions, but it shall remain Ordering Activity’s sole responsibility to install, configure, and deploy all Software; and (2) with respect to an Escalated Issue, troubleshooting code-level errors/bugs in licensed Software (that is to say, Software does not substantially conform to it Documentation) that Ordering Activity is unable to bring to resolution on its own.

(c) Trend Micro will provide Ordering Activity’s Authorized Contacts with reasonable access to Trend Micro’s antivirus researchers via an established technical support channel set forth in the Support Guide to assist Ordering Activity in addressing malware/virus infections, but in no event will Trend Micro provide any remediation services with respect thereto unless by separate agreement.

(d) The Ordering Activity shall have the right to optionally enable, access, and use Trend Micro’s Smart Protection Network (“SPN”) to the extent such features form a part of a licensed Software.

(e) All Maintenance will be conducted by the Parties only in the English language (unless otherwise agreed) and provided by Trend Micro and/or its global Affiliates (or its or their subcontractors) from locations Trend Micro and/or its global Affiliates may determine from time-to-time, which may be a location solely outside the country or region of Trend Micro’s Licensing Entity. Maintenance may be available in other languages on different terms and conditions and at an additional charge. Ordering Activity understands that in some regions, Maintenance of Products will only be provided by Trend Micro’s subcontractors.

(f) Maintenance does not include any Separate Modules, Premium Support Services, or other Trend technical or engineering services.

3.2.2 Escalated Issues. In connection with Trend Micro’s performance of its Maintenance obligations with respect to an Escalated Issue, Ordering Activity agrees to perform, and Trend Micro’s responsibilities and obligations to perform Maintenance with respect to Escalated Issues are subject to, Ordering Activity doing the following:

(a) Ensuring that the licensed Software is being used only in accordance with its Documentation.

(b) Prior to escalating a suspected issue to Trend Micro, Ordering Activity will undertake the identification of and/or isolation of suspected issue(s) with licensed Software such as recreation, diagnosis, and resolution of problems related to licensed Software, and if Ordering Activity is unable to do so, Ordering Activity will develop, diagnose, identify (including gathering all necessary or relevant information, logs, and/or technical information), and create repeatable demonstrations of any purported Software non-conformance, issues or errors for submission to Trend Micro for Maintenance.

(c) After escalation of an issue, allow Trend Micro to have remote access to Ordering Activity’s networks/systems to troubleshoot an Escalated Issue if requested by Trend Micro to the extent consistent with Ordering Activity security policies. Ordering Activity and Trend Micro may agree on appropriate remote access to prevent unauthorized access to Ordering Activity’s networks/systems/data for which there is no need-to-know: provided, however, the ultimate responsibility for the security of the networks/systems/data remains solely with Ordering Activity. Trend Micro will not connect to the Ordering Activity’s networks/systems without prior authorization and such connection will be solely to provide Maintenance. Ordering Activity has the right to observe and maintain control over such access.
Trend Micro may permit Ordering Activity to do so, but Trend Micro reserves the right to charge Ordering Activity applicable fees.

Trend Micro and the registration process. If Ordering Activity needs to designate additional technical personnel as Authorized Contacts, Activity's networks, systems, and environment in order to help resolve system issues and to assist Trend Micro in analyzing and resolving Escalated Issues.

3.3 Authorized Contacts. Trend Micro will provide Maintenance to Ordering Activity only through Ordering Activity's Authorized Contacts. Authorized Contacts, each of whom must be technically skilled and knowledgeable about the Software and the Ordering Activity's networks, systems, and environment in order to help resolve system issues and to assist Trend Micro in analyzing and resolving Escalated Issues. The Support Guide states the number of Authorized Contacts that Ordering Activity is entitled to register with Trend Micro and the registration process. If Ordering Activity needs to designate additional technical personnel as Authorized Contacts, Trend Micro may permit Ordering Activity to do so, but Trend Micro reserves the right to charge Ordering Activity applicable fees.

Authorized Contacts will be responsible for, among other things: (i) developing and deploying troubleshooting processes within Ordering Activity and its Affiliates. Accessing/Using any Software licensed to Ordering Activity; (ii) performing any and all technical service required of Ordering Activity in connection with any Software other than Maintenance that Trend Micro is obligated to perform hereunder; and (iii) performing the technical services required of Ordering Activity prior to Ordering Activity's request for assistance with any Escalated Issue so as not to impair or impede Trend Micro's ability to perform Maintenance of any Software in accordance herewith. An Authorized Contact may not share his or her login, ID, or other credentials with anyone else, nor delegate his or her responsibilities as an Authorized Contact to anyone other than another Authorized Contact. Ordering Activity may update this contact information through its online account management or by providing any such business contact information to Trend Micro, Ordering Activity represents to Trend Micro on an ongoing basis that Ordering Activity will have already notified and obtained the consent of the individuals whose business contact information may be stored, disclosed internally, and used the business contact information of Ordering Activity's Authorized Contacts and other employees and Contractors in connection with the provision of Maintenance by Trend Micro and its Affiliates. Where required by Applicable Law, by providing such business contact information to Trend Micro, Ordering Activity represents to Trend Micro on an ongoing basis that Ordering Activity will have already notified and obtained the consent of the individuals whose business contact information may be stored, disclosed internally, and processed and will forward their requests, if any, to Trend Micro where required by Applicable Law to access, update, correct or delete their contact information to Trend Micro that will then comply with such request.

3.4 Lapse and Reinstatement. In the event that Ordering Activity allows Maintenance to lapse or expire for more than one hundred and twenty (120) days, Ordering Activity shall have no right to purchase and Trend Micro shall have no obligation to permit Ordering Activity to reinstate or otherwise purchase, Maintenance. Trend Micro advises and Ordering Activity acknowledges that because of the constantly changing threat/security environment and periodic technology improvements to most Software, the technical and/or security capabilities, functionality, and performance of any such Software will rapidly degrade and will, in most instances, not perform in the manner and for the purposes for which it is designed or as set forth in the Documentation if Maintenance is not repurchased or is otherwise allowed to lapse and such Software is thereafter utilized by Ordering Activity.

3.5 End-of-Maintenance. Trend Micro reserves the right to discontinue Maintenance of any licensed Software (including Software licensed for a Perpetual Period) in accordance with this Section (each of the following herein an "End-of-Maintenance" event). In each of the following End-of-Maintenance events:

(a) Trend Micro will continue to make Maintenance available for any licensed Software that is no longer offered for sale by Trend Micro for a period of at least twelve (12) months after the end-of-sale.
(b) Trend Micro provides Maintenance and other technical support for a then-current Update of licensed Software for at least eighteen (18) months after the release of a subsequent Update for such Software.

Trend Micro advises that it will not renew Maintenance for a period that would otherwise extend past the expiration of an End-of-Maintenance period referenced in subpart (a) above. The Parties understand and agree that an End-of-Maintenance event with respect to any licensed Software shall not be considered a breach hereof by Trend Micro, nor shall any such End-of-Maintenance entitle Ordering Activity to any claim for compensation or damages as result of or in connection therewith.

4. Limited Maintenance Warranty; Non-Conformance Remedy.

4.1 Limited Maintenance Warranty. When purchased by Ordering Activity, Trend Micro warrants to Ordering Activity ONLY that Maintenance will be provided or performed using reasonable care and skill on the terms and subject to the conditions of these Maintenance Terms. Trend Micro will have no obligation to provide Maintenance with respect to any licensed Software, and the foregoing Maintenance warranty will be voided by: alteration, modification, enhancement, or misapplication of the licensed Software; failure to properly install and/or configure the licensed Software; use of the licensed Software other than in accordance with its Documentation; failure to install/deploy the most current Update if such Update would resolve the Escalated Issue; improper maintenance of the Software by any person other than Trend Micro; use of the licensed Software in an unsuitable physical or operating environment; or an Escalated Issue is caused in whole or in part by a product or technology that Trend Micro did not supply.
4.2 Non-Conformance Remedy. For a breach of the foregoing warranty, Ordering Activity’s sole and exclusive remedy, and
Trend Micro’s entire obligation and liability shall be the re-performance of the non-conforming Maintenance. However, only with respect
to separately purchased (by unique SKU) and invoiced Maintenance, if Trend Micro is unable to re-perform Maintenance for any reason to
achieve conformance with the foregoing warranty after making commercially reasonable efforts, either Ordering Activity or Trend Micro
may terminate these Maintenance Terms for convenience as to the non-conforming portion of such Maintenance, in which event, Trend
will refund to Ordering Activity a pro-rated amount corresponding to the remaining portion of any paid Maintenance. TREND MICRO
SHALL ONLY HAVE LIABILITY FOR ANY SUCH BREACH OF WARRANTY IF ORDERING ACTIVITY PROVIDES TIMELY NOTICE (IN
ACCORDANCE WITH THE SUPPORT GUIDE) OF THE BREACH TO TREND MICRO WITHIN TEN (10) DAYS OF THE
PERFORMANCE OF THE APPLICABLE MAINTENANCE SERVICE. THE FOREGOING WARRANTY IS ORDERING ACTIVITY’S
EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES, GUARANTEES, OR CONDITIONS, EXPRESS OR IMPLIED,
INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, OR
FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT MAINTENANCE WILL BE
FREE FROM ERRORS OR DEFECTS, BE UNINTERRUPTED, THAT MAINTENANCE WILL PROTECT AGAINST ALL POSSIBLE
THREATS, OR THAT TREND MICRO WILL CORRECT ALL DEFECTS IN MAINTENANCE OR SOFTWARE. IN ADDITION TO THE
FOREGOING, IT IS EXPRESSLY AGREED THAT THE TERMS, CONDITIONS, LIMITATIONS, AND EXCLUSIONS SET FORTH IN
SECTION 12 OF THE AGREEMENT WILL APPLY TO THESE MAINTENANCE TERMS AND MAINTENANCE.

EXHIBIT C – Privacy Notice for Trend Micro Products and Services (Effective January 2017)

Trend Micro Incorporated, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA ("Trend Micro" or "we") provides this
Privacy Notice to help Ordering Activity understand the types of information that Ordering Activity provide to Trend Micro, what we do
with that information and how we protect that information when Ordering Activity use Trend Micro’s products and services.

With Trend Micro products and services, Ordering Activity can increase the protection for Ordering Activity’s digital data from hackers,
spammers, spyware, malware and other online threats. Because of the fast and constant evolving nature of online threats and malware,
it is necessary to configure our products and services to constantly provide data and information from Ordering Activity devices to
enable us to stay ahead of malicious activities and protect Ordering Activity’s devices and data.

What information do Ordering Activity provide?

Product license data
When Ordering Activity install and activate our products, Ordering Activity provide information such as:
name
phone number@email address
device ID
operating system/license key

We use this information to ensure that Ordering Activity license to our solutions is valid and to contact Ordering Activity regarding
renewals, technical issues and new product information.

Smart Feedback data
Ordering Activity provides the following types of information and data if Ordering Activity enable certain features such as Smart
Feedback, a key feature of our Smart Protection Network (SPN). Providing these types of information and data enables Ordering Activity
to participate, share and leverage Trend Micro’s global database of threat related intelligence to rapidly identify and defend against
potential threats within Ordering Activity’s unique network environment, as described in more detail below.

Product information
Public IP address
Mobile/PC environment
Metadata from suspicious executable files
URLs, Domains and IP addresses of websites visited
Metadata of client/device managed by gateway product
Application behaviors
Information from suspicious e-mail, including sender and recipient email address, and attachments
Detected malicious file information
Detected malicious network connection information

How does Trend Micro use the data that Ordering Activity provide to us?

Trend Micro uses Smart Feedback collected data to understand threat behavior and reveal trends that lead to stronger security
solutions.

Faster responses to threats: SPN delivers our latest protection to Ordering Activity in real time. Compared to traditional
signature updates, this approach dramatically reduces Ordering Activity’s window of vulnerability from (potentially) days to
mere minutes.

Strong defense against targeted attacks: Attackers have moved away from launching large scale attacks to focus on more
specific and “personal” targets. Smart Feedback allows us to identify new sources and methods of attack.
Hidden threats revealed: Using data collected from around the globe, Trend Micro uses big data analytics to identify critical relationships during an attack and shed light on well-hidden threats. This data also helps Trend Micro find zero-day vulnerabilities to deliver updated protection much more rapidly.

Improved results: The real-time statistics collected by SPN improve the overall quality and performance of Trend Micro solutions.

How do we protect Ordering Activity’s information?

Trend Micro designs SPN to limit the collection of personal information as much as reasonably possible, by collecting data that cannot identify an individual where this is sufficient, stripping out specific personal information and keeping only redacted behavior profiles. Unavoidably, Ordering Activity’s computer will also send some information to SPN that can be connected to Ordering Activity, e.g. location information for mobile devices, or file names bearing identifiable details. But, even if and where information can theoretically be connected to an individual person, we do not normally try to make such connection for data reported by Ordering Activity and other users to SPN.

Beyond data aggregation and redaction, SPN also takes additional measures to keep data secure. SPN transfers data using SSL encryption in addition to destination server authentication. We also deploy other technical, administrative and organizational measures to protect the security of personal data, including access controls, premise security measures, secure data destruction and incident response plans.

Where do we process Ordering Activity’s SPN data?

We process SPN data at data centers in the United States. When Ordering Activity connect to our services, Ordering Activity may be sending Ordering Activity’s information outside Ordering Activity’s country.

SPN Data retention and deletion

Trend Micro retains Smart Feedback data only as needed for examining and updating the Smart Protection Network and other legitimate business purposes. Trend Micro regularly deletes Smart Feedback data every 6 months.

How do we share Ordering Activity’s data?

We do not share data that Ordering Activity provide to us, except with service providers that help us perform and improve services for Ordering Activity; with Ordering Activity’s consent; as necessary to perform our contractual obligations to Ordering Activity; in order to protect Ordering Activity’s, our and others’ rights and interests; in connection with a sale or reorganization of our business, if and to the extent permissible by law and as required to cooperate with any legal process and any law enforcement or other government inquiry. This means that we may provide information that we collect from Ordering Activity if that information is relevant to a court subpoena or to a law enforcement or other government investigation, provided this is permissible under applicable data protection law.

If Ordering Activity has any questions, requests, comments or concerns regarding this Privacy Policy, please email us at legal_notice@trendmicro.com or by sending a letter to Trend Micro Privacy Program, Trend Micro Incorporated, c/o Legal Department, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA.
This End-user License Agreement (the "Agreement") is made and entered into as of the date set forth in the Purchase Order, Statement of Work, or similar document (the “Effective Date”) between the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (hereinafter "Customer" or “Ordering Activity”), and the GSA Multiple Award Schedule Contractor acting on behalf of Tufin Software North America, Inc., whose main office is located at 2 Oliver Street, Boston, MA, 02109, United States, on behalf of itself, its parent companies and subsidiaries (together "Tufin" or "Tufin Technologies").

1. DEFINITIONS

1.1 "Affiliate" means any partnership, joint venture, corporation or other form of enterprise, that directly or indirectly, controls, is controlled by, or is under common control with a party hereto.

1.2 "Product" - the object code copy of the software provided to Customer subject to this Agreement, together with the associated original digital media and all accompanying manuals and other documentation, and together with all enhancements, upgrades, and extensions thereto that may be provided by Tufin Technologies to Customer from time to time (subject to the provisions of Section 5 below).

1.3 "Licensed Configuration" - to the extent applicable, as indicated on the License Key, the choice of features and the maximum number of firewalls configured per Check Point Management Server, or the license type of the Check Point Provider-1 Customer Management Add-On or the maximum number ofJuniper devices, or the maximum number of Cisco devices, or the maximum number of Fortinet devices, or any other hardware or Product specifications, as declared by Customer in its purchase order, and upon which the licensing fee was based.

1.4 "Licensed Server" - the server which enables the Product to operate in accordance with the Licensed Configuration.

1.5 "License Key" - the code provided to Customer by Tufin Technologies, which enables the Product to operate on the Licensed-server for the specified Licensed Configuration.

1.6 "Third Party Product" - any software programs provided by third parties and contained in the Product.

2. END USER RIGHTS AND USE

Subject to Customer's compliance with the terms hereunder, Tufin Technologies grants Customer a non-exclusive, non-transferable, non-sub licensable limited license to use the Product in accordance with the documentation provided by Tufin Technologies only on the Licensed Server and only for the Licensed Configuration (the "License").

3. LIMITATIONS ON END USER RIGHTS

Customer may not copy, distribute, reverse engineer, or make derivative works of the Product except as follows:
3.1 Customer may make only one copy of the Product on magnetic media for archival backup purposes, provided that such Customer’s archival backup copy is not installed or used on any computer without Tufin Technologies’ prior written consent. Any other copies Customer makes of the Product are in violation of this Agreement.

3.2 Customer may not use, modify, translate or reproduce the Product, or assign or transfer the right to use the Product or copy the Product except as expressly provided in this Agreement.

3.3 Customer may not resell, sublicense, rent, lease, or lend the Product.

3.4 Customer agrees to use the Product solely for its internal business purposes, and not to let others use the Product and not to use the Product for the benefit of third parties.

3.5 Customer acknowledges that the source code of the Product, and its underlying ideas and/or concepts, are valuable intellectual property of Tufin Technologies and Customer agrees not to attempt to (or permit others to) decipher, reverse engineer, reverse compile, disassemble, or otherwise attempt to discover the source code of the Product or create derivative works based on the Product.

3.6 Customer agrees that Customer shall only use the Product in a manner that complies with all applicable laws in the jurisdiction in which Customer uses the Product, including, but not limited to, applicable restrictions concerning copyright and other intellectual property rights.

3.7 Evaluation License. This Section 3.7 shall only apply if Customer is licensing the Product for an initial evaluation period. In such case and subject to Customer's compliance with the provisions of this Section 3.7, Tufin Technologies grants to Customer a limited in time, a non-exclusive, non-transferable, non-sub licensable license to use the Product in accordance with the relevant documentation provided by Tufin Technologies, only on the Licensed Server and only for the Licensed Configuration (the "Temporary License"). The Temporary License is valid only for the designated evaluation period and is designed to allow Customer to evaluate the Product during such period. In the event that Customer wishes to enter into a full License Agreement with Tufin Technologies, Customer may request a License Key from Tufin Technologies which if provided to Customer will allow Customer to use the Product after such evaluation period, but only subject to all of the terms and conditions of this Agreement. In the event that Customer and/or Tufin Technologies determine not to enter into a licensing transaction with the other party, both during or at the end of such evaluation period, then Customer's rights under this Agreement shall terminate at the end of the evaluation period and Customer shall, at Tufin Technologies’ discretion, promptly return to Tufin Technologies or destroy all copies of the Product. It is a violation of this End User License Agreement to create, set-up or design any hardware, software or system which alters machine's date or time during the evaluation period. Sections 3.2 to 3.6 shall apply, mutatis mutandis, to any Temporary License.

4. MAINTENANCE AND SUPPORT

4.1 Tufin performs Maintenance and Support services in accordance with Tufin’s standard Software Maintenance Program: http://web.tufin.com/hubfs/Tufin_Maintenance__Support_Services.pdf Tufin may modify its Software Maintenance Program upon written notice to Customer, provided, however, that in no event may Tufin make any modifications to its Software Maintenance Program that would materially reduce the level of maintenance and support services that Tufin provides to Customer hereunder during the then-current term for which Customer has paid maintenance and support fees.

4.2 Tufin will provide Maintenance and Support services on an annual (twelve month) basis, provided that Customer pays Tufin’s then-current annual maintenance and support service fees according to Tufin’s price list and the GSA Schedule Pricelist. Customer will purchase maintenance and support for all licensed Software during the first twelve (12) months from the date of delivery of the Software (“Initial Term”).

4.3 Customer may choose to continue maintenance and support on an annual basis (“Renewal Term”) after the Initial Term. Customer shall notify Tufin at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term of its intent to renew maintenance and support services under this Agreement.
Maintenance and support services for the Software shall not automatically renew on annual basis. If Customer elects to purchase maintenance and support, Customer must purchase maintenance and support services with respect to all of the licensed Software. Reinstatement of lapsed maintenance and support services is subject to payment by Customer of Tufin’s reinstatement fees equal to the amount that would have been paid by the Customer for the past maintenance and support services period(s) had coverage been maintained continuously.

4.4 Exclusions to Maintenance and Support Services. Tufin shall have no obligation of any kind to provide maintenance and support services for problems in the operation or performance of the Software caused by any of the following (each, “Customer-Generated Error”): (a) non-Tufin software or hardware products; or (b) Customer’s failure to properly maintain Customer’s site and equipment on which the Software is installed or accessed. If Tufin determines that it is necessary to perform maintenance and support services for a problem caused by a Customer-Generated Error, Tufin will notify Customer thereof as soon as Tufin is aware of such Customer-Generated Error and, upon Customer’s approval, Tufin will have the right to perform such services and invoice Customer at Tufin’s then-current published time and materials rates in accordance with the GSA Schedule Pricelist for all such maintenance and support services performed by Tufin.

5. COPYRIGHT

The Product and all rights, without limitation including proprietary rights therein, are owned by Tufin Technologies and/or its licensors and Affiliates and are protected by international treaty provisions and all other applicable national laws of the country in which it is being used. The structure, organization, and code of the Product are the valuable trade secrets and confidential information of Tufin Technologies and/or its licensors and Affiliates. Customer must not copy the Product, except as set forth in clause 3.1 (Limitations on End-User Rights). Any copies which Customer is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on the Product.

6. COMMENCEMENT & TERMINATION

This Agreement is effective from the first date Customer installs the Product and shall remain in effect until terminated, in accordance with the terms herein. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Tufin shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination of this Agreement, Customer agrees to cease any and all use of the Product and to return to Tufin Technologies or destroy, at Tufin Technologies' discretion, the Product and all documentation and related materials in Customer’s possession, at Customer’s own costs, and so certify to Tufin Technologies in writing. Except for the License and/or Temporary License granted herein and except as expressly provided herein, the terms of this Agreement shall survive termination.

7. INDEMNIFICATION

Tufin Technologies shall have the right to intervene to defend or settle, at its option, any action at law against Customer resulted directly from a claim that Customer’s permitted use of the Product under this Agreement infringes any patent, copyright, or other ownership rights of a third party (a "Claim"). Notwithstanding the aforementioned, claims associated with any or all of the following are excluded from Tufin Technologies' indemnification obligations: (i) any alterations, modifications, or adaptations to the Products made by anyone other than Tufin Technologies (including – without limitation – Customer); (ii) the use of the Products in combination with products and/or information not provided and/or approved by Tufin Technologies; or (iii) use of any version other than the then current, unaltered version of the Product, where Customer was previously advised not to make any further use of previous versions. Customer agrees to provide Tufin Technologies with written notice of any such Claim within ten (10) days of Customer’s notice thereof and
provide reasonable assistance in its defense. Tufin Technologies has sole discretion and control over such defense and all negotiations for a settlement or compromise, unless it declines to defend or settle, in which case Customer is free to pursue any alternative Customer may have, provided that Tufin Technologies shall not be required to indemnify Customer for any settlement reached without Tufin Technologies' prior written consent. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

8. WARRANTY DISCLAIMER

TUFIN WARRANTS THAT THE PRODUCT WILL, FOR A PERIOD OF THIRTY (30) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, CUSTOMER ACKNOWLEDGES THAT THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. TUFIN TECHNOLOGIES, IT'S LICENSORS AND AFFILIATES, EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE PRODUCT WILL NOT INFRINGE ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER RIGHTS. THERE IS NO WARRANTY BY TUFIN TECHNOLOGIES OR BY ANY OTHER PARTY THAT THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK FOR THE SELECTION OF THE PRODUCT TO ACHIEVE CUSTOMER’S INTENDED RESULTS AND FOR THE INSTALLATION, USE, AND RESULTS OBTAINED FROM IT.

9. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TUFIN TECHNOLOGIESBE LIABLE FOR ANY LOST PROFITS, REVENUE, SALES, DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, INTERRUPTION OF BUSINESS, LOSS OF BUSINESS INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC, COVER, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, TORT, OR OTHER THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF TUFIN TECHNOLOGIES OR ITS LICENSORS OR AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME COUNTRIES/STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY, BUT MAY ALLOW LIABILITY TO BE LIMITED, IN SUCH CASES, TUFIN TECHNOLOGIES, ITS EMPLOYEES OR LICENSORS OR AFFILIATES' LIABILITY SHALL BE LIMITED TO THE AMOUNT ORDERING ACTIVITY PAID FOR THE PRODUCT DURING THE LAST TWELVE (12) MONTHS. Nothing contained in this Agreement limits Tufin Technologies' liability to Customer for its indemnification obligations under Section 7 (other than as specified therein), or in the event of death or personal injury resulting from Tufin Technologies' gross negligence. Tufin Technologies is acting on behalf of its employees and licensors or Affiliates for the purpose of disclaiming, excluding, and/or restricting obligations, warranties, and liability as provided in this clause 9, but in no other respects and for no other purpose. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-
10. EXPORT CONTROLS

The Product is subject to various export control laws including, without limitation, the export control laws of the United States. Customer agrees that Customer will not ship, transfer, or export the Product into any country, or make available or use the Product in any manner prohibited by any applicable export control laws.

11. GENERAL

11.1 Taxes. Tufin shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

11.2 Miscellaneous. Except by operation of law, neither party may assign its rights or obligations under this Agreement to any party without the prior written consent of the other party. Both parties shall remain fully responsible to the other party for a breach of this Agreement by its assignees. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect.

11.3 Governing Law; Venue. The Federal laws of the United States shall govern all issues arising under or relating to this Agreement. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

11.4 Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire understanding and agreement between Customer and Tufin Technologies and may be amended only in writing signed by both parties.

11.5 Third Party Software. The provisions of this Agreement shall apply to all Third Party product providers and to Third Party products as if they were the Product and Tufin Technologies, respectively.

11.6 Government Restricted Rights. This provision applies to Product acquired directly or indirectly by or on behalf of any government. The Product is a commercial product, licensed in accordance with FAR 12.212 and was developed entirely at private expense and without the use of any governmental funds. Any use modification, reproduction, release, performance, display, or disclosure of the Product by any government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement, and no license to the Product is granted to any government requiring different terms.

11.7 This is the entire agreement between Tufin Technologies and the Customer relating to the Product, and it supersedes any prior representations, discussions, undertakings, end-user agreements, communications, or advertising relating to the Product.

Customer
By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

Tufin Software North America, Inc.
By: ____________________________
Name: __________________________
Title: ___________________________
Date: ___________________________
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Unitrends, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.26 (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs
when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504, 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
UNITRENDS SOFTWARE LICENSE, WARRANTY AND SUPPORT TERMS

Unitrends™ Inc. End User License Agreement

1. Software Use
1.1. License Grant Subject to the terms and conditions of this Agreement, Licensor grants to the Ordering Activity a personal, limited, non-exclusive, non-transferable, license to use the Software for the term set forth in the applicable purchase order accepted by Licensor (either perpetual or for the subscription period selected in the ordering process) in object code form only on such computers, servers, or equipment in which such Software is embedded or for which such Software is approved for use by Licensor in the Documentation and on such storage capacity as specified in the Documentation (collectively “Approved Systems”) solely for Ordering Activity’s own internal information processing services and computing needs and subject to any license limitations specified by Licensor or its Channel Partners as part of the ordering process. Any use of the Software that is inconsistent with the terms and conditions of this Agreement, including without limitation the transfer of the Software to another computer or a third party shall be in violation of this Agreement. All rights not expressly granted to Ordering Activity are retained by Licensor. Ordering Activity agrees that its use of the Software will comply with all Federal, state and local laws, rules and regulations of the United States and any foreign country in which the Software is used. The license granted herein is subject to the specific terms set out in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Licensor in the Documentation. Ordering Activity shall pay all applicable license fees as set forth in the applicable purchase order for the Software to Licensor or the Channel Partner through which Ordering Activity issued its purchase order for the Software in accordance with the payment terms set forth on the applicable purchase order.

1.2. Third Party Contractors. Notwithstanding anything to the contrary contained herein, Ordering Activity may permit its Third Party Contractors to use the Software on Ordering Activity’s behalf solely in connection with providing information processing and computing services to Ordering Activity. Ordering Activity may not use the Software for providing computing services to third parties. “Third Party Contractor” means a third party engaged by Ordering Activity to provide services to Ordering Activity that is not a competitor of Licensor. Ordering Activity shall require its Affiliates and Third Party Contractors to agree to the terms of this Agreement and shall be liable for any breach of this Agreement by its Affiliates or Third Party Contractors.

1.3 License Keys. In order to use the Software, a license key may be required. After Licensor has received a valid purchase order issued by Ordering Activity which specifies the proper fees and identifies the platform and host name of each computer, server or other equipment on which the Software is installed or will be installed, Licensor will issue a license key to Ordering Activity.

1.4 Restrictions.
(i) General. Except as otherwise expressly permitted herein, Ordering Activity shall not and shall not permit any third party to: (a) translate, adapt, reverse engineer, decompile, decrypt, disassemble, or create derivative works based on the Software; (b) copy (except for one archival copy and provided all of Licensor’s trademark, copyright, patent and other notices of proprietary rights are reproduced on all copies), modify or create derivative works of the Software; (c) rent, lease, transfer, assign, sublicense or otherwise transfer rights to the Software; (d) transfer, distribute, resell, rent, lease, sublicense or loan the Software to any third party; (e) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement or otherwise use or make available the Software or any part of the Software for the benefit of any third party, or make the Software or any part of the Software publicly available for download or use via an internet website; (f) distribute any software or device incorporating a part of the Software; (g) use the Software in a manner that would be incompatible with prior versions of the Software. Ordering Activity agrees that its use of the Software will comply with all Federal, state and local laws, rules and regulations of the United States and any foreign country in which the Software is used. The license granted herein is subject to the specific terms set out in this Agreement, the technical restrictions of the Software and/or any additional licensing terms specified by Licensor in the Documentation. Ordering Activity shall pay all applicable license fees as set forth in the applicable purchase order for the Software to Licensor or the Channel Partner through which Ordering Activity issued its purchase order for the Software in accordance with the payment terms set forth on the applicable purchase order.

(ii) Software Embedded In Approved System. If the Software is delivered as embedded in an Approved System, Ordering Activity agrees not to remove the Software from the Approved System without Licensor’s prior written consent.

(iii) Reserved
(iv) Use Where Invoiced. Ordering Activity’s use of the Software under a paid license is limited to the country where Ordering Activity has been invoiced for the Software under the applicable purchase order.

(v) Prior Versions. If the Software is a version that Ordering Activity has converted or exchanged from a valid licensed prior version (i.e., an Upgrade), Ordering Activity agrees that by using the Upgrade, Ordering Activity will no longer use the prior version. Licensor reserves the right to require the certification of the destruction of such previous version of the Software.

1.5 Third Party Software. The Software may include certain third party open source components that are distributed under their own licensing terms. For more details, see the User Guide document in the Documentation available at the Licensor web site (www.unitrends.com) or accompanying the Software. All terms herein are offered by Licensor and not by the rightsholders of such components, and are without prejudice to the terms thereof. Ordering Activity may obtain the location of a copy of the source code of these components by contacting Licensor.

1.6 Continual Development. This Agreement governs any updates, upgrades, new versions, bug fixes, corrections, improvements, revisions or enhancements to the Software which Licensor may furnish to Ordering Activity pursuant to support services or otherwise (collectively, “Upgrades”) and any additional copies of the Software licensed or provided to Ordering Activity for which Ordering Activity has purchased and, if applicable, holds the corresponding license keys, all of which are deemed included in the definition of “Software.” Ordering Activity acknowledges that the Software may change and that future versions of the Software may be incompatible with prior versions of the Software. Ordering Activity further acknowledges and agrees that Licensor has no obligation to provide any Upgrades or additional copies of the Software under this Agreement. If any Upgrades or additional copies are provided (i) Ordering Activity does not have a license or right to use any such Upgrades or additional copies unless Ordering Activity, at the time of
acquiring such Upgrade or copy already hold a valid license and corresponding license key, if applicable, to the original Software and (ii) use of the Upgrades is limited to Approved Systems for which the original Software was purchased.

1.7 Support Services. Licensor will not provide, and Ordering Activity is not entitled to, any support services under this Agreement. Ordering Activity may procure support services separately and such support services will be subject to the terms and conditions of the underlying GSA Schedule Contract, Schedule pricelist, and the applicable purchase order. This Agreement does not give Ordering Activity any rights to any updates or upgrades to the Software or to any extensions or enhancements to the Software developed by Licensor at any time in the future. Any of the foregoing updates, upgrades, extensions or enhancements may be available at Licensor’s discretion and Ordering Activity will be notified in the event of their availability.

1.8 APIs. Licensor may provide to Ordering Activity Application Programming Interface (“API’s”) for Ordering Activity’s use solely for the purpose of creating software that communicates with the Software (“Interfaces”). Ordering Activity hereby acknowledge and agree that Ordering Activity will not (1) use the APIs to create, design or develop anything other than Interfaces; (2) make any more copies of the APIs than are reasonably necessary for the authorized use and backup and archival purposes; (3) modify, create derivative works of, reverse engineer, reverse compile, or disassemble the APIs, except that Ordering Activity may modify and create derivative works of, and distribute any code provided in the APIs that is designated by Licensor in the API’s documentation as “distributable code” solely as part of Interfaces; (4) distribute, sell, lease, rent, lend, or sublicense any part of the APIs to any third party or; (5) use the APIs to (a) create, design or develop software or services to circumvent, enable, modify or provide access, permissions or rights which would violate the technical restrictions of the Software or this Agreement; or (b) upload or otherwise transmit any material containing software viruses or other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any software or hardware.

1.9 Additional Terms Applicable to Boomerang. If Ordering Activity has licensed Licensor’s Boomerang Software the following terms apply and shall supersede any conflicting terms in Section 1.1.

1.9.1 License. Licensor grants to the Ordering Activity a limited, non-exclusive, non-transferable license during the subscription period selected by Ordering Activity as part of the ordering process (the “Subscription Period”) to use the Boomerang Software for the “Permitted Purpose” on the terms and conditions of this Agreement and limited to the number of virtual machines selected by Ordering Activity in the ordering process (“VM Quota Entitlement”). Ordering Activity acknowledges and agrees that the Boomerang Software is provided as a virtual OVA appliance only. The license granted in this Agreement is solely for the following “Permitted Purpose”: to replicate, cloudburst, and migrate virtual machines (“VMs”) between Ordering Activity’s VMware environment and AWS cloud, and perform services for Ordering Activity’s internal business purposes only. If Ordering Activity has issued a purchase order for the “Migration Only” offering, Ordering Activity acknowledges and agrees that the Subscription Period is sixty (60) days and Boomerang may be used on only one virtual machine. Ordering Activity may not use the Boomerang Software except on Ordering Activity’s own VMware environment and Amazon Web Services (“AWS”) cloud.

1.9.2 Reserved.

2. Reserved.

3. Reserved.

4. Ownership

4.1 Software. The Software and APIs are licensed and not sold. Ordering Activity acknowledges and agrees that the Software and the APIs are the sole property of Licensor and its suppliers, and has been developed at great expense; therefore, Ordering Activity agrees to protect the Software and APIs from unauthorized disclosure to third parties. As between Licensor and Ordering Activity, all right, title and interest in and to the Software and the APIs, and all enhancements, updates, modifications, new versions, and derivative works thereof, and all intellectual property rights therein and thereto, are solely owned by Licensor and Licensor reserves all rights not expressly granted hereunder.

4.2 Reserved.

4.3 Feedback. Ordering Activity and its users may, from time to time, make known to Licensor suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to Licensor with respect to the Software (collectively, “Suggestions”). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Licensor shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its services any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Ordering Activity or any other person or entity. To assist Licensor in its efforts to enhance the features available in the Software in order to improve Ordering Activity’s experience in using the Software, Ordering Activity agrees that Licensor may collect log and usage information from the Software, which may be used by Licensor for its business purposes. Licensor may use any technical information Ordering Activity provides to Licensor for any Licensor business purposes without restriction, including for product support and development. Licensor will not use technical information in a form that personally identifies Ordering Activity.

4.4 Reserved.

5. Reserved.

6. Limited Warranty; Disclaimer

6.1. Reserved.
6.2 Limited Warranty. Subject to the provisions of this Section 6, Licensor warrants only that the Software will conform in all material respects to its published Documentation for a period of sixty (60) days from the earlier of (i) the date Ordering Activity first downloads and is able to use the Software and (ii) the date Licensor or its Channel Partner provides Ordering Activity with the associated license key(s). Ordering Activity’s sole and exclusive remedy for any breach of this warranty is for Licensor or its designated third party service provider to, at Licensor’s option and in its sole discretion, to either (i) repair or replace, without charge, any Software which is not in conformity with the foregoing warranty or (ii) to terminate this Agreement and refund the license fees paid by Ordering Activity for the Software instead of repairing or replacing the Software. This limited warranty extends only to the original Ordering Activity. This warranty is subject to the following conditions: (i) the Software is installed by Licensor or its authorized representatives or installed in accordance with all of Licensor’s installation instructions by personnel trained by Licensor; and (ii) Ordering Activity notifies Licensor within the sixty (60) day warranty period of the breach of warranty. This warranty does not cover (x) any defect or deficiency which is not reproducible or which results from: (1) any alteration, repair or maintenance of the Software by anyone other than Licensor or its authorized contractors; (2) failing to follow in all material respects Licensor’s written recommendations or instructions; (3) use the Software on other than the Approved Systems or using or combining the Software with products or services of others, other than under Licensor’s direction; (4) any of Ordering Activity’s designs, specifications or instructions; or (5) any abnormal physical or electrical stress, or any accident, misuse, abuse or other cause external to the Software as furnished by Licensor and beyond Licensor’s reasonable control; (y) any software support not strictly necessary to correct warranty defects as provided herein and (z) any Approved Systems, third party software, supplies or accessories included with the Software. Such Approved Systems and other third party products are provided with the owner’s or manufacturer’s warranties, if any, which Licensor is permitted to pass on to Ordering Activity. OTHERWISE, SUCH THIRD PARTY PRODUCTS ARE PROVIDED TO ORDERING ACTIVITY “AS IS”.

6.3 DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE, THE TRIAL VERSION OR ANY FREE SOFTWARE WILL BE ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT LICENSOR WILL BE ABLE TO CORRECT ALL DEFECTS. THE SOFTWARE, THE TRIAL VERSION AND ANY FREE SOFTWARE ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. LICENSOR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. Ordering Activity assumes the risk of any and all liability, damage or loss from use, or inability to use the Software, the Trial Version, and any Free Software. If applicable law requires any warranties other than those set forth in this Section 6, all such warranties are limited in duration to sixty (60) days from the earlier of the date the Software is first made available for download or is delivered.

7. Reserved.

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EC America Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)  

1. **Scope.** This Rider and the attached Uplogix, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.  

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:  

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.  
   
   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.  
   
   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.  
   
   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301),
since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
Uplogix Limited Warranty, Disclaimer of Warranty and End User License Agreement

LIMITED WARRANTY

The following terms of this Limited Warranty govern, except to the extent there is a separate signed agreement between Customer and Uplogix with a different limited warranty. To the extent of a conflict, the order of precedence will be: (a) the signed agreement, and (b) this Agreement.

Hardware. Uplogix, Inc. ("Uplogix") warrants that commencing from the date of shipment to Customer (and in the case of resale by an Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to the reseller), and continuing for a period of (a) one year, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year), the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of a Product by Uplogix is set forth on the packaging material in which the Product is shipped. This limited warranty extends only to the original user of the Product. Customer’s sole and exclusive remedy and the entire liability of Uplogix and its suppliers under this limited warranty will be, at Uplogix’s option, shipment of a replacement within the warranty period and according to the replacement process described in the Warranty Card (if any), or if no Warranty Card, according to Uplogix’s then-current Return Material Authorization (RMA) process (available through Uplogix’s support desk), or a refund of the purchase price of the Hardware if the Hardware is returned to the party supplying it to Customer, freight and insurance prepaid. Uplogix replacement parts used in Hardware replacement may be new or equivalent to new. Uplogix’s obligations hereunder are conditioned upon the return of the affected Hardware in accordance with Uplogix’s then-current RMA process.

Software. Uplogix warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to reseller), and continuing for a period of 90 days, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year): (i) the media on which the Software is furnished will be free from defects in materials and workmanship under normal use, and (ii) the Software substantially conforms to its documentation. The date of shipment of the Software by Uplogix is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided “AS IS”. This limited warranty extends only to the Customer who is the original licensee. Customer’s sole and exclusive remedy and the entire liability of Uplogix and its suppliers and licensors under this limited warranty will be, at Uplogix’s option, repair, replacement, or a refund of the Software fee paid by Customer if reported (or, upon request, returned) to Uplogix or the party supplying the Software to Customer. In no event does Uplogix warrant that the Software is error-free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Uplogix does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions: This warranty does not apply if the Hardware or Software or any other equipment on which the Software is authorized to be used: (a) has been altered, except by Uplogix or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Uplogix or its authorized representative, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, (d) has not been updated with provided or available modifications or corrections, or (e) is licensed for beta, evaluation, testing or demonstration purposes for which Uplogix does not charge a purchase price or license fee. In addition, Uplogix makes no warranty with respect to any of the following: (i) Products whose external
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The Limited Warranty and the End User License Agreement will be governed by and construed in accordance with the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as it may be enacted in the applicable jurisdiction will not apply to this Agreement. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement will remain in full force and effect. Except as expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes (except as set forth in the order of precedence paragraph set forth at the beginning of this Agreement) any conflicting or additional terms contained in any purchase order or elsewhere, all of which terms are excluded. This Agreement has been written in the English language, and the English version will govern.
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**Grant of License.** Varonis Systems, Inc. ("Licensor") grants the Ordering Activity under GSA Schedule contracts ("the GSA Customer") a limited, non-exclusive, nontransferable, non-sublicensable license to (i) use the Software as provided herein, during the Evaluation Period (as defined below), solely for the trial and evaluation of the Software (a "Temporary License"), and/or (ii) subject to the full payment of the applicable license fee, to use the Software, in executable form only, internally (the "License") solely during the term set forth in Section 5 below. The GSA Customer may not make any commercial use of the Software, nor grant any third party any right to use the Software, whether or not for any consideration. This License Agreement allows the GSA Customer to run and use the Software on the GSA Customer's internal network, subject to the number of users (i) limited by the software key provided to the GSA Customer by the Licensor, if a Temporary License is granted to the GSA Customer, or (ii) indicated in the GSA Customer Purchase Order pursuant to which a License is granted to the GSA Customer. For the purpose of this Agreement, with respect to each Software, a "user" shall include any account that is monitored by such Software during the term of the License.

**Other Rights and Limitations.** The GSA Customer may not, and may not permit or aid others to, translate, reverse engineer, decompile, disassemble, update, modify, reproduce, duplicate, copy, distribute, place the Software onto a server so that it is accessible by third parties via a public network or otherwise disseminate all or any part of the Software, or extract source code from the object code of the Software. The GSA Customer may not publish or make available to the public, without Licensor's prior written approval, its impressions, evaluations, notes or recommendations from the use of the Temporary License. The Software is licensed as a single product. The GSA Customer may not separate its component parts for use on more than one computer or for any other purpose. The GSA Customer may not assign, sublicense, transfer, pledge, lease, rent, or share the GSA Customer's rights under this Agreement. Any data processed, shared, transferred or otherwise used by the GSA Customer, including any of its users, is the GSA Customer's sole responsibility. The GSA Customer must comply with applicable federal data protection laws and regulations. The GSA Customer must verify that no unauthorized users have access to its data. THE GSA CUSTOMER SOLELY, IS RESPONSIBLE TO BACK UP ITS DATA. Under no circumstances will Licensor be liable for any inaccuracy, loss of or damages to the GSA Customer's data used by it including any of its users by means of the Software.

**Proprietary Rights: Confidentiality.** The GSA Customer acknowledges and agrees that the Software is a proprietary product of Licensor, protected under copyright laws and international treaties. The GSA Customer further acknowledges agrees and that all right, title and interest in and to the Software, including associated intellectual property rights, are and shall remain with Licensor. All intellectual property rights (including, without limitation, copyrights, trade secrets, trademarks, etc.) evidenced by or embodied in and/or attached/connected/related to the Software, including any revisions, corrections, modifications, enhancements, updates and/or upgrades thereof (to the extent provided by Licensor) are and shall be owned solely by Licensor. This Agreement does not convey to the GSA Customer any interest in or to the Software, except for a limited right of use as set forth herein, terminable in accordance with the Federal Acquisition Regulation (the "FAR"), the GSA Schedule Contract and/or any applicable GSA Customer Purchase Orders. The GSA Customer will maintain all copies of the Software and all related documentation in confidence, and in a manner that the Software and all related documentation are not publicly accessible, and that only those that need access to Software shall be able to access it. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement. Licensor
recognizes that Federal agencies are subject to the Freedom of
Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

**License Fees.** In consideration of the License, the GSA Customer shall pay the applicable license fees in accordance with the GSA Schedule Pricelist.

**Term and Termination.** The Temporary License shall be effective upon delivery of the Software, and shall continue until the lapse of thirty (30) days from the delivery day (or such longer period as approved in writing by the Licensor), unless terminated earlier as set forth in the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders (the “Evaluation Period”). Depending on the type of License purchased, the License shall be valid: (i) in perpetuity, if a perpetual license is purchased, or (ii) during the subscription period indicated on the relevant purchase order, if a term license is purchased, unless the License (whether term or perpetual) is: (a) terminated by Licensor in accordance with the Contract Disputes Act (if and as applicable) due to a breach by the GSA Customer of any term hereof, or (b) terminated by Licensor in accordance with the FAR, the underlying GSA Schedule Contract, and/or any GSA Customer Purchase Orders. When the end user is an instrumentality of the US Government, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract disputes clause (Contract Disputes Act). During any dispute under the disputes clause, Varonis shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract and comply with any decision of the Contracting Officer.

**Limited Warranty.** With respect to the Temporary License, no warranties are provided by the Licensor in connection with the Software. With respect to the License, Licensor warrants, for the GSA Customer’s benefit only, that the media on which the Software is provided will be free from defects in material and workmanship under normal use for a period of twelve (12) months from the date on which a License was granted to the GSA Customer. Licensor does not warrant that the Software shall be error free or that it shall meet the GSA Customer’s requirements. This limited warranty is void if failure of the Software has resulted from accident, abuse, unauthorized use or misapplication. LICENSOR WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, EXCEPT FOR THE WARRANTY SET FORTH ABOVE, THE SOFTWARE MEDIA AND THE SOFTWARE ARE LICENSED "AS IS", AND LICENSOR DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY AND NON-INFRINGEMENT.

**Maintenance and Support.** Following the Evaluation Period, and in connection with Software granted a License, the GSA Customer may purchase maintenance and support services pursuant to the execution of a new GSA Customer Purchase Order. The use and installation of any updates, upgrades, patches or other software the GSA Customer may receive or purchase from Licensor or its resellers in connection with the GSA Customer’s use of the Software, shall also be subject to and governed by the terms of this Agreement and the terms of Licensor’s Support Principles attached hereto as Exhibit A.

**Limitation of Liability.** Notwithstanding anything herein to the contrary, Licensor’s cumulative liability to the GSA for any loss, cost or damage resulting from any claims, demands, or actions arising out of or relating to this License Agreement, the Temporary License and/or the License shall not exceed the total Purchase Order price, including license fees actually paid to Licensor hereunder, if any. In no event shall Licensor be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Licensor has been advised of the possibility of such damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
Qualifications and Limitations Basis of Bargain. The limited warranty, exclusive remedies and limited liability provisions set forth herein are fundamental elements of this License Agreement and the license granted hereunder, and the GSA Customer accepts and confirms that Licensor would not be able to provide the Software on an economic basis without such limitations. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Varonis’ negligence; (2) for fraud; or (3) for express remedies under law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

U.S.-Related Special Provisions. The GSA Customer agrees that the Software is not being or will not be shipped, transferred or re-exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations thereunder, nor will it be used for any purposes prohibited by such Act. If any part of the Software is acquired by or on behalf of a unit or agency of the U.S. Government, the Government agrees that the Software and all related documentation are "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to the Software and the related documentation are limited by the terms of this Agreement, pursuant to FAR 12.212(a), FAR 52.227-14 “Rights in Data” (MAY 2014) and/or DFARS 252.227. 7015 “Technical Data- Commercial Items”(Jun. 2013), as applicable.

Governing Law and Jurisdiction; Litigation Costs. This Agreement shall be construed and governed in accordance with Federal the laws of the United States of America without reference to conflict of laws, and dispute resolution shall take place in a forum, and within the time period, prescribed by applicable federal law. No equitable or injunctive relief, and no shifting of legal fees or costs, may be sought against the GSA Customer except as, and then only to the extent, specifically authorized by applicable federal statute.

Auto-updates & Environment Settings survey. The following functionality shall automatically be available to the GSA Customer with the Software: (i) if the GSA Customer purchases software subscription services, and subject to Government Information Security Requirements, including but not limited to those imposed by the Federal Information Security Management Act (FISMA), Licensor will regularly download and install software fixes and improvements to the installed DatAdvantage® environment. This includes only database scripts and does not compromise the data collected at the GSA Customer’s environment. Use of the software fixes and improvements shall be subject to the terms of this Agreement; and (ii) if the GSA Customer purchases support services, subject to Government information security requirements, Licensor will monitor and collect general information about the GSA Customer's installed Software environment. This includes general information (the number of probes, shadows, file servers, folders, users and permissions that are monitored), as well as health status (database sizes, jobs and status of executables). This information can be used by Licensor's support engineers to improve the service if a problem arises, or to contact the customer proactively to prevent problems. Note that the GSA Customer may choose not to activate these functions by manually selecting "I Refuse" during the installation process.

Miscellaneous. Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof. This Agreement, together with the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders represents the entire agreement concerning the program between the GSA Customer and Licensor and it supersedes any prior proposal, representation, or understanding between the parties. This Agreement, however shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer’s Purchase Order. The GSA Customer may not assign this Agreement to any third party without the prior written consent of Licensor. Assignment by Varonis is subject to FAR 52.232-23 “Assignment of Claims” (Jan. 1986) and FAR subpart 42.12 “Novation and Change-of-Name Agreements” (Sep. 2013). The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.
Third Party Software. The Software contains software provided by third parties. The restrictions contained in this Agreement shall apply to all such third party software providers and third party software as if they were Licensor’s and the Software, respectively. In addition, the Software may contain software provided by Oracle, Inc. Such software is subject to the provisions in Exhibit B hereto, in addition to those contained in this Agreement.
Exhibit A

Varonis Support Principles

VARONIS SUPPORT PRINCIPLES

Throughout the Support Services term (the period for which applicable Support Services fees have been paid), Varonis Systems ("Varonis") provides standard Support Services to customers using our North America and EMEA support centers during our standard operation hours. Our support offers and standard operating goals are outlined below.

Support Services Goal:
Varonis Technical Support is intended to make our customers’ use of our software products (the “Software”) successful by assisting with troubleshooting and helping to resolve specific issues resulting from the use of Varonis products on supported platforms. Customers may be required to perform reasonable troubleshooting tasks as recommended by Varonis’ support staff.

SUPPORT OFFERINGS:

During the Support Services term, Standard Support includes:

- Product updates and upgrades (if and when available)
- Web based, Email and phone support for installation and general use questions
- Access to Varonis’ Support Portal, Knowledgebase and Customer Community
- Create, update and manage your support cases online
- Unlimited Knowledge Base access
- Unlimited access to technical documents
- Use of Varonis’ dedicated toll-free number (https://www.varonis.com/services/support)
- Two named contacts

Response Times: Response times are dependent upon the level of Support Services the customer has purchased and the severity of the case. Varonis’ ability to provide support will depend, in some cases, on the ability of the customer to provide accurate and detailed information and to aid in handling a support request or error report.

Relief Goals: Relief Goals describe the target time period for Varonis to provide a temporary resolution of an issue. Varonis reserves the right to request a customer to download an Update (as defined below) or to upgrade to the Current Version (as defined below) in order to resolve a known problem or a technical issue.

ESCALATION PROCEDURES:

Varonis’ escalation procedures raise the visibility of your most important issues internally. Varonis may, at its discretion, pass any issue into the escalation process. Our normal escalation process includes evaluating the severity level of the issue. Our goal is to solve issues in a timely manner taking into consideration the severity of the issue.

In general, if you are not satisfied with a response from the Technical Support staff, you may request that the issue be escalated to a Support Team Lead or to the Director of Technical Support. Once an issue has been escalated, Varonis Technical Support will coordinate internal and customer resources in gathering relevant data required to identify and solve the issue. Varonis expects our customers to provide adequate resources and the requested data to assist in resolution of the issue.
## RESPONSE TIME

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Description</th>
<th>Contact Method</th>
<th>Response Time</th>
<th>Relief Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>A down situation where core components of the Software are non-operational and there is no known work-around.</td>
<td>Notify Support via portal, phone or email</td>
<td>Standard: up to 4 hours, during the regional operation hours.</td>
<td>Standard = 7 days</td>
</tr>
<tr>
<td>Severity 2</td>
<td>A major component of the Software is not functioning and no work-around is available, but the Software still supports core functionality.</td>
<td>Notify Support via portal, phone or email</td>
<td>Standard: up to 6 hours, during the regional operation hours.</td>
<td>Standard = 14 days</td>
</tr>
<tr>
<td>Severity 3</td>
<td>A minor component of the Software is not functioning and any other case where a Software feature is not operating as documented.</td>
<td>Notify Support via portal, phone or email</td>
<td>Standard: 24 hours, during the regional operation hours.</td>
<td>Shall be repaired within a reasonable time</td>
</tr>
</tbody>
</table>

To qualify for the above response times, customers are required to cooperate with the Varonis Technical Support team in providing reproducible results for errors reported.

### HOURS OF OPERATION:

**North America:** Monday–Friday, 09:00-21:00 EST, for a list of observed holidays click [here](#)

**EMEA:** Monday–Friday, 09:00-21:00 CET, for a list of observed holidays click [here](#)

**APAC:** Monday–Friday, 09:00-21:00 China Standard Time

Each customer may choose only one of the time zones identified above for the Support Services. Such time zone shall dictate the hours of support provided by Varonis for all Software licensed by the customer.

**Contact Support:** [http://www.varonis.com/services/support/](http://www.varonis.com/services/support/)

### GENERAL SUPPORT INFORMATION:

Technical Support for supported products is available via a variety of contact methods, including the Varonis Knowledge Base, Support Portal, email and phone during scheduled support hours, for current Software versions and during the support term purchased by a customer. Providing technical support does not imply that Varonis will make changes to the Software.

The following items are **NOT** supported:

- Operating systems and third-party applications
- Alterations or revisions to the Software made by the customer or third parties
- Use of the Software in a manner other than as authorized in the applicable license agreement
- Use of any Software that has been announced as End of Life
- Escalations from personnel other that the named contacts
- Continued support for issues which Varonis has provided corrections not implemented by the customer or data requested from the customer but not provided
- Free Varonis software products and tools
- Any migration services
- Issues of performance when the environment does not meet Varonis’ sizing recommendations as provided to Customer, or as set forth in the Software documentation
SUPPORTED VERSIONS

Varonis will provide Support Services under these principles only for the most current generally available Version (as defined below) of the Software (the “Current Version”) and the Version immediately preceding the Current Version of the Software (the “Previous Version”). Notwithstanding the aforesaid, for a period of three (3) months from the release date of the Current Version of the Software, Varonis will provide Support Services to the version of the Software which is immediately preceding the Previous Version, at such level as determined by Varonis in its sole discretion.

"Version" shall mean a subsequent release of a Software or associated Documentation (the user documentation made generally available by Varonis to customers in connection with the Software) denoted by a change in the Software's release number. "Versions" do not include new functionality, features or modules offered by Varonis as separate or additional products or components or add-ons by Varonis.

SUPPORTED USERS

Varonis will provide Support Services under these principles with respect to the number of users for which the Customer duly purchased the Support Services. Upon any renewal of the Support Services, Customer shall be required to renew the Support Services for the then current number of users using the Software (the "Supported..."
Number of Users”). Varonis shall be entitled, at any time, to run an audit check (including through running a script) in order to verify the Supported Number of Users. If the audit reveals any underpayments by Customer of any fees payable for the Support Services, Customer shall: (a) promptly pay the outstanding amounts, plus interest from the due date at a rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. The foregoing is without derogating from any other right or remedy Licensor may have under these principles or applicable law.

SOFTWARE SUBSCRIPTION

Provision of Updates. Varonis shall make available to Customers Updates of the Software, if and when Varonis makes such Updates generally available to its other customers then covered by Software Subscription. “Updates” shall mean new Versions, modifications, Work Around (a technically reasonably feasible change in the operating procedure of the Software whereby the adverse effects of the Error on the normal operation of the Software are reasonably minimized), upgrades, patches, error-correction, releases hotfixes, service packs, feature packs, which are designed and released by Varonis to optimize and/or repair the operation of the Software or the Documentation, if and when generally made generally available by Varonis to its customers. Updates shall not include any new functionality, features or modules offered by Varonis as separate or additional products, components or add-ons.

All Updates and upgrades are subject to the terms and conditions of the customer’s license agreement.

REINSTATEMENT

In the event Customer elects not to renew Support Services following the conclusion of the applicable Support Services term, Customer may later request Varonis to reinstate Support Services. In such event, Customer shall pay Varonis a Support Services reinstatement fee equal to the cumulative standard Support Services fees applicable for the Support Services terms during which Support Services lapsed, in addition to the Support Services fees for the then-current Support Services period.

CUSTOMER OBLIGATION

Customer Cooperation. Customer will cooperate with Varonis with regard to the provision of any Support Services, including, without limitation, by providing as much detail as available about reported Errors and taking all such reasonable measures requested by Varonis in order to detect and provide further information with respect to each Error. Customer shall ensure the readiness of its hardware, computerized systems, environment and personnel operating the Software and shall ensure the appropriate conditions so as to enable Varonis to comply with its undertakings hereunder, including, without limitation: (i) enabling Varonis to remotely access the Software; (ii) ensuring the availability of Customer's personnel required for the operation of the Software; (iii) providing Varonis and its representatives with Customer’s accompany and on-demand consent, a remote control access to the servers where the Software is installed.

Access. If requested by Varonis, Customer shall grant Varonis such access to its information, premises and hardware as may be necessary or appropriate for Varonis to perform the Support Services.

Customer Contacts. Customer shall ensure that its contacts authorized to receive the Support Services are fully knowledgeable regarding the Software and its underlying technologies and are capable of receiving remote instructions from Varonis and performing activities reasonably required by a computerized system operator.

VARONIS SUPPORT PLANS, SERVICES AND OFFERINGS

Varonis reserves the right to alter its Technical Support Plans, Services and Offerings without prior notice. Varonis has no obligation to provide the Support Services in the event Varonis is not paid for such Support Services.
VARONIS DATANYWHERE

Notwithstanding anything herein to the contrary, starting February 28, 2019, Support Services for DatAnywhere will be limited. Varonis will use its best efforts to resolve a known problem or a technical issue within a reasonable time. New updates and upgrades will not be released and new platforms (such as new versions of IOS, Android, Windows, etc.) will not be supported. Support Services for DatAnywhere will no longer be available after February 28, 2020.

WARNING; DISCLAIMER; AND LIMITATION OF LIABILITY

VARONIS UNDERTAKES TO PROVIDE THE SUPPORT SERVICES IN A TIMELY AND PROFESSIONAL MANNER. EXCEPT FOR THE ABOVE UNDERTAKING, VARONIS PROVIDES NO WARRANTY, EXPRESS OR OTHERWISE, WITH RESPECT TO THE SUPPORT SERVICES, AND VARONIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VARONIS' LIABILITY HEREUNDER FOR ANY DAMAGES WHICH CUSTOMER MAY SUFFER SHALL IN NO EVENT EXCEED THE AMOUNT OF THE MOST RECENT ANNUAL SUPPORT FEE PAID BY CUSTOMER TO VARONIS OR ITS AUTHORIZED RESELLER.

IN NO EVENT WILL VARONIS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF VARONIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1)
PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
Exhibit B

Additional Provisions Applicable to Oracle, Inc. Software for Government Entity

The software provided by Oracle, Inc. (the “Oracle Software”) may only be used by the legal entity that executed the Agreement. Notwithstanding the preceding sentence, the Oracle Software may be used by the parent company of such legal entity, and the parent company's majority owned subsidiaries, provided that: (a) each of such entities agrees in writing to be bound by the terms of the Agreement, and (b) the legal entity that executed the Agreement shall be responsible for any breach of the Agreement by any such entity.

The Oracle Software may only be used in accordance with the scope of Section 1 of the Agreement, including the license definitions and rules set forth in the Oracle Software documentation, and only for your internal business operations. To the extent you are permitted to do so under the Agreement, you may allow agents or contractors (including, without limitation, outsourcers) to use the Oracle Software on your behalf for your internal business operations as described above, subject to the terms of the Agreement. In any such case, you shall be responsible for your agent's, contractor's, outsourcer's, customer's and supplier's use of the Oracle Software and their compliance with the Agreement.

Ancillary programs specified in the Oracle Software documentation may only be used for the purposes of installing or operating the Oracle Software with which the ancillary programs are delivered.

Oracle, Inc. or its licensor retains all ownership and intellectual property rights to the Oracle Software.

The Oracle Software is subject to a restricted license and can only be used in conjunction with the Software.

Third party technology that may be appropriate or necessary for use with some Oracle Software as specified in the applicable documentation or as otherwise notified by Licensor and such third party technology is licensed to you only for use with the Oracle Software under the terms of the third party license agreement specified in the applicable documentation or as otherwise notified by Licensor and not under the terms of the Agreement.

The Oracle Software is not specifically designed, manufactured or intended for use as parts, components or assemblies for the planning, construction, maintenance or operation of a nuclear facility and may not be used for these purposes.

You may not (a) transfer the Oracle Software except for temporary transfer in the event of computer malfunction; (b) assign, give or transfer the Oracle Software and/or any services related thereto or an interest in them to another individual or entity; (c) use the Oracle Software for rental, timesharing, subscription service, hosting, or outsourcing; (d) remove or modify any Oracle Software markings or any notice of Oracle’s or its licensors' proprietary rights; (e) make the Oracle Software available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted under the Agreement); (f) reverse engineer (unless required by law for interoperability), disassemble or decompile the Oracle Software (the foregoing prohibition includes, but is not limited to, review of data structures or similar materials produced by the Oracle Software) or duplicate the Oracle Software except for a sufficient number of copies of each Oracle Software for your licensed use and one copy of each Oracle Software media.

Any additional programs that Oracle may include with the Oracle Software ordered may be used by you only for
trial, non-production purposes only. You may not use such additional programs included with an order to provide training or attend training provided by Licensor or a third party on the content and/or functionality of such programs. You have 30 days from the delivery date to evaluate the additional programs, subject to the terms of the Agreement. If you decide to use any additional programs after the 30 day trial period, you must obtain a license for such programs from Licensor. If you decide not to obtain a license for the additional programs after the 30 day trial period, you will cease using and will delete any such programs from your computer systems. Additional programs included with an order are provided “as is,” and Oracle does not provide technical support or offer any warranties for these programs.

Technical support, if ordered from Oracle, is provided under Oracle's technical support policies in effect at the time the services are provided and that Oracle's technical support policies can be accessed at http://oracle.com/contracts. You acknowledge that Oracle's technical support policies are incorporated into the Agreement by reference. If you decide not to purchase technical support on the date hereof, then you will be required to pay reinstatement fees equal to the amount that would have been paid to bring the support fees to the time of service.

Any third party firms retained by you to provide computer consulting services are independent of Oracle and are not Oracle's agents, and Oracle is not liable for nor bound by any acts of any such third party firm.

Some Oracle Software may include source code that Oracle may provide as part of its standard shipment of such programs, which source code shall be governed by the terms of the Agreement.

Licensor disclaims, to the extent permitted by applicable law, Oracle’s liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the programs. Varonis shall remain liable in accordance with the terms of this license agreement.

Upon the termination of the Agreement, you shall discontinue use and destroy or return to Licensor all copies of the Oracle Software and related documentation.

You may not publish any results of benchmark tests run on the Oracle Software.

You shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Oracle Software, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.

In accordance with Government security requirements and not more than once a year, Licensor may audit your use of the Oracle Software. You will provide reasonable assistance and access to information in the course of such audit. Licensor may report the audit results to Oracle or assign its right to audit your use of the Oracle Software to Oracle. Licensor and Oracle shall not be responsible for any costs incurred by you in cooperating with the audit.

You hereby confirm that you have not relied on the future availability of any hardware, programs or updates in entering into the Agreement; however, (a) if you order technical support from Oracle, the preceding sentence does not relieve Oracle of its obligation to provide updates under such order, if-and-when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any Oracle Software licensed under the Agreement, per the terms of the Agreement.

Non-material terms of this Exhibit B are subject to change at Oracle's discretion upon 30 days’ notice.
1. **Scope.** This Rider and the attached VBrick Systems, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. §
6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the
commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause
is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby
superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties.
Notwithstanding the foregoing, Contractor shall separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with
the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41
U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information
confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is
an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a
federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of
Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software
on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103
and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule
Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VBRICK SYSTEMS, INC.

VBRICK SYSTEMS, INC. LICENSE, WARRANTY AND SUPPORT TERMS

GRANT OF LICENSE
The Software Product is being licensed, not sold, to Ordering Activity. In accordance with and subject to the terms and conditions of this Attachment A, Contractor grants Ordering Activity a personal, non-transferable, non-exclusive license to use the object code version of the Software Product and Documentation. All rights and title in and to the Software Product and Documentation and all derivative works thereof (as such term is defined by the United States Copyright Act (as amended) at Title 17 U.S.C., and in accordance with FAR 52.227-19), including without limitation copyrights and trade secret rights, belong to Contractor and/or its partners, licensors and suppliers (collectively, "Suppliers"). and Contractor and its Suppliers hold title to each copy of the Software Product and Documentation, and any portion thereof. Contractor and its Suppliers reserve all rights to the Software Product and Documentation not expressly granted to Ordering Activity herein. This Attachment A grants Ordering Activity the following rights:
Software Product. Ordering Activity may install and use one copy of the Software Product, or any prior version for the same operating system, only
GS-35F-0511T www.ecamerica.com
Storage/Network Use. Ordering Activity may also store or install a copy of the Software Product on a storage device, such as a network server, used only to install or run the Software Product on Ordering Activity's other computers over an internal network; however, Ordering Activity must acquire either a Single User License for each separate computer on which the Software Product is installed or run from the storage device, or a Single Building License or an Enterprise License (defined below). If Ordering Activity have acquired appropriate licenses to allow installation of the Software Product on a computer file server within Ordering Activity's internal network Ordering Activity may also use such server to push firmware updates to other VBrick products. No server or network use of the Software Product is permitted except the uses expressly permitted in this Attachment A.

Single User License. Ordering Activity may use the Software Product on one computer only, or must have a license for each computer on which the Software Product is installed. A Single User License for the Software Product may not be shared or used concurrently on different computers or by separate users unless otherwise specified in Ordering Activity's Purchase Order.

Connection License. Ordering Activity is granted license to interconnect a single external server to Ordering Activity's VBrick Server Software; additional connections require purchase of additional connection licenses.

No Modification. Ordering Activity may not alter or modify the Software Product or create a new installer for the Software Product. The Software Product is licensed and distributed for viewing, distributing, and sharing media files. Ordering Activity is not authorized to integrate or use the Software Product with any software except software authorized by Contractor.

Automatic Connection. THE SOFTWARE PRODUCT MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING. THIS TECHNOLOGY MAY CAUSE ORDERING ACTIVITY'S COMPUTER TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE PRODUCT MAY TRANSMIT ORDERING ACTIVITY'S SERIAL NUMBER TO CONTRACTOR OR ITS SUPPLIERS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE THAT ARE NOT PERMITTED.

Third-Party Website Access. The Software Product may allow Ordering Activity to access third-party websites ("Third-Party Sites"). Ordering Activity's access to and use of any Third-Party Sites, including but not limited to any goods, services, or information made available for such sites, is governed by the terms and conditions found at each Third Party Site, if any. Third-Party Sites are not owned or operated by Contractor or its Suppliers. ORDERING ACTIVITY'S USE OF THIRD-PARTY SITES IS AT ORDERING ACTIVITY'S OWN RISK. NEITHER CONTRACTOR NOR ITS SUPPLIERS MAKES ANY WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS, OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE, OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NONINFRINGEMENT OF THIRD-PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE THIRD-PARTY SITES.

Compliance With Licenses. If Ordering Activity is an entity, Ordering Activity agree that upon request from Contractor or Contractor's authorized representative, Ordering Activity will within thirty (30) days fully document and certify that use of any and all Software Products at the time of the request is in conformity with Ordering Activity's valid license(s) from Contractor and/or its Suppliers.

OTHER RIGHTS AND LIMITATIONS

Limitations on Reverse Engineering, Decompilation, and Disassembly. Ordering Activity may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Ordering Activity may not use the Software Product to conduct a service bureau or similar business for the benefit of third parties. Ordering Activity may not modify, adapt, translate, or otherwise created derivative works based on the Software Product or Documentation.

Separation of Components. The Software Product is licensed as a single product. Its component parts may not be separated for use on more than one computer beyond the licensed number of users. If the Software Product is an upgrade or a revision of a component of a package of software programs that Ordering Activity licensed as a single product, the Software Product may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

Dual Media Software. Ordering Activity may receive the Software Product in more than one medium. Regardless of the type or size of medium Ordering Activity receive, Ordering Activity may use only one medium that is appropriate for the computer or computers for which the license is given (pursuant to the Purchase Order). Ordering Activity may not use or install the other medium on another computer. Ordering Activity may not loan, rent, lease, or otherwise transfer the other medium to another user, except as part of the permanent transfer (as provided below) of the Software Product.

Support Services. Contractor through VBrick may or may not provide Ordering Activity with support services related to the Software Product ("Support Services"). Any supplemental software code provided to Ordering Activity as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this Attachment A. With respect to any technical information Ordering Activity may provide as part of the Support Services, Contractor through VBrick may use such information for its business purposes, including but not limited to product support and development.

COPYRIGHT

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), the Documentation or other accompanying printed materials, and any copies of them are owned and retained by Contractor and/or its Suppliers. Copyright laws and international treaty provisions protect the Software Product. Therefore, Ordering Activity must treat the Software Product like any other copyrighted material, except that Ordering Activity may install a copy of the Software Product on a single computer, storage device or as otherwise provided in this Attachment A, provided that Ordering Activity keep the original solely for backup or archival purposes. Ordering Activity may not copy the printed materials accompanying the Software Product.

U.S. GOVERNMENT RESTRICTED RIGHTS

The Software Product and Documentation are subject to RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, or RESTRICTED RIGHTS notice per 52.227-14 as applicable. Manufacturer is VBrick Systems, Inc. 12 Beaumont Road, Wallingford, CT 06492 USA.

www.ecamerica.com
LIMITED WARRANTY

THE SOFTWARE PRODUCT AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OR CONDITIONS WITH RESPECT TO THE SOFTWARE PRODUCT'S OR THE DOCUMENTATION'S TITLE, NONINFRINGEMENT OF THIRD PARTY'S RIGHTS, QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE FOREGOING, NEITHER CONTRACTOR NOR ITS SUPPLIERS WARRANT THAT THE SOFTWARE PRODUCT SHALL BE OPERABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT IT MEETS ORDERING ACTIVITY'S REQUIREMENTS, OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR HARDWARE.

THE ENTIRE RISK AS TO THE USE, QUALITY AND PERFORMANCE OF THE SOFTWARE PRODUCT AND DOCUMENTATION IS WITH ORDERING ACTIVITY. NEITHER CONTRACTOR NOR ITS SUPPLIERS IS OBLIGATED TO PROVIDE ANY SUPPORT SERVICES TO ORDERING ACTIVITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF ALL WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO ORDERING ACTIVITY.

EXHIBIT A – VBRICK WARRANTY AND SUPPORT

THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONTRACTOR SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE.

PRODUCTS OR PARTS WHICH ARE SAMPLES OR PROTOTYPES ARE SOLD "AS IS" "WHERE IS" WITH ALL FAULTS, i.e. WITHOUT ANY WARRANTY WHATSOEVER.

WHEN SUBMITTING AN ORDER FOR SOFTWARE MAINTENANCE (REFERED TO THROUGHOUT THIS DOCUMENT AS SUPPORT SERVICES) ORDERING ACTIVITY MUST CERTIFY THAT ORDERING ACTIVITY HAS READ, UNDERSTAND, AND AGREE TO BE BOUND BY THE FOLLOWING ATTACHMENT A TERMS AND CONDITIONS. ADDITIONALLY, IF ORDERING ACTIVITY IS ACTING AS AN EMPLOYEE OR AGENT OF THE ORDERING ACTIVITY FOR THE VBRICK PRODUCT FOR WHICH SOFTWARE SUPPORT SERVICES ARE TO BE PROVIDED, ORDERING ACTIVITY FURTHER CERTIFY THAT ORDERING ACTIVITY HAS FULL LEGAL AUTHORITY TO ACCEPT THE TERMS AND CONDITIONS OF THIS ATTACHMENT A ON BEHALF OF THE ORDERING ACTIVITY.

DO NOT SUBMIT ORDERING ACTIVITY'S ORDER UNTIL ORDERING ACTIVITY HAS CAREFULLY READ, UNDERSTOOD AND AGREED TO THESE ATTACHMENT A TERMS AND CONDITIONS. IF ORDERING ACTIVITY DOES NOT AGREE TO THESE ATTACHMENT A TERMS AND CONDITIONS, OR IF ORDERING ACTIVITY DOES NOT HAVE LEGAL AUTHORITY TO ACCEPT THEM ON BEHALF OF THE ORDERING ACTIVITY, CONTRACTOR WILL NOT ACCEPT ORDERING ACTIVITY'S ORDER.

THE CHART BELOW IS A SUMMARY OF THE WARRANTY TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO CONTRACTOR'S LIMITED WARRANTY ARE AS SET FORWARD BELOW.

### VBrick Maintenance Services Offerings

<table>
<thead>
<tr>
<th></th>
<th>Gold Program</th>
<th>Gold Plus Program</th>
<th>Platinum Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hardware Warranty, Standard RMA (guarantee five-day turnaround after receipt)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hardware Warranty, Next day RMA</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Minor Software releases and patches</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Major Software releases</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>E-mail/Phone Support (Response within 24 business hours)</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>E-mail/Phone Support (Response within 4 business hours)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 3 Telephone Support 8:30 – 7 pm (Monday to Thursday)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Level 3 Telephone Support 8:30 – 5:30 (Friday)</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Level 1, 2 Telephone Support 8:30 – 7 pm (Monday to Thursday)</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Level 1, 2 Telephone Support 8:30 – 5:30 (Friday)</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>After hours priority number (Level 3 only. 4 hour response time)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
<tr>
<td>Web-Based Knowledgebase</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Onsite Support (Level 3 only)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes*</td>
</tr>
</tbody>
</table>

I. PRODUCTS COVERED.

Contractor warrants to Ordering Activity the VBrick Software and Manufactured Equipment, including hardware, software and firmware (the "Equipment"): (i) to be free from defects in material and workmanship under normal use and service, and (ii) to conform in all material respects to the printed specifications for the Equipment which have been delivered to Ordering Activity in connection with Ordering Activity’s purchase of the Equipment.

Provision of Software Maintenance Software Support Services by Contractor through VBrick are conditioned upon Ordering Activity having deployed the current shipping release of the respective VBrick Product for which such Software Support Services are to be provided*. Only these Attachment A terms and conditions, notwithstanding any preprinted or other terms and conditions on Ordering Activity's Purchase Order shall govern Ordering Activity’s purchase and Contractor's provision of Software Support Services.

*Upgrades to the latest version will be provided free of charge according to the program purchased by the Ordering Activity. Contractor does not guarantee it can support versions of software other than the current shipping release.
II. LENGTH OF WARRANTY.

Warranty and Software Maintenance shall commence upon the date indicated in the Contractor confirmation notice and shall continue in full force and effect for a period of one (1) year. Ordering Activity may, at the time of your initial order, purchase up to five (5) years of Subscription Service. Contractor will provide Ordering Activity with no less than thirty (30) days prior written notice of any pending Software Subscription Service changes with details on any pricing and/or modifications to these Attachment A terms and conditions.

III. WHO OR WHAT IS COVERED?

This Limited Warranty covers only the VBrick Software and VBrick Manufactured Equipment acquired by the original Ordering Activity.

IV. EXCLUSIONS.

This warranty shall be void if the Ordering Activity fails to use or maintain the Software or Equipment in accordance with Contractor’s specifications or instructions, or if the Software or Equipment or any part thereof has been subject to any unauthorized modifications, improper operation, user negligence, service by an unauthorized person, company or association, use with any unauthorized attachment, device or feature, accident neglect, misuse, tampering, acts of God, or any event other than ordinary use.

The following points are not included in Contractor’s Limited Warranty and Gold and Platinum programs:

- Support on any product not manufactured or produced by VBrick
- Professional services:
  - Integration with 3rd party equipment,
  - Installation support for new VBrick equipment
- Contractor through VBrick Technical Support Services personnel performing or providing over the phone a step by step upgrade of the Equipment.
- Support Services related to the relocation of VBrick equipment or the elimination or addition of new VBrick equipment or third party equipment, such as network equipment, audio and video devices, or custom software applications or programs.
- Feasibility Studies
- Equipment Upgrades/Updates that also require hardware upgrades in order to utilize new functionality of the software. Any such hardware upgrades is not covered. Ordering Activity may purchase the hardware upgrades at the price set forth in the latest-current Contractor GSA Price List.

V. LIMITATION OF LIABILITY.

Contractor’s obligation and Ordering Activity’s remedy for any failure of the Equipment is limited to the repair or replacement of any part of the Software and/or Equipment at Contractor’s discretion, which examination shall disclose to Contractor as defective. Contractor reserves the right to satisfy its warranty obligations in full by refunding the purchase price of the Equipment. Nothing herein shall obligate Contractor to make such a refund.

Software Updates and Upgrades: If Contractor, in its discretion, creates Software Updates or Software Upgrades to the VBrick Product during the term for which Ordering Activity has purchased Software Support Services, Contractor shall provide all such Software Updates and Software Upgrades to Ordering Activity designated technical contact. Distribution of Software Updates or Software Upgrades does not include installation by Contractor. Contractor will provide Ordering Activity with all such Software Updates and Software Upgrades when Contractor makes them available to its general customer base for the VBrick Product. All Software and related materials provided pursuant to Software Support Services, including documentation and program materials are subject to these Attachment A terms and conditions for the VBrick Product.

VI. HOW TO OBTAIN WARRANTY SERVICE.

To receive warranty services, Ordering Activity must register equipment under their name upon arrival at http://registration.vbrick.com, or via mail to:

Technical Support Services – Registration Department
12 Beaumont Rd
Wallingford, CT 06492

Ordering Activity must notify Contractor through VBrick promptly by telephone, and/or via our website of any alleged defect with the Equipment or software, including a detailed description of such alleged defect. For warranty verification purposes, the Ordering Activity must furnish VBrick Technical Support Services with the equipment serial number or warranty contract number. Failure to provide this number may delay service response time or require payment for services. VBrick’s telephone number for warranty service is (203) 303-0222. VBrick’s support website is located at http://www.vbrick.com/support. Upon notifying VBrick of an alleged defect with the Equipment and after defect has been verified by VBrick’s Technical Support Services, Ordering Activity agrees not to use the Equipment until further notice by VBrick. Ordering Activity shall bear all risks of operation, if Ordering Activity operates the Equipment prior to VBrick’s determination that the Equipment is suitable for operation, and VBrick shall bear no liability whatsoever for any damages, losses or claims that may arise due to such operation.

Upon notification of a possible defect and after defect has been verified by VBrick’s Technical Support Services, Contractor through VBrick will provide to customer a Return Merchandise Authorization (“RMA”).

Technical Customer Support is available via telephone at (203) 303-0222, email: support@vbrick.com, or website: http://www.vbrick.com/support, from 8:30 AM to 7:00 PM Monday to Thursday and 8:30 AM to 5:30 PM Friday (U.S. Eastern Time).

Priority will be given to Ordering Activities who have purchased Extended Warranty / Maintenance Program. Expected response time for Gold products is 24 business hrs and 4 business hrs for Platinum products.

VII RETURN MATERIAL AUTHORIZATION (RMA)
All equipment under abnormal operation must be verified by a VBrick Technical Customer Support representative before it is assigned a Return Material Authorization (RMA) number. If Ordering Activity elects to avoid the verification process, a PO for VBrick’s in-house diagnostics fee (consult latest GSA price list for diagnostics fee charges) will be required. If equipment is deemed faulty, diagnostic fees will be void.

Replacement equipment will not be shipped without an RMA number assigned. All equipment received by Contractor through VBrick without an RMA number will be returned to the Ordering Activity without being repaired. Ordering Activities must return the Equipment in need of repair with the same serial number as reported in the RMA. If equipment with a different serial number is returned under the RMA, the equipment will be returned without being repaired. Ordering Activity is responsible for properly packing the Equipment before it is shipped to Contractor through VBrick.

If Contractor through VBrick determines that the defect was not caused by accident, improper use, abuse, neglect, unauthorized alteration or service, inconsistent use with the specifications or any use other than ordinary use, VBrick shall, at its option, repair or replace the applicable part(s) of the Equipment within the limits of the program in which the Equipment is enrolled, and at VBrick’s expense, return the Equipment to the Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Next Day Shipment: ensures that a replacement for defective Equipment will be shipped to the Ordering Activity before requiring the Ordering Activity to return the defective Equipment to Contractor through VBrick. Equipment will be shipped to arrive at Ordering Activity’s site the next business day after dispatch. However, any requests for replacement equipment processed in North America after 3:00 PM Eastern Time (ET) may ship the following business day for second business day delivery. Any international requests for replacement processed after 3:00 PM ET may ship the following business day for international delivery. Delivery times depend upon each country customs regulations. Contractor through VBrick is not responsible for any customs or tax charges related to any country other than the U.S.A. A replacement Equipment may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to VBrick within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Ordering Activity. Any single request for a single shipment of five (5) or more Equipment of the same type may be subject to delays.

DOA (Dead on arrival): A product can be deemed as DOA, after troubleshooting by Contractor through VBrick Technical Support Services, if it is not fully functioning when it is set up for the first time or received with damage. It does not have to be completely dead or non-functioning to qualify for DOA. It could be anything from a unit not powering up to a unit with a bent connector. If it's not fully functional or has damage when opened and setup for the first time, it qualifies as "DOA" and eligible for a cross ship replacement if within 30 days of the original ship date and registered runtime of the product is not more than 4 days. After 30 days, follow normal RMA process unless Manager of Support Services approves expedited RMA process.

VIII. REPLACEMENT PARTS

Parts replaced during the Limited Warranty Period, as applicable, will be covered for the remaining term of such period or for thirty (30) days from time of replacement, whatever is longer. Such replacement parts may, at Contractor’s option, be new or remanufactured. All parts removed from warranted Equipment shall become property of Contractor.

IX. PLATINUM PROGRAM - EXTENDED WARRANTY / MAINTENANCE -

Ordering Activities may purchase VBrick’s Extended Warranty/Maintenance Program (Platinum) for their equipment at any time within thirty (30) days from the date indicated in the VBrick confirmation notice -and for additional 1 year incremental periods if renewals of the Extended Warranty/Maintenance Program are purchased (the “Extended Warranty/Maintenance Program”).

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick’s facilities. After this period this program only covers technical support and major software releases.

X. GOLD and GOLD PLUS PROGRAMS - EXTENDED WARRANTY / MAINTENANCE -

Contractor through VBrick’s Limited Warranty Gold Program is in effect for one (1) year from the date indicated in the VBrick confirmation notice - and for additional periods if renewals of the Extended Warranty/Maintenance Program are purchased (the “Extended Warranty/Maintenance Program”). Periods must be consecutive one to each other. Ordering Activity shall not be allowed to renew the program for their Equipment and/or Software in the case the program period expired for the Equipment and/or Software in question and Ordering Activity missed to renew between 30 days of renewal due date.

Hardware coverage/warranty under this program is provided up to 5 years from the date the equipment is shipped from Contractor through VBrick’s facilities. After this period this program only covers technical support and minor software releases.

XI. SOFTWARE COVERAGE

Software: means all computer programming code, entirely in binary form, which is directly executable by a computer and includes those computer programs which have been licensed to Ordering Activity either as a separate product or as part of another VBrick Product.

Software coverage includes the following:

Major Software Release (Software Upgrade): initial or new version of a software product or application. It means a version of the Software as classified by Contractor through VBrick which has been enhanced, improved and/or modified and replaces the existing version of the Software. This includes any minor software releases, user interface changes, usability changes, and new features and functions. As an example a major release is denoted by a version change from 2.0 to 3.0.

Minor Software Release (Software Update): piece of software designed to correct discovered deficiencies and/or bugs affecting performance to the software description, program or its supporting data. This includes improved performance, bugs fixes, or graphics replacement. As an example a minor releases is denoted by version changing from 2.0 to 2.1.

Software upgrades during the Extended Warranty/Maintenance Program period. The upgrades will be provided to the Ordering Activity via CD-ROM or VBrick’s website. The Ordering Activity is required to perform the upgrade.

Software upgrades may not include upgrades that require disassembly of the Equipment.
XII. HARDWARE COVERAGE

Hardware coverage includes the following:

Repair or replacement of defective Equipment during Warranty Program period.
Firmware upgrades (upgrades of code that require disassembly of Equipment).

XIII. TECHNICAL SUPPORT SERVICES

The following is an explanation of services performed at each level:

Level 1: provide answers and helpdesk for Equipment features. Basically all the “what” questions. This information can be found in the Equipment Documentation.
Level 2: diagnose and troubleshoot complex network problems including multicast issues. Diagnose and troubleshoot Server software related problems. Provide answers on how to perform upgrades. Basically able to answer the entire “how” questions. This information can be found in the Equipment documentation and in training materials.
Level 3: diagnose and troubleshoot “error and abnormal Equipment behaviors”.

Onsite Support: When a problem cannot be resolved by utilizing remote technical support, Contractor through VBrick will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Ordering Activity. VBrick will not be held responsible for delays in the delivery of the services due to Ordering Activity’s stoppage to provide access to Ordering Activity’s facilities or due to security requirements. Contractor through VBrick may comply with all Ordering Activity imposed security requirements.

The Extended Warranty/Maintenance Program is obtained in the manner outlined in Part IX, X above and is limited as provided in the introduction and Parts III, IV, V, VII, VII and XI, XII, XIII above.

XIV. PRODUCTS OUT OF WARRANTY RE-JOINING A WARRANTY PROGRAM

No product can be renew under the old warranty program except for products from Ordering Activity and only until the new GSA pricing becomes effective.
If warranty coverage has lapsed, there can be NO Hardware repair claim made for a minimum of 60 days after the renewal. If a claim is made within the first 60 days - it will be billed to the Ordering Activity at then-current GSA repair rate.

XV. REPAIR SERVICE OUTSIDE WARRANTY OR MAINTENANCE PROGRAM POLICY

In the event that Equipment requires service that is not covered by Contractor’s Limited Warranty or any other Program, Equipment may be shipped to Contractor through VBrick for repair. Ordering Activity must notify VBrick’s Technical Customer Support of the problem via telephone at (203) 303-0222, or via website at http://www.vbrick.com/support, obtain a RMA and ship the Equipment to VBrick, at Ordering Activity’s expense. Repairs are performed under flat fee charges (please refers to latest Contractor’s GSA price list for charges). Contractor through VBrick will repair the Equipment within five (5) business days from the date the equipment is delivered at VBrick’s facilities and will, at VBrick’s expense, return the Equipment to Ordering Activity in the same or equivalent manner that the Equipment was delivered to VBrick.

Limited Services Warranty. THE PROVISION OF SOFTWARE SUPPORT SERVICES DOES NOT EXTEND, MODIFY OR ENHANCE THE ORIGINAL SOFTWARE WARRANTIES, IF ANY, FOR THE VBRICK PRODUCT(S). CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES WITH RESPECT TO INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT SERVICE(S) PROVIDED HEREUNDER.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Vectra Networks, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

- **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

- **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

- **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

- **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

- **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

- **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

- **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

- **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
**Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

**Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

**Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

**Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

**Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

**Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

**Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

**Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

**Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

**Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

**Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**VECTRA NETWORKS, INC.**

**VECTRA NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

**ATTACHMENT A - VECTRA NETWORKS, INC.**

**Definitions**

"Hardware" means the VECTRA hardware products set forth in the Order.

"Product" means the VECTRA security services product(s) set forth in the Order that consist of Hardware, Software, and/or Subscriptions.

"Order" means an ordering document issued by Ordering Activity that specifies Product(s) to be provided under this Agreement.
“Software” means the executable code version of VECTRA’s software products set forth in the Order and any updates thereto furnished by VECTRA under this Agreement.

“Subscriptions” means subscription-based Software or services provided by VECTRA to Ordering Activity for a fixed or recurring period, subject to subscription fees for each such period as set forth in the Order.

Scope

Authorized VECTRA Resellers. While VECTRA shall remain the "licensor" for purposes of the grant of the licenses and other rights hereunder, and Ordering Activity shall remain the "licensee" for purposes of the obligations contained herein, Ordering Activity shall contract directly with the authorized VECTRA reseller for the purchase of Hardware and/or Maintenance provided by such authorized VECTRA reseller.

Products and Services

Reserved

Software License. Subject to the terms and conditions of this Agreement and the applicable Order, VECTRA grants to Ordering Activity a nonexclusive, nontransferable, limited license to use the Software in accordance with the applicable user documentation and license keys provided by VECTRA solely for Ordering Activity’s internal use: (i) at the Ordering Activity facility authorized in the Order, (ii) during the period for which Ordering Activity has purchased a then-current license and Subscription, (iii) by Licensee employees up to the number of users for whom then-current licenses and Subscriptions have been paid, and (iv) for the measured bandwidth usage (“Measured Usage”), up to the service level set forth in the Order (“Service Level”).

Subscriptions. The Subscriptions will commence on the Effective Date (or other applicable start date specified in the Order) and will continue for the period set forth in the Order (the “Initial Subscription Term”).

Maintenance and Services. To the extent maintenance services are provided by VECTRA, such maintenance services are subject to Exhibit A (“Maintenance”). Installation, training and other support services may be provided if set forth in the Order, subject to the terms set forth in Exhibit A.

Evaluation. Any Hardware, Software or Subscriptions provided for evaluation or at no charge or for a nominal charge may only be used for evaluation during the evaluation period set forth in the Order, not to exceed 90 days (“Evaluation Period”) and solely for considering whether to purchase the applicable Product from Ordering Activity and not for any other purpose or any productive use. Ordering Activity shall return and discontinue all use of such Products at the end of the Evaluation Period.

Restrictions. Ordering Activity shall not (and shall not permit any third party to) (i) copy, modify, translate, reverse engineer, decompile, disassemble or otherwise reduce the Software or Subscriptions to human perceivable form or attempt to discover underlying source code, algorithms or techniques, except to the extent that such activities may not be prohibited under applicable law; (ii) provide, lease, use for timeshared or service bureau purposes, or lend or otherwise allow use of any Product by or on behalf of any third party or at any location other than the Ordering Activity facility authorized in the Order; (iii) disclose any benchmarking, competitive analysis or other results obtained from any Product or use any Product or portion thereof to develop any similar item or any competitive products or services; (iv) use or remove the applicable Software or Subscriptions from any Hardware on which or for which they are provided under the applicable Order; (v) attempt to disable or circumvent any license key; encryption or other security device or mechanism used in connection with the Product, Software or Subscriptions; or (vi) remove or otherwise interfere with any portion of the Product designed to monitor Ordering Activity’s compliance with this Agreement. Ordering Activity acknowledges that Software and Subscriptions may include license keys and other features that disable use at the end of the applicable license or Subscription Term, or once the Service Level set forth in the Order is met.

Proprietary Rights. The Software and Subscriptions are licensed and not sold. VECTRA shall retain ownership of all Software and Subscriptions and all intellectual property rights relating thereto. Ordering Activity agrees that VECTRA may use and exploit without restriction any error reports, suggestions and other information provided by Ordering Activity with respect to the Products and shall own any fixes, modifications, improvements and new versions made by VECTRA based on such information. The Products, Software, documentation and other non-public information provided by VECTRA are confidential to VECTRA and shall not be disclosed by Ordering Activity to any third party. All implied licenses are disclaimed and all rights not expressly granted herein are reserved to VECTRA.

Data Access. VECTRA collects personally identifiable information uploaded during registration or account administration and information provided during support requests (collectively, “Ordering Activity Administrative Data”). Ordering Activity Administrative Data includes, for example, name, email address, phone number, and VECTRA-generated licenses associated with a Ordering Activity’s account or email address. In the provision of the Product or a Subscription (including services related thereto), VECTRA may receive, store, process, and utilize network traffic data, including system stability data, threat detection information, user experience data, user interface data, and session and detection metadata (including packet capture data) (such data, “Ordering Activity Traffic Data” and, together with Ordering Activity Administrative Data, all such data is “Ordering Activity Data”). Without limiting the foregoing, VECTRA may automatically access, process, and retain Ordering Activity Traffic Data transferred on networks to which Ordering Activity connects any Product for purposes of product improvement, analysis, and evaluation as follows:

Default Access. VECTRA may monitor and access: (i) system stability data, including uptime statistics for various processes; hardware, software and network failure indicators; and back trace and call stack data; (ii) threat detection information, including the number, type and score of each threat detection instance (based on VECTRA proprietary metrics); the attribution of each threat detection to an anonymized host; and the score for each anonymized host; (iii) anonymized user experience data, including the last login time; the frequency of logins; and User Interface clickstream data; and (iv) interface data.

Optional Metadata Access. As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Section 00a) monitor and access nondetecting session and detection metadata, including DNS, HTTP and session data; detection details; host ID mapping data; and precursors.

Optional Virtual Private Network (“VPN”) Access. As set forth in the Order or as Ordering Activity otherwise elects during the installation, configuration or use of the Products, VECTRA may (in addition to the Ordering Activity Traffic Data set forth in Sections 0a and 0b) receive VPN access to Ordering Activity’s network, monitor and access packet capture data, and facilitate troubleshooting. 3.9 Data Access Consent.
Ordering Activity acknowledges that the Products detect threats and attacks by monitoring Ordering Activity Data, and that the Products may be less effective in detecting threats, attacks, or other suspicious or unauthorized activity if the Products do not have adequate access to Ordering Activity Data. Ordering Activity authorizes and directs VECTRA to store, process, retrieve, and disclose Ordering Activity Data for the following purposes: (i) providing service to Ordering Activity; (ii) analyzing, maintaining and improving VECTRA's products and services; (iii) complying with legal, governmental or contractual terms or requirements, including without limitation good faith efforts to comply with such terms or requirements; (iv) making malicious or unwanted content anonymously available to its licensees for the purpose of further developing and enhancing VECTRA products and services; and (v) anonymously aggregating and statistically analyzing malicious or unwanted content. In addition, VECTRA may use Ordering Activity Administrative Data for the following purposes: (i) to inform Ordering Activity about products, seminars and services VECTRA believes may be of interest to you; (ii) to contact Ordering Activity if VECTRA needs to obtain or provide additional information; and (iii) to verify the accuracy of VECTRA's records. VECTRA may use web analytics and cookies as set forth in the VECTRA Privacy Policy attached.

Data Protection by Ordering Activity. Ordering Activity represents and warrants that Ordering Activity's use of the Products and Subscriptions complies with all applicable laws, including those related to data privacy, data security, and international communications and that Ordering Activity has obtained any and all consents necessary for VECTRA to engage in data processing under this Agreement. Submission or provision of Ordering Activity Data to VECTRA shall be at Ordering Activity's own risk, and VECTRA assumes no responsibility or liability for receipt of such Ordering Activity Data.

Reserved.

Reserved.

Reserved.

Limited Warranty

Limited Warranty. Hardware as delivered by VECTRA will be free from material defects in materials and workmanship for a period of ninety (90) days from the date of shipment. Ordering Activity's sole remedy, and VECTRA's exclusive liability, with respect to such warranty will be to repair, replace or provide a refund of the purchase price (at VECTRA's option) for the defective Hardware or portion thereof, subject to return within the applicable warranty period in accordance with VECTRA's return materials authorization (RMA) procedures and provided the defect is not due to accident; unusual physical, electrical or electromagnetic stress; neglect; modification, alteration or misuse; or failure to properly install, operate and maintain in accordance with the manufacturer's specifications. Software and Subscriptions are subject to maintenance as set forth in Exhibit A and not warranty. VECTRA does not warrant that Product will meet Ordering Activity's requirements or function uninterrupted or error free. EXCEPT AS EXPRESSLY SET FORTH ABOVE, PRODUCTS, SOFTWARE, HARDWARE, SUBSCRIPTIONS AND ANY SERVICES ARE "AS IS" AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND VECTRA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

RMA Procedures. Prior to return of any Hardware, Ordering Activity will execute and report the results of any tests or diagnostics specified by VECTRA, confirm limited warranty status with VECTRA and obtain and affix an RMA number from VECTRA prior to shipment. Returns with RMA number are to be shipped by Ordering Activity, freight pre-paid, to VECTRA's designated return or repair facility, so that they are received within 2 weeks of obtaining the RMA number. Any Hardware found to be out-of-warranty, including any with a voided warranty, is subject to charges for processing and repair or replacement at VECTRA's then-current GSA Schedule Contract rates.

Reserved.

Reserved.

Export: FCPA. Products may not be exported without prior written consent of VECTRA. Ordering Activity warrants and hereby gives written assurance to VECTRA that Ordering Activity will comply with all U.S. and foreign export and re-export restrictions applicable to the Products, documentation and technical information provided hereunder. Company warrants that it shall comply with the Foreign Corrupt Practices Act ("FCPA") in all dealings with, by, for or on behalf of VECTRA, and shall not offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind that would or could be construed as an illegal or corrupt practice.

Reserved.

Vectra Networks privacy policy

This Privacy Policy is designed to assist you in understanding how we collect and use personal information related to our website www.vectranetworks.com. References to "Vectra," "we," "our" and "us" refer to Vectra Networks, Inc.

Registration Information

When you register to download content from Vectra, we may ask you to provide us with personal information that may include your name, company, job position, email address, and phone number. We are committed to protecting your privacy. Authorized employees within the company on a need to know basis only use any information collected from individual visitors. We constantly review our systems and data to ensure the best possible service to our customers. We will not sell, share or rent your personal information to any third party.

User Communication

If you send us email or other communications, we may retain the content of your communications together with your email address and our responses. We may send you information that we think you will find interesting. If you want to be removed from our mailing list at any time, you may opt out of these communications by contacting info@vectranetworks.com.

Links to External Sites
We are not responsible for the practices employed by websites linked to or from our website nor the information or content contained therein. Often links to other websites are provided solely as pointers to information on topics that may be useful to the users of our website.

Please remember that when you use a link to go from our website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including websites which have a link on our website, is subject to that website's own rules and policies. Please read over those rules and policies before proceeding.

We reserve the right to modify this privacy statement at any time. If we change how we use your personally identifiable information, we will notify you here, by email, or by means of a notice on our home page.

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EXHIBIT A

Maintenance Services

Maintenance Term. Maintenance service as set forth in this Exhibit A ("Maintenance Services") commence on the Effective Date (or other applicable start date specified in the Order) and will continue until the end of the Subscription Term. If Ordering Activity elects not to renew Maintenance Services or fees are not kept current, Ordering Activity may re-enroll only upon prior written consent of VECTRA and payment of the applicable subscription fee for the coming period and all fees that would have been paid had Ordering Activity not discontinued Maintenance Services.

Maintenance Services. If Ordering Activity purchases such Maintenance Services, the following Maintenance Services will be made available during the applicable Subscription Term: (a) Updates released during the Subscription Term, and (b) Error resolution assistance for Errors in the Software reported by Ordering Activity during the Subscription Term, as further described below. VECTRA shall have no obligation to provide Maintenance Services or Support for: (i) altered or damaged Software or any portion of the Software incorporated with or into other software; (ii) Software or Subscription problems caused by Ordering Activity's negligence, abuse or misapplication, use of the Software or Subscriptions other than as specified in VECTRA's user manual or other causes beyond the control of VECTRA; or (iii) Software or Subscriptions installed or used on any hardware that is not supported by VECTRA. Support requests may be submitted online 24/7 at support.vectranetworks.com. For Error resolution assistance, VECTRA will use commercially reasonable efforts to correct any Error reported by Ordering Activity in the Software attributable to VECTRA, employing a level of effort commensurate with the severity of the Error, provided, however, that VECTRA shall have no obligation to correct all errors in the Software.

Ordering Activity Responsibilities. Ordering Activity is responsible for providing sufficient information and data to allow VECTRA to readily reproduce all reported Errors. If VECTRA believes that a problem reported by Ordering Activity may not be due to an Error in the Software or cannot be readily reproduced VECTRA will so notify Ordering Activity. Ordering Activity shall document and promptly report all Errors to VECTRA and take all steps necessary to carry out procedures for the rectification of Errors or malfunctions within a reasonable time after such procedures have been received from VECTRA.

Certain Definitions. For the purpose of this Exhibit only, the following terms shall have the following meanings:

"Error" means a reproducible programming error in the Software which significantly degrades the Software as compared to VECTRA's published performance specifications. Correction may be provided by patch, correction in the next Update, work-around or avoidance procedure, or other resolution to remedy the Error.

"Support" means technical support telephone or email assistance provided by VECTRA to a designated Ordering Activity support contact during normal business hours concerning the installation and use of the Product.

"Update" means a maintenance release of the Software designated as such by VECTRA and released on a general, regularly scheduled basis as part of standard maintenance to VECTRA's other maintenance customers for the same version of the Software without additional charge.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Veem Software Corporation ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract. Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et. seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

**Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

**Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

**Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

**Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

**Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

**Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

**Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Contractor are hereby superseded.

**Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

**Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

**Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

**Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
Contractor Indemnities. All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

VEEAM SOFTWARE CORPORATION
VEEAM SOFTWARE CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

Important - Read Carefully
This EULA is a legally binding agreement between licensee end user (“End User”) and Veeam setting forth the terms and conditions governing the use and operation of Veeam’s proprietary computer software products (the “Software”) and the written technical specifications for the use and operation of the Software (the “Documentation”). Where the sense and context permit, references in this EULA to the Software include the Documentation. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting this EULA, End User agrees to be bound by the terms and conditions of this EULA. If End User does not agree to or accept the terms of this EULA, End User may not access or use the Software.

1.0 Definitions
1.1 “Fee(s)” means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.

1.2 “Maintenance” and “Maintenance Policies” have the respective meanings set forth in Section 7.0.

1.3 “Transaction” and “Transaction Document” have the following meanings: "Transaction(s)" is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a "Transaction Document(s)"), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Veeam, or authorized third party distributors, dealers, and/or other resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of this EULA will govern and control.

1.4 “Open Source” means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. A current list of Open Source Software used by Veeam can be found at http://www.veeam.com/eula-oss.html.

2.0 Grant of License

2.1 License Grant. When the Software is delivered to End User as part of a Transaction, End User will have, subject to the terms and conditions of this EULA, a perpetual, non-transferable, non-exclusive, license ("License"), to use the Software in object code format, solely for government purpose for the management and processing of its own data and not the data of any third party(ies). Veeam Software License is perpetual, unless the Software is delivered to End User as part of a Transaction on a non-perpetual basis for a defined period, in such case, the End User’s right to use such Software will cease on the end date of the defined period. The data processing restriction set forth in the preceding paragraph will not apply to End User if End User a) has been accepted by Veeam, under “Veeam Cloud Provider Program” at http://www.veeam.com/veeam-cloud-providers.html and b) has accessed and is utilizing the Software with a stock-keeping unit number that designates End User as a “Cloud Provider” or similar description, thus authorizing End User to utilize the Software to perform systems management services for its customers.

3.0 Additional Terms

Nothing contained in this EULA is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this EULA or the License granted to End User pursuant to this EULA; or ii) create or modify the terms a particular Transaction.

4.0 Evaluation License

A License designated as an “Evaluation” License in a Transaction Document authorizes End User to use one (1) copy of the Software for a 30 day period for non-production evaluation or demonstration purposes only.

5.0 Not for Resale License

A License designated as a “Not for Resale” License in a Transaction Document authorizes End User to use one (1) copy of the Software with full functionality for evaluation or demonstration purposes only, and for a defined period of time.

6.0 Limited Term License

A license designated as a “Limited Term” License in a Transaction Document authorizes End User to use one (1) copy of the Software in production environment at End User’s site for a defined period of time. The defined period for a “Limited Term” License commences immediately upon generation of the license key.

7.0 Maintenance

Maintenance and support ("Maintenance") for the Software will be available in accordance with Veeam’s applicable Maintenance Policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance, End User will receive (a) online support and (b) any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance Policies and are not licensed by Veeam at its discretion to its customers for a separate charge. Veeam’s current Maintenance Policies can be found at http://www.veeam.com/support.html.

8.0 Copyright and Other Restrictions

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Veeam. All right, title and interest in the Software remains at all times with Veeam. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software, or the results of any benchmark or other tests of the Software, to any third party without the prior written consent of Veeam. End User shall not remove any proprietary notices from the Software. End User may make one copy of the Software solely for backup or archival purposes.

9.0 Limited Warranty and Limitation of Liability

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam will defend or, at its option, settle any action against End User based upon a claim that its use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify End User against any amounts awarded against End User as a result of the claim, provided Veeam is promptly notified of the assertion of the claim and has control of its defense or settlement. Veeam warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Veeam is unable to correct the defect, Veeam’s sole and exclusive liability and End User’s sole and exclusive remedy shall be
a refund of the License fee, if any, paid by End User for the Software. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEEAM OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VEEAM DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THE LIMITED WARRANTY.

In no event will Veeam, its affiliates, resellers, or distributors or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

10.0 Assignment
Except in the event of a sale or transfer by Veeam of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.

11.0 U.S. Government End Users
Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

12.0 General
This Agreement sets forth Veeam's entire obligation and End User's exclusive rights with respect to the Software and, except to the extent otherwise specifically provided in a purchase order or other written communication or advertising signed or jointly issued by both parties with respect to the Software, supersedes any conflicting terms of any purchase order and any other communication or advertising with respect to the Software. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected. To the extent not preempted by federal law or regulation, this EULA will be governed by the laws of the State of Ohio, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods will not apply.

13.0 Export Controls
The Software is subject to U.S. Export Administration Regulations. Veeam prohibits any export or re-export of Veeam Software products, services, or technical data to any destinations subject to U.S. embargoes or trade sanctions, except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the U.S. may prohibit export transactions. The following countries are subject to the United States embargo or restricted trade sanctions: Burma (Myanmar), Cuba, Iran, North Korea, the Republic of South Sudan, the Republic of the Sudan, Syria, or any other country with which the United States may prohibit export transactions.
# Veeam Licensing Policy

This licensing policy, which is incorporated into and part of Veeam’s End User License Agreement ("EULA"), defines the specific licensing terms and conditions for your use of Veeam software products and documentation (collectively, "Software"). Definitions for all capitalized terms are found in Definitions section below.

## 1. Veeam Licensing

### 1.1. Veeam Universal License (VUL) Offerings

<table>
<thead>
<tr>
<th>Offering</th>
<th>License type(s)</th>
<th>License unit</th>
<th>Specifics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veeam Availability</td>
<td>Subscription or Perpetual</td>
<td>Instance</td>
<td>Bundle offered in packs of 10 Instances. Support and Maintenance is limited to Production level. Basic level is not offered.</td>
</tr>
<tr>
<td>Suite</td>
<td></td>
<td></td>
<td>Offerings included:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Veeam Backup &amp; Replication</td>
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<tr>
<td></td>
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<td>• Veeam ONE</td>
</tr>
<tr>
<td>Veeam Backup &amp;</td>
<td>Subscription or Perpetual</td>
<td>Instance</td>
<td>Offered in packs of 10 Instances. Support and Maintenance is limited to Production level. Basic level is not offered.</td>
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<tr>
<td>Replication</td>
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<td>Applications included:</td>
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<td>• Veeam Backup for AWS</td>
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<td>• Veeam Backup for Microsoft Azure</td>
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<td>• Veeam Backup for Nutanix AHV</td>
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<td>• Veeam Agent for Windows</td>
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<td>• Veeam Agent for Linux</td>
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<td>• Veeam Agent for Oracle Solaris</td>
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<td>• Veeam Agent for IBM AIX</td>
</tr>
<tr>
<td>Veeam Backup</td>
<td>Subscription or Perpetual</td>
<td>Instance</td>
<td>Bundle offered in packs of 5 Instances with a minimum of 5 Instances (or 1 pack) and a maximum of 50 Instances (or 10 packs).</td>
</tr>
<tr>
<td>Essentials</td>
<td></td>
<td></td>
<td>Designed exclusively for small businesses and installations. Cannot be merged with another product license or centrally managed to scale above maximum. Purchase of an upgradeSKU required to grow beyond maximum limit.</td>
</tr>
<tr>
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<td></td>
<td>Support and Maintenance is limited to Production level. Basic level is not offered.</td>
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<td>Offerings included:</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• Veeam Backup &amp; Replication</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>• Veeam ONE</td>
</tr>
</tbody>
</table>
Offering | License type(s) | License unit | Specifics
---|---|---|---
Veeam Backup Essentials NAS Capacity Packs | Subscription or Perpetual | TB | Offered in increments of 1TB with minimum of 5TB and maximum of 50TB.
|  |  |  | This NAS license is only available to Veeam Backup Essentials VUL Customers. Support and Maintenance is Production level, tied to a Veeam Backup Essentials contract.
Veeam Backup Starter | Subscription | Instance | Effective October 1, 2020, this product is no longer offered, and all Veeam Backup Starter subscriptions were converted to Veeam Backup Essentials subscriptions.

### 1.1. Instance calculation for Veeam Universal License

Veeam Universal License (available in both Subscription and Perpetual License Types) removes complexity from license consumption tracking, providing portability of the license across a breadth of product functionality. All Protected Workloads consume 1 (one) Instance for the following Licensed Objects:

<table>
<thead>
<tr>
<th>Workload type</th>
<th>Licensed object(s)</th>
<th>Instance</th>
</tr>
</thead>
<tbody>
<tr>
<td>VM or Cloud VM</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Server or Application Server</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Workstation</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>NAS</td>
<td>250 GB</td>
<td>1</td>
</tr>
</tbody>
</table>

### 1.2. Standalone Offerings (non-VUL)

Offering | License type(s) | License unit | Specifics
---|---|---|---
Veeam Availability Suite | Perpetual | Socket | Bundle for VMware and Hyper-V virtual machine workloads only.

**Product Edition options include:**

- Enterprise Plus
- Enterprise*
- Standard*

**Support and Maintenance options include:**

- Production level
- Basic level*

**Offerings included:**

- Veeam Backup & Replication (with Socket License Unit limitations)
- Veeam ONE

*Only available for customers with the above Product Editions or Support and Maintenance prior to January 1, 2021. Not available for new sales.
<table>
<thead>
<tr>
<th>Offering</th>
<th>License type(s)</th>
<th>License unit</th>
<th>Specifics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veeam Backup &amp; Replication</td>
<td>Perpetual</td>
<td>Socket</td>
<td>Offering for VMware and Hyper-V virtual machine workloads only.</td>
</tr>
</tbody>
</table>
| **Product Edition options include**: | | | • Enterprise Plus  
• Enterprise*  
• Standard* |
| **Support and Maintenance options include**: | | | • Production level  
• Basic level* |
| **Applications NOT included**: | | | • Veeam Backup for AWS  
• Veeam Backup for Microsoft Azure  
• Veeam Backup for Nutanix AHV  
• Veeam Agent for Windows  
• Veeam Agent for Linux  
• Veeam Agent for Oracle Solaris  
• Veeam Agent for IBM AIX |
| | | | *Only available for customers with the above Product Editions or Support and Maintenance prior to January 1, 2021. Not available for new sales. |
| Veeam Backup Essentials | Perpetual | Socket | For VMware and Hyper-V virtual machine workloads only. |
| **Bundle offered in packs of 2 Sockets with maximum of 6 Sockets (3 Packs).** | | | Designed exclusively for small businesses and installations. Cannot be merged with another product license or centrally managed to scale above maximum limit of Sockets. Can be combined with Veeam Availability Suite VUL. Purchase of an upgrade SKU required to grow beyond maximum limit of Sockets. |
| **Product Edition options include**: | | | • Enterprise Plus  
• Enterprise  
• Standard |
| **Support and Maintenance options include**: | | | • Production level  
• Basic level |
| **Offerings included**: | | | • Veeam Backup & Replication (with Socket License Unit limitations)  
• Veeam ONE |
<table>
<thead>
<tr>
<th>Offering</th>
<th>License type(s)</th>
<th>License unit</th>
<th>Specifics</th>
</tr>
</thead>
</table>
| Veeam ONE                        | Perpetual       | Socket       | When purchased as a standalone without Veeam Backup & Replication, offering provides monitoring, reporting and analytics for VMware and Hyper-V virtual machine workloads only. Support and Maintenance options include:  
  • Production level  
  • Basic level                                                                                                                                 |
| Veeam Backup for AWS             | Subscription    | Instance     | Offered in packs of 10 Instances. Available as part of AWS Marketplace subscription or with BYOL version.                                                                                                     |
| Veeam Backup for Azure           | Subscription    | Instance     | Offered in packs of 10 Instances. BYOL version only.                                                                                                                                                     |
| Veeam Backup for Microsoft Office 365 | Subscription | Orchestrated | Offered in packs of 10 Orchestration Instances.                                                                                                                                                        |
| Veeam Availability Orchestrator  |                 | Instance     | Non-transferable to or from other Veeam products using Instances. For VMware and Hyper-V virtual machine workloads only. Not available as an Add-on for Veeam Backup Essentials  
  **DR Pack Offering:** quantity must match Veeam Backup & Replication license quantity.                                                      |
| Veeam Backup for Microsoft Office 365 | Subscription | User         | Minimum of 10 Users. Licensed per User account in all customer organizations. A license is not required for:  
  • Shared, resource and group mailboxes  
  • Group SharePoint sites  
  • External SharePoint users                                                                                                                 |
| Veeam Management Pack for System Center  | Subscription | Socket       | Minimum of 10 Sockets. For Subscription Offering, Support and Maintenance is limited to Production level. Basic level is not offered.  
  For Perpetual Offering, Support and Maintenance options include:  
  • Production level  
  • Basic level                                                                                                                                       |

### 13. Multiyear Subscription Billing Options

Multiyear Subscriptions with **Upfront Billing** contain all years in one SKU. Customer commits to pay for the entire length of the contract upfront. Multiyear Subscriptions with **Annual Billing** require all yearly options to be purchased together on initial order. Customer commits to pay annual amount by the yearly anniversary each year for the length of contract.
14. **Gifted (Built-in) Product License**

For all Perpetual Licenses with Sockets, Veeam Backup & Replication and Veeam ONE products will enable additional FREE Instance licenses to be available for use — one Instance per each Socket with maximum of 6 gifted Instances.

For Veeam ONE, these FREE instances can only be used on monitoring and reporting on all non-VM workloads from the connected Veeam Backup & Replication.

15. **Combining Socket and Instance licenses in Veeam Backup & Replication**

Customers who need to combine purchased Socket and Instance licenses into one License Key can do so on the Customer Portal ([https://my.veeam.com](https://my.veeam.com)). Read more about [License Key merges](https://www.veeam.com). Starting with version 10, Veeam Backup & Replication allows installing separate Socket and Instance License Keys at the same time without prior merging of keys at the customer portal. The following conditions will apply:

- Both Socket and Instance licenses are valid product licenses
- Company name matches between licenses
- Socket License Key will define the Support level, Support ID and Product Edition
- Only one Socket and one Instance License Key can be installed into the product at the same time
- Sockets will only protect VMware vSphere and Microsoft Hyper-V VMs

Instances, when in the presence of sockets, will protect NAS, Agents, Plug-Ins, AHV and Cloud VMs, and any workload excluding VMware and Hyper-V VMs.

Instance license expiration will, following the grace period, disable all product functionality until the expired license is removed from the product installation.

Socket license support expiration will not have any impact on the product’s functionality, except for the limitation to install product updates shipped after the support expiration date.

**Important note:** To receive Production Support for combined license, the Socket license must be at the Production Support and Maintenance level.

16. **Product Edition**

When present, Product Edition of the license regulates the Software capabilities level. In case when both Perpetual per Socket and Subscription VUL licenses are installed, the Software will follow the Perpetual License edition.

17. **Downgrades**

1. Only Customers who are current on Support and Maintenance are eligible for a downgrade.

2. Veeam does not refund the difference in price for downgrades.

3. Offering Downgrades are only offered for Perpetual Licenses, may require a downgrade SKU, and a penalty or fee may be charged.

4. Product Edition Downgrades have no penalty or fee. Support and Maintenance expiration date(s) and licensing terms are not altered in the event of Product Edition Downgrade. Downgrades to Product Editions that Customer does not currently own are not available.

5. Support and Maintenance Downgrades are not available.

For more information, please contact Veeam Renewals at [renewals@veeam.com](mailto:renewals@veeam.com).
1.8. Upgrades

1. Only Customers who are current on Support and Maintenance are eligible for upgrades.
2. Upgrades may require a fee — even in cases where Customer is upgrading to what they were previously entitled to.
3. Product Edition Upgrades are only offered for Perpetual Licenses and may require an upgrade SKU.
5. Production level Support and Maintenance is required for, and thus is included in, all upgrades.
6. Support and Maintenance Upgrades are available.

For more information, please contact Veeam Renewals at renewals@veeam.com or by submitting a form [https://www.veeam.com/renewal.html](https://www.veeam.com/renewal.html).

1.9. License Purchase Terms

Except as expressly agreed otherwise, Veeam reserves the right to change Packaging as needed without advanced or written notification. Except as expressly agreed otherwise, renewals or extensions of Perpetual License Support and Maintenance or Subscription Licenses will be at Veeam’s GSA Schedule list price in effect at the time of the applicable renewal.

1.10. Migrations

Customers with "Active" Support and Maintenance Agreement may migrate their Socket-based Veeam Backup & Replication, Veeam Availability Suite or Veeam Backup Essentials Perpetual License to a Veeam Universal License (VUL) Subscription for additional benefits. Migrations from Socket-based Perpetual License to Perpetual VUL are also available.

For more information, please contact Veeam Renewals by submitting a form [https://www.veeam.com/renewal.html](https://www.veeam.com/renewal.html).

1.11. Veeam License Keys

Veeam issues License Key for each license purchased. The End User is authorized to use each License Key to activate and use the Software within the parameters of this Licensing Policy according to this License Policy terms.

Veeam License Key contains specific licensing terms and a signature record that proves the integrity of the License Key file for the product. Only those License Keys that are marked as "Active" in Veeam’s records are considered legitimate and valid License Keys. Customer’s Active License Keys are always visible on the Customer Portal.

In the event where a License Key is revoked and a written confirmation has been sent, Customer must stop usage of License Key.

Please refer to technical documentation for product license installation help. The Veeam License Key defines the maximum number of License Units for the Software to consume or process from all objects of the connected Source Infrastructure.

Customers can use copies of the Software and one License Key to manage same or multiple Source Infrastructures. In this scenario, Customers are required to implement centralized license management (for example, Veeam Enterprise Manager) to control total license consumption and compliance with the licensing terms.
Customers can use multiple License Keys with different license terms, but only for separate backup infrastructures (which are defined as not sharing servers or storage between each other and are protecting different Source infrastructures). Veeam centralized management is not available/allowed for such use cases. In these cases, Customers will be provided with separate license files for each separate backup infrastructure.

With certain conditions, Customers can combine License Keys with different license terms to manage multiple Source Infrastructures with the same backup infrastructure. Customers are advised to implement centralized license management (Veeam Enterprise Manager) to control total license consumption and compliance with the licensing terms.

### 1.11.1. License Start Date

The license expiration date and license support expiration date are calculated from the license start date which is the date when Veeam accepts the Purchase Order from distribution and delivers the License Key to the Customer portal at [https://my.veeam.com](https://my.veeam.com).

When purchasing a renewal of Perpetual or Subscription Licenses, the updated License Keys become available at the Customer portal. If the License Key auto-update functionality is enabled, the updated License Key will be installed into the product automatically.

### 1.11.2. License Key Merge

Customers that are current on maintenance have an option to merge several Production License Keys into a single License Key to use in a product installation. Merge functionality for current versions is available at Customer Portal ([https://my.veeam.com](https://my.veeam.com)). For cases when merge is required for older versions of Veeam products, the Licensing support case needs to be opened.

When several License Keys are merged, the lowest Edition terms are selected for the resulting key (e.g. merging a 10 Socket Standard Edition license with the Veeam Universal License will result in a Standard Edition License Key). Similarly, the earliest license expiration date and support expiration date with respective Support ID will be provided.

License Key merge is only available for compatible licenses with up-to-date License Administrator information.

To revert the License Key merge operation, Customers may choose “Undo merge” to destroy the merged license and revert to original product License Keys.

<table>
<thead>
<tr>
<th>License key merge exception</th>
<th>Merge rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veeam Backup Essentials</td>
<td>This product offering is not allowed for merging between License Types or with other products.</td>
</tr>
<tr>
<td>Veeam Backup Starter</td>
<td>This product offering is not allowed for merging between License Types or with other products. This product will no longer be offered on October 1, 2020. Support will be discontinued with v11 release.</td>
</tr>
<tr>
<td>Veeam Universal Licenses</td>
<td>Merge is allowed between Veeam Universal Licenses and other types of supported licenses. The resulting License Key will contain combined License Units from Perpetual and Subscription Licenses. Legacy Instance licenses will be re-calculated based one-to-one match (e.g. 10 Instances Standard Edition will match 10 Instances of Veeam Universal Licenses). All other License Key parameters will follow License Key merge rules</td>
</tr>
</tbody>
</table>

Below are clarifications and exceptions to general merge rules:
### License key merge exception

<table>
<thead>
<tr>
<th>Merging License Keys with Sockets and Instances</th>
<th>Merge rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customers can combine Socket Perpetual and Instance Subscription License Keys to use with previous versions of the Veeam Backup &amp; Replication. Below are merging directions for resulting key:</td>
<td></td>
</tr>
<tr>
<td>• License type: Subscription</td>
<td></td>
</tr>
<tr>
<td>• License expiration: the earliest expiration date of selected Instance Subscriptions License Keys</td>
<td></td>
</tr>
<tr>
<td>• Support expiration: the earliest support expiration date of all involved licenses</td>
<td></td>
</tr>
<tr>
<td>• Support ID: Socket Perpetual License Key with the earliest support expiration date.</td>
<td></td>
</tr>
<tr>
<td>Please note that:</td>
<td></td>
</tr>
<tr>
<td>• Sockets will be used to protect VMs on VMware and Hyper-V hosts</td>
<td></td>
</tr>
<tr>
<td>• Instances will cover Agents, Plug-Ins, AHV VMs, excluding VMware and Hyper-V VMs.</td>
<td></td>
</tr>
</tbody>
</table>

#### 1.11.3 License Auto-update

Customers who enable the license auto-update feature will benefit from having automatic installation of Software updates and version upgrades, if their Subscription or Support and Maintenance Agreement is current. If separate environments are merged, please contact support to understand how this will affect the auto-update function.

#### 1.11.4 Legacy Licenses

In case a Customer on maintenance needs a License Key for a legacy product version Veeam may provide such a License Key, with the condition that the License terms and License Units are available for that legacy product version. Please see if the "Previous version" action is available for the License Key on the Customer portal.

#### 1.11.5 Promotional License Key

When Veeam gives a free production license or adds licenses/features at no cost for a limited time, the duration of the offer is defined by the promotion’s specific terms and conditions or by the License Key parameters. Promotional licenses do not change any pre-existing licensing agreement for paid products.

#### 1.11.6 License Transfer

To initiate the license transfer process to another License Administrator or to another Company, Customers are required to open a licensing case on the Customer portal (https://my.veeam.com/)

The licensing case must be opened by the current Veeam License Administrator or a representative of the Customer with a proof of purchase submitted via the case.

#### 1.12 License Administrator

The End User is responsible for providing correct contact information about License Administrator and keep it up to date. The End User is required to submit any changes to License Administrator data to Veeam’s Customer Support service via the Customer portal (https://my.veeam.com).
1.13. Source Infrastructure

Customers can use copies of the Software under the same License Key and license terms to manage same or multiple Source Infrastructures. In this scenario, Customers are required to implement centralized license management (for example, Veeam Backup Enterprise Manager) to control total license consumption and compliance with the licensing terms.

Sharing of the Source Infrastructure between different Licenses and license terms is prohibited.

1.14. Licensed Objects

Licensed Objects are associated with License Units by the Software. Some Software allows revoking License Units from Licensed Objects and re-applying to other License Objects. For example, you can revoke the license from some hosts or virtual machines (VMs) and assign it to other hosts or VMs.

1.15. License Units

Older versions of Veeam products prior to Veeam Backup & Replication v10 include the following License Units: VM, Server, Workstation with 1 (one) License Unit consumed by each Protected Workload.

2. Support and Maintenance

2.1. Paid Offerings

Customers are entitled to the Service Level Agreements (SLAs) associated with the Offering as described in the support policy.

Please note that support may NOT be provided for Customers with expired license or Support and Maintenance agreement.

2.2. Free Software

FREE/Community/NFR Licenses DO NOT include Support and Maintenance.

2.3. Eligibility

Support and Maintenance is offered with both Subscription and Perpetual License Types. With “Active” Subscriptions, Customers are eligible for Support and Maintenance; however, with Perpetual Licenses, Customers must renew their annual Support and Maintenance agreement in order to stay eligible. Read more details on Support and Maintenance renewal costs.

Please open a licensing support ticket at the Customer portal for such a request.

2.4. Requirement for Software Re-activation

Customers are advised to keep a copy of the Software and License Key file provided to them from the purchase of Veeam products to re-activate the Software as needed. For Customers with an active maintenance contract, Veeam may provide a copy of the Software and the license file for supported versions in response to a Customer request. Customers with expired maintenance contracts may not be granted such a service.
2.5. Support

Veeam has three support programs which may or may not be available for all Offerings: Premier, Production, and Basic. Additionally, there is an Evaluation support program for 30 days following product downloads. Each program provides a guarantee for support via Web, E-mail and Phone, and the ability to open cases via Web or Phone. Support for Customers with the Community Edition/Free License/NFR licensed products is provided on a best-effort basis. For more information, please refer to the Veeam Customer Support Policy.

New product releases and maintenance updates are also available only to Customers with a current maintenance contract. Product updates may be refused by the Software where the License Key Support Expiration date has past.

Support level for Customers always defaults to their lowest contracted level. For example, if a Customer has 90% of their licenses contracted to Production Support and 10% of their licenses contracted to Basic Support, Veeam will only provide Basic Support.

2.6. Support and Maintenance Included in License Types

Perpetual License includes a Production or Basic Support and Maintenance agreement for the first year.

Subscription License includes a Production or Basic Support and Maintenance agreement for the full term of the license.

2.7. Basic Level Agreement Renewal

The annual renewal of Basic level Support and Maintenance is equal to the listed GSA Schedule Pricelist fee for Basic level Support and Maintenance for each product purchased under perpetual licensing.

2.8. Production Level Agreement Renewal

The annual renewal of Production level Support and Maintenance is equal to the listed GSA Schedule Pricelist fee for Production level Support and Maintenance for each product purchased under perpetual licensing.

2.9. Public, Educational or Internal Licensing Discounts

Veeam may provide discounts for public, educational and ‘internal use’ sectors on Subscription renewals. There are no sector discounts for Perpetual Support and Maintenance Agreement renewals. Contact Veeam Renewals Team for discounts available in your region.

2.10. Prepaid Support and Maintenance Availability

Prepaid discounted SKUs may be purchased within the first six months of the original new License purchase. After this period, standard annual renewal SKUs are required.

2.11. Maximum Prepaid Term

Maximum prepaid term for Support and Maintenance is five years for each License. The first year of support included with new Perpetual Licenses counts towards this maximum. Please note that SKUs may not be ‘doubled’ to increase length of time for support.

2.12. Maintenance Upgrades

Customers who upgrade Product Editions which have future years of support remaining on the product contract must also purchase annual and monthly edition maintenance upgrade SKUs to cover the price difference between previous and new product.
2.13. Expired Maintenance & Reinstatement Fee

Support renewals past due will be assessed a reinstatement fee equal to the fee for Support and Maintenance had Support and Maintenance remained continuous during the lapsed period. Fee is included in Expired Renewal SKUs, which are required for renewal of agreements expired at time of purchase. Expired Fee Waived SKUs can be used with Veeam approval only.

If support agreement is expired, please contact Veeam Renewals team to confirm needed SKUs.

2.14. Pricing Adjustments

Veeam strives to provide its customers with the best technology support for a broad alliance ecosystem, in a flexible, cost-effective manner. We reserve the right to evaluate our Packaging and Pricing, and adjust Pricing for subscription, subscription renewal and maintenance renewal of any Offering in accordance with the GSA Schedule Pricelist. Please refer to License Purchase Terms section.

2.15. End of Support

When a product version reaches end of support stage, this version will no longer be supported by Veeam. No further updates, patches or hotfixes will be created for it (exceptions may be made on case-by-case basis). For more information, read https://www.veeam.com/kb1530.

2.16. Product Lifecycle

All Software goes through product lifecycles which can affect the licenses and support associated with that Software. To read more about Veeam product lifecycles, read https://www.veeam.com/releasestatus_rn.pdf.

3. Definitions

3.1. Customer

“Customer” means the Ordering Activity under GSA Schedule contracts End User of the Software.

3.2. License Administrator

“License Administrator” means a person associated with and recorded in the Veeam License Key who represents the End User (per Veeam’s EULA) and has the authority to request changes to the End User’s Veeam Product License.

3.3. License Key

“Veeam License Key” or “License Key” refer to (1) a transaction document that defines the scope of the license; (2) eligible License Units and options; and (3) license terms reference, such as License ID and Support ID. Veeam License Key is typically required to enable functionality of the Software.

3.4. Protected Workload

“Protected Workload” means a Workload (as defined below) that had at least one restore point created by the Software in the past 31 days in the form of a backup or native snapshot.

3.5. Workload

“Workload” means a computer (physical, virtual or cloud), an application (on-prem or SaaS), an unstructured data (files or objects) or any data source that Software protects or manages.
3.6. Source Infrastructure

"Source Infrastructure" means an infrastructure with management servers, hosts, physical/virtual/cloud machines, applications, files or storage that is protected, monitored or otherwise managed by the Software and by the Customer.

3.7. Licensed Object

"Licensed Object" means an element of the Source Infrastructure that may be counted towards the maximum number of License Units. Below is a table of available Licensed Objects with descriptions:

<table>
<thead>
<tr>
<th>Licensed object</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>VM</td>
<td>A protected VMware ESX, Microsoft Hyper-V or Nutanix AHV VM that is backed up, replicated, copied, monitored or otherwise consumed by the Software.</td>
</tr>
<tr>
<td>Cloud VM</td>
<td>An Amazon AWS EC2 Instance or a Microsoft Azure VM that is backed up, replicated, copied, monitored or otherwise consumed by the Software.</td>
</tr>
<tr>
<td>Server</td>
<td>A Windows, Linux, Unix (or other supported operating system) machine, physical or virtual, where the Software is installed. Each node of the clustered setup needs to be licensed.</td>
</tr>
<tr>
<td>Application Server</td>
<td>A physical or virtual machine where the application-specific Software is installed. Each node of the clustered setup needs to be licensed.</td>
</tr>
<tr>
<td>Workstation</td>
<td>A physical or virtual machine where the Software is installed. Each node of the clustered setup needs to be licensed.</td>
</tr>
<tr>
<td>NAS</td>
<td>Front-end storage capacity pack.</td>
</tr>
<tr>
<td>User</td>
<td>A User account in all organizations as reported by the management Software.</td>
</tr>
<tr>
<td>Socket</td>
<td>An occupied motherboard CPU socket (as reported by the hypervisor API) on hosts with virtual machines (VMs) to be backed up, replicated, monitored or reported on.</td>
</tr>
</tbody>
</table>

3.8. License Unit

"License Unit(s)" means the maximum capacity of Licensed Objects that Software will process. Also represents how an Offering is licensed. For instance, Veeam Backup & Replication is offered in Instances. The following table describes the License Units:

<table>
<thead>
<tr>
<th>License unit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instance</td>
<td>Calculated value representing the total &quot;value&quot; of all Licensed Objects that can be protected and/or managed by the Customer using Veeam or partner solutions. See Instance calculation for Veeam Universal License. In Rental licenses, Instance represents the value in rental points for managed workloads.</td>
</tr>
<tr>
<td>Orchestrated Instance</td>
<td>1 (one) License Unit is consumed by each Protected Workload. This instance type allows the workload to participate in orchestration activities (be a part of plans, labs, reports) in Veeam Availability Orchestrator (VAO).</td>
</tr>
<tr>
<td>User</td>
<td>1 (one) License Unit is consumed by each User account in all organizations as reported by the management Software.</td>
</tr>
</tbody>
</table>
### License unit

<table>
<thead>
<tr>
<th>License unit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>TB</td>
<td>Terabytes of front-end storage (NAS).</td>
</tr>
</tbody>
</table>

**Socket**

1 (one) License Unit is consumed for each occupied motherboard CPU socket as reported by the hypervisor API.

Only source hosts are licensed — hosts on which VMs that you back up or replicate reside. Target hosts (for replication and migration jobs) do not need to be licensed. Each node of the clustered setup needs to be licensed.

### 3.9. Product Edition

If present, “Product Edition” or “Edition” means the specific edition of the Software that defines the functionality available in the Software.

See [VBR Editions Comparison](#) for more information on specific Product Edition features and functionality.

### 3.10. Support and Maintenance

“Support and Maintenance” means Software updates, licensing and technical support to Customers according to [published Veeam Customer Support Policy](#) attached hereto.

### 3.11. Offering Downgrade

Change from a higher tier Offering or Bundle to a lower tier Offering or Bundle, if applicable.

### 3.12. Product Edition Downgrade

Change on any product from a higher Product Edition to a lower Product Edition.

### 3.13. Support and Maintenance Downgrade

Change in the middle of contracted term from a higher level of Support and Maintenance to a lower level of Support and Maintenance.

### 3.14. Offering Upgrade

Change from lower tier Offering or Bundle to a higher tier Offering or Bundle, if applicable.

### 3.15. Product Edition Upgrade

Change on any product from a lower Product Edition to a higher Product Edition.

### 3.16. Support and Maintenance Upgrade

Change from lower level of Support and Maintenance to a higher level of Support and Maintenance.

### 3.17. License Type

“License Type” means the type of license to the Software that is purchased by a Customer. License Types (defined below) include: Perpetual, Subscription, Rental, Evaluation, Not-for-Resell (NFR), Community Edition, and Free.
3.18. **Perpetual License**

“Perpetual License” means a License Type that grants Customers the right to use, in perpetuity, any version of the Software delivered prior to the Support and Maintenance expiration date reflected in the license file provided, however, that License Keys are updated from time to time. One year of Support and Maintenance is included with any purchase of a Perpetual License.

3.19. **Subscription License**

“Subscription License” means a License Type that grants Customers the right to use the latest version of the Software for a specified length of time or term, depending on SKU purchased. Basic or Production Support and Maintenance is included for the entire term of the Subscription License, provided the End User is compliant with this Licensing Policy and the EULA. More details on [Support and Maintenance](#).

To renew your Subscription License, please contact your reseller or use the [Veeam Renewal form to contact Veeam](#).

3.20. **Rental License**

“Rental License” means a License Type that grants Veeam Cloud & Service Providers (VCSP) the right to use the Software to perform systems management services for their customers or clients based on monthly usage being reported and paid for by the VCSP. Copies of Rental Licenses can be produced by VCSPs using self-service functionality of Veeam ProPartner Portal to generate individual licenses for their customers’ or clients’ environments. More details on [VCSP program](#).

3.21. **Evaluation and Not-for-Resell (NFR) Licenses**

“Evaluation License” or “NFR License” mean a License Type that grants Partners and End Users the right to use the Software for a limited period stated in the License Key for evaluation or demonstration purposes only, in a non-production environment.

3.22. **Community Edition and Free Licenses**

Veeam provides some products free of charge with full or limited functionality.

“Community Edition” means a License Type that grants End-Users a fully functional version of the Software for very small environments and is limited to Licensed Units built into the License Key. Some versions of free products may require a valid no-cost license (“Free License”) that is available for everyone upon website page registration. Please follow directions in the product interface to obtain such a license.

Community Edition License Customers agree to receive email marketing communications from Veeam Software with ability to unsubscribe from it.

Sharing of the Source Infrastructure between different Community Edition and Free Licenses is prohibited. This includes using multiple Community Edition deployments, or using both paid licenses and Community Edition deployments, to protect different parts of the same Source Infrastructure.

3.23. **Packaging**

“Packaging” means the Software, Features, [Product Editions](#), Add-ons, Bundles, and [Support and Maintenance](#) associated with Veeam’s portfolio of Offerings.

3.24. **Product**

“Product” group of features or capabilities designed to function synergistically under one interface, License Key, and title. May be referred to as “Software”.


3.25. **Offering**

“Offering” means Software offered or commercialized with a specific License Unit, License Type, Support and Maintenance program and License Policy rules.

3.26. **Add-on**

“Add-on” means a dependent Offering offered in addition or complimentary to an independent Offering.

3.27. **Bundle**

“Bundle” means an Offering composed of a specific group of Software, Offerings and/or Add-ons offered together at a discount.

3.28. **Feature**

“Feature” means capability designed to complete a function or series of functions found within Software.

3.29. **Pricing**

“Pricing” means License Units, License Types, terms, structural discounts and price points associated with Veeam’s Packaging in accordance with the GSA Schedule Pricelist.

3.30. **Veeam-Published Image**

Veeam-Published Image means a virtual machine image made available by Veeam for use in a cloud marketplace (like Amazon Web Services or Azure) and in which the Software is pre-installed. When the Software is delivered to End User as pre-installed on Veeam-Published Image End User has a right to use the Software only in virtual machines in the marketplace deployed from Veeam-Published Image. If the Software is delivered to End User as pre-installed on Veeam-Published Image with the operating system pre-installed, the right to use the operating system is governed by terms of EULA of this operating system. By executing a purchase order incorporating this Agreement in writing the Software End User accepts the terms of EULA of such an Operating System, otherwise the End User must not use the Software.
Veeam Data Privacy Policy

This Veeam Data Privacy Policy was updated on March 1, 2018

Veeam is committed to protecting your privacy. This Data Privacy Policy tells you about Veeam’s policy and practice for the collection, use, processing, storage, transfer, protection, and disclosure of information that we may collect about you through our website, www.veeam.com, or any subdomains, Veeam websites, marketing events or our partners.

Before you access and use our websites or submit your personal information to us, you will be asked to provide your authorization and consent by agreeing to the terms and conditions of this Veeam Data Privacy Policy and consenting to the collection, your submission (if applicable), and processing of information about you as described herein, in compliance with relevant data protection laws.

The collection, use, processing, storage, transfer and disclosure of your Personal Information (as defined below) will be limited to the terms under which you provide Veeam your authorization. Veeam is committed to compliance with all relevant country-specific data privacy laws, including EU Standard Contractual Clauses, model contracts / transfer agreements, privacy statements and policies, and country-specific filings if applicable. This Data Privacy Policy covers www.veeam.com and all other Veeam websites.

Collection of Your Personal Information

Personal information ("Personal Information") is data that can be used to identify, either directly or indirectly, an individual to whom the information applies. The information that we may collect from you includes your name, mailing address, phone number, email address, contact preferences, occupation, login information (account number, password), marketing preferences, social media account information, and as applicable, IP address.

Veeam will not collect any Personal Information about you unless you voluntarily choose to provide it to us or our partners (e.g. to obtain a newsletter subscription, white papers, participate in surveys, generate product downloads, register for marketing events, promotions or job applications), you provide your explicit consent, or unless it is permitted by applicable laws and regulations. You can always "opt out" at any time by visiting your subscription preferences page, click the «unsubscribe» link in any email or visit the Veeam unsubscribe page.

Use of Your Personal Information

When you do voluntarily provide us with Personal Information, we will use it to provide you information about our products, process your order, register you for an event, create an account, provide customer service, respond to a specific question, offer you the opportunity to participate in contests, register for courses, manage a job application, or provide access to additional information or offers. We also use the information we collect to improve the content of our website, to notify customers of updates to our website, products, and also to contact customers for marketing and sales purposes, including renewals, that are related to a customer’s specific needs and interests.
Disclosure to Third Parties, Service Providers, and Others

In order to support and enhance the customer relationship with you, Veeam may store, process, or share your Personal Information with our worldwide partners and affiliates (e.g. channel partners, credit card processors, data hosters and service providers) to perform a function, provide you with information that you may be interested in or complete a transaction related to your purchase or interest in purchasing Veeam solutions.

Veeam also leverages its worldwide partners and affiliates to provide valuable services on our behalf. To provide these services to you we need your explicit consent to share your Personal Information with them. Third parties with whom we share your Personal Information are all bound by all relevant and applicable data privacy laws, terms of confidentiality and Veeam’s Privacy Policy.

Veeam may also share non-personal summary information with our worldwide partners and affiliates. In the event Veeam shares any information with a worldwide partner or affiliate, Veeam also does so with your explicit consent and Veeam ensures that all worldwide partners or affiliates who do receive information protect the information with the same care and policies as Veeam does. For purposes of this Privacy Policy, non-personal information combined with personal information is treated as Personal Information.

There are times when Veeam may be required to disclose your Personal Information by law, legal process, litigation, and/or requests from public and governmental authorities. Veeam may also disclose your Personal Information for purposes of investigations of threats to national security, compliance with requests from law enforcement, or other issues of public importance, or when we determine that disclosure is reasonably necessary to enforce our terms and conditions or protect our operations or users.

Purpose Limitation

Veeam will collect, use or disclose Personal Information supplied by you, for the purposes disclosed to you, unless the disclosure is a use of the Personal Information for an additional purpose related to the original purpose, is necessary to prepare, negotiate and perform a contract with you, is required by law or competent governmental authority, is necessary to establish or preserve a legal claim or defense against a legal claim, or is necessary to prevent fraud or other illegal activities.

Cookies and Other Technologies

Veeam’s websites, advertisements, emails, and online services may use certain automatic data collection technologies such as cookies, web beacons, and pixel tags to collect data, including personal information, about you while you use our website, our products, and when you interact with us. Collection of user data helps us to understand our users’ behavior, web searches, and where on our websites users have visited. Our website uses cookies to distinguish you from other users of our website, helps us to provide you with a good experience when you browse our website, and allows us to improve our website. A cookie is a piece of information that is stored on your computer’s hard drive by your web browser. When you visit www.veeam.com (or any of the Veeam websites), our server recognizes the cookie, giving us information about your last visit to the website. Our website uses cookies to distinguish you from other users of our website, helps us to provide you with a good experience when you browse our website, and allows us to improve our website. A cookie is a piece of information that is stored on your computer’s hard drive by your web browser. When you visit www.veeam.com (or any of the Veeam websites), our server recognizes the cookie, giving us information about your last visit to the website. Many browsers accept cookies automatically, but you can adjust the settings in your browser to disable automatic acceptance of cookies. If you choose not to use cookies, you may experience limited functionality of our website. This Data Privacy Policy only covers Veeam’s use of cookies and does not cover the use of any propensity management by advertisers. Veeam complies with global regulations including the EU Cookie Directive. Visitors to our websites are advised of our use of cookies upon landing on our website.

A “web beacon” (also known as a clear gif and pixel tag) helps us better manage the content of our website by informing us of what content is effective. A web beacon is incorporated into a web page or an email to keep track on a user’s activity on the page or the email. Just like a cookie, a beacon tracks a user’s visit and sends the data to the server, however, unlike cookies, a web beacon cannot and is not used for identification purposes, nor can it store any data on your computer as it is not browser-based.

Information collected by cookies and similar technologies are treated as non-personal information except to the extent under local law that IP addresses (or like identifiers) are otherwise considered Personal Information.
Accuracy and Retention of Personal Information

Veeam strives to make it easy for you to keep your Personal Information up to date and to help us maintain its accuracy. Your Personal Information will be stored only for the time period necessary to fulfill the purposes outlined in this Privacy Policy unless otherwise required or permitted by law.

Communications and Subscription Preferences

You have the choice to determine what information you receive from Veeam about products and services, and how such information is received by specifying your communication preferences by your subscription details at the subscription preferences page. If you wish to discontinue receiving marketing and/or non-transactional e-mails from us, you may do so in the "My Account" section of our website or using an «unsubscribe» link in any email or the Veeam unsubscribe page. We would like to emphasize that this provision does not apply to transactional emails related to users’ business relationship with Veeam.

In the event you choose not to provide certain personal information, we may not be able to respond completely or adequately to your questions, provide updates, and/or information about our products and services. You can always "opt out" of receiving certain communications at any time by updating your subscription preferences page, click the «unsubscribe» link in any email, or visit the Veeam unsubscribe page. We will however continue to use your Personal Information for the limited purpose of sending you important notices relating to information about your purchases and changes to our policies and agreements, or for other reasons permitted by applicable law.

Data Security

Veeam takes the security of Personal Information seriously. To protect your Personal Information that you have provided us against accidental or unlawful destruction, loss or alteration, Veeam uses technical and organizational security measures to prevent any unauthorized disclosure or access.

Data Security Breach

Veeam has implemented strict security controls, intrusion detection software and processes to alert us in the case of a potential or actual intrusion of our information systems. Veeam has a Data Breach Notification Policy and an established Incident Response Team that will react immediately and execute a Remediation Plan in response to any unauthorized access to our information systems or databases. If any data security breach occurs and it may impact your Personal Information, you will be notified as soon as possible once the breach has been determined.

Collection and Use of Non-Personal Information

When you access www.veeam.com (or other Veeam websites), we may automatically collect non-Personal Information even if you don't register. For example, this information may include the operating system used, the domain name of the website that directed you to our website, the number of visits, average time spent on a page and what pages you viewed. We may use this data and share it with our worldwide affiliates to monitor the content and relevancy of the content on our websites to improve the performance, content or your experience on our websites.

Through your use of services to access our website, your communications data (for example, Internet Protocol Address, or IP Address) or utilization data (information on the telecommunications services you accessed) may be technically generated and could, depending on the applicable law, constitute Personal Information. To the extent it is a necessity, the collection and processing of your communications or utilization data, and the subsequent use of such data will only occur and be performed in accordance with the applicable data privacy protection framework and laws.
Forums, Blogs, Third Party Websites and Links

Veeam is only responsible for privacy practices of Veeam and its websites. Veeam's website may contain links to other websites for additional information and convenience. Veeam does not control those other websites, endorse or make any representation about other websites, and is not responsible for the privacy practices of those other websites. Some of Veeam's websites contain interactive elements such as discussion forums and blogs that allow users to publish their own content. Any information posted on these blogs and forums becomes public, which means it could be read, collected or used by other users in any manner. Veeam is not responsible for any Personal Information you choose to submit in forums.

Consent to Transfer, Process, and Store Personal Information

Veeam is a global organization so the information you provide to Veeam may be transferred or accessed by Veeam corporate entities in Switzerland and other countries around the world, each of which are responsible for the Personal Information which it collects and protects your Personal Information in accordance with this Privacy Policy. Personal Information of individuals who reside in a member state of the European Economic Area and Switzerland is controlled by Veeam Software Corporation AG. Veeam uses approved Model Contractual Clauses for the international transfer of personal information collected in the European Economic Area and Switzerland. Veeam abides by the Asia-Pacific Economic Cooperation (APEC) Cross Border Privacy Rules System. The APEC CBPR system provides a framework for organizations to ensure protection of personal information transferred among participating APEC economies.

Career Page and Apply for a Job with Veeam

If you browse or apply for a job in the careers portion of our website, your application and any additional information that you provide may be used to assess your skills and interests against career opportunities at Veeam. Veeam may retain this information for reporting purposes that may be required by applicable law.

Right to be Forgotten

Veeam is committed to taking reasonable steps to ensure that any Personal Information requests to be forgotten can be erased with our existing technology will be done so in a reasonable time of the request. However, this doesn't apply to information that you have made public by posting on our forums, blogs, or have made available to third parties yourself, this is beyond the reach of what Veeam can erase. Veeam will do everything possible to erase your Personal Information if you withdraw your consent (opt out) from receiving information for us and request the right to be forgotten. However, Veeam will not be able to erase all of your Personal Information if it is technically impossible due to limitations to existing technology, or for legal reasons (Veeam is mandated by local law to keep the Personal Information).
Children’s Privacy

Veeam will not knowingly collect Personal Information from any person that is not a legal adult, as defined by local law, without insisting that they seek prior parental consent, if such consent is required by applicable law. Veeam does not target children in connection with its products, services, and websites. In the event Veeam uses or discloses Personal Information of a person that is not a legal adult, Veeam will seek parental consent pursuant to local laws and regulations in order to protect the person that is not a legal adult.

Changes to this Privacy Policy

As a technology company, our systems will mature and change as will this Data Privacy Policy. Non-material Changes to this Data Privacy Policy with the most recent revision date will be posted at www.veeam.com. We will take the steps to notify you of the material changes to this Data Privacy Policy by posting the changes here or contacting you by e-mail.

Questions

Veeam is committed to responding to reasonable requests to review any of your Personal Information we may have and to amend, correct, or delete any inaccuracies. To have your information amended, corrected, or deleted, or if you have any questions that weren’t answered in this Data Privacy Policy, you can contact us at Veeam Software Group GmbH, Linden Park Lindenstrasse 16 Baar, CH-6340 or email us at privacy@veeam.com.
Veeam Customer Support Policy

Switzerland, Linden Park
Lindenstrasse 16, 6340 Baar
Phone: +41417667131
Technical Support Phone: +41225331149

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Veeam Customer Support Policy

Initial Response SLA Matrix

<table>
<thead>
<tr>
<th>Severity</th>
<th>Premier</th>
<th>Production</th>
<th>Basic</th>
<th>Evaluation</th>
<th>Free/NFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>30 minutes</td>
<td>1 hour</td>
<td>2 business hours</td>
<td>Best effort to provide 2 business hours</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Severity 2</td>
<td>30 minutes</td>
<td>3 hours</td>
<td>8 business hours</td>
<td>8 business hours</td>
<td>Best effort</td>
</tr>
<tr>
<td>Severity 3</td>
<td>30 minutes</td>
<td>6 hours</td>
<td>12 business hours</td>
<td>12 business hours</td>
<td>Best effort</td>
</tr>
<tr>
<td>Severity 4</td>
<td>30 minutes</td>
<td>8 hours</td>
<td>24 business hours</td>
<td>24 business hours</td>
<td>Best effort</td>
</tr>
</tbody>
</table>

Business Hours

Business hours are defined as follows during Customer local business days.

<table>
<thead>
<tr>
<th>Support program</th>
<th>Business hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evaluation</td>
<td>Mon – Fri 8 am – 5 pm</td>
</tr>
<tr>
<td>Basic</td>
<td>Mon – Fri 8 am – 8 pm</td>
</tr>
<tr>
<td>Production</td>
<td>24x7x365</td>
</tr>
<tr>
<td>Premier</td>
<td>Support available: 24x7x365</td>
</tr>
<tr>
<td></td>
<td>Support Account Manager</td>
</tr>
</tbody>
</table>

Support of FREE/NFR licensed products is provided on a best-effort basis.

Supported Languages

Veeam is pleased to offer first-level technical support services in the following languages for Veeam Backup & Replication and in English only for all other products during normal business hours (8 a.m. to 6 p.m. (customer local time)).

<table>
<thead>
<tr>
<th>Region</th>
<th>Languages</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>English, Spanish</td>
</tr>
<tr>
<td>Canada</td>
<td>English, French</td>
</tr>
<tr>
<td>Europe, Middle East, Africa</td>
<td>English, German, French, Russian, Spanish, Italian</td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>English, Japanese, Chinese (Mandarin)</td>
</tr>
<tr>
<td>Latin America</td>
<td>English, Spanish, Portuguese</td>
</tr>
</tbody>
</table>

After customer business hours, all first-level support is in English only. Regardless of first level supported languages and support programs, all second and third-level support is offered in English only.
## Overview

This policy details our support services, contact information and best practices for contacting support to ensure quick responses and issue resolution. Here are quick links:

- **Supported languages**
- **Support programs**
- **Severity definitions and response time SLA**
- **Contacting Customer Support**
- **Product lifecycle**
- **Contacts**

The Veeam website ([www.veeam.com](http://www.veeam.com)) provides a wealth of information at your fingertips. Refer to the following online resources before you contact Veeam Customer Support.

### Community Forums

Exchange information with other Veeam customers and team behind the product; contains product-specific conferences.

Maintained and moderated by product management team. By registering you will receive our Weekly Community Digest, which contains notifications of new patches. Available at no additional charge.

### Support Portal

- [my.veeam.com](http://my.veeam.com)

Please log in to our Customer Center support portal to:

- Manage your support cases.
- Request "one click update".
- Attach logs to existing cases
- Obtain product downloads and patches.
- Manage your license.
- Note: you must be case administrators, partner administrators and license administrators to submit support cases.

### Knowledge Base

Browse how to articles and search for solutions to common questions at [www.veeam.com/kb_search_results.html](http://www.veeam.com/kb_search_results.html)

### Documentation

Review and download the latest product documentation online [www.veeam.com/documentation-guides-datasheets.html](http://www.veeam.com/documentation-guides-datasheets.html)

In addition to the above, Veeam has voice-enabled services. By using or accessing the voice-enabled services, you consent to Veeam recording and collecting your voice input. If you do not consent to Veeam recording and collecting your voice input, you may not use the voice-enabled services. The voice input will be used to provide the voice-enabled services to you and improve Veeam products and services. Veeam won't use your voice input for any other purpose. Your privacy is important to us. Please read Veeam privacy policy statement ([www.veeam.com/privacy_policy.html](http://www.veeam.com/privacy_policy.html)) to learn how we use and protect your information.
Supported languages

Veeam is pleased to offer first-level technical support services in the following languages for Veeam Backup & Replication and in English only for all other products during normal business hours (8 a.m. to 6 p.m. (customer local time)).

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</tr>
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<td>Europe, Middle East, Africa</td>
<td>English, German, French, Russian, Spanish, Italian</td>
</tr>
<tr>
<td>Asia Pacific</td>
<td>English, Japanese, Chinese (Mandarin)</td>
</tr>
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<td>Latin America</td>
<td>English, Spanish, Portuguese</td>
</tr>
</tbody>
</table>

After customer business hours, all first-level support is in English only. Regardless of first level supported languages and support programs, all second and third-level support is offered in English only.

Support programs

All customers with maintenance agreement in effect, regardless of their program, are entitled to contact support via web or phone 24x7x365 and open a case.

We offer three support response programs (Premier, Production and Basic) to our customers and one program (Evaluation) for 30 days if you are evaluating our software.

<table>
<thead>
<tr>
<th>Support Program</th>
<th>Product</th>
<th>Product</th>
<th>Business Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premier Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Phone/web/SAM</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>24x7x365</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mon—Fri 8.am—8.p.m</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Support Account Manager</td>
</tr>
<tr>
<td>Production Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Phone/web</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>24x7x365</td>
</tr>
<tr>
<td>Basic Support</td>
<td>Yes</td>
<td>Yes</td>
<td>Phone/web</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mon—Fri 8.am—8.p.m</td>
</tr>
<tr>
<td>Evaluation Support</td>
<td>No</td>
<td>No</td>
<td>Phone/web</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mon—Fri 8.am—5.p.m</td>
</tr>
<tr>
<td>Community, Free and NFR licensed products</td>
<td>No</td>
<td>No</td>
<td>Web</td>
</tr>
</tbody>
</table>
Severity definitions and response time SLA

Severity level guidelines

Severity levels provide an indication of the urgency of an issue, and help us provide a rapid and effective response. Categorizing severity levels incorrectly hinders the overall case-handling process, and can adversely affect you. When you report an issue, you and the Veeam Support Engineer should discuss and agree upon an appropriate severity level. You have the option to change the severity level of an issue as business conditions change around the impact.

Response goals are intended to provide a target for initial response to an issue or query. We will work a Severity 1 issue around the clock for Basic, Production and Premier Support if you have a technical resource available to work with us until:

- A resolution or workaround is in place and business impact has been mitigated.
- The severity is mutually downgraded.

<table>
<thead>
<tr>
<th>Severity</th>
<th>Premier</th>
<th>Production</th>
<th>Basic</th>
<th>Evaluation</th>
<th>Free/NFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>30 minutes</td>
<td>1 hour</td>
<td>2 business hours</td>
<td>Best effort to provide 2 business hours</td>
<td>Best effort</td>
</tr>
<tr>
<td>Severity 2</td>
<td>30 minutes</td>
<td>3 hours</td>
<td>8 business hours</td>
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<tr>
<td>Severity 3</td>
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<td>24 business hours</td>
<td>24 business hours</td>
<td>Best effort</td>
</tr>
</tbody>
</table>

Severity level descriptions

Severity 1
A business critical software component, or a Veeam managed system is inoperable or unavailable; production system is down; or there is an emergency condition. Requires an immediate workaround or solution. Examples: Excessive abnormal terminations impacting all monitoring, backups and schedules or a down/ offline production system cannot be restored; application or system failure caused by Veeam product.

Severity 2
Adversely impacting Production operations, but the production system is not down; product operates, but is seriously restricted. Examples: Production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.

Severity 3
A non-production issue; the majority of functions are still usable, a limited condition that can be readily circumvented. Example: non-production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.

Severity 4
Minor issue or question that does not affect the product function, and can be readily circumvented. For example: "How to" questions; the text of a message, or page of documentation is worded poorly or misspelled, General Feedback.

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Contacting Customer Support

If at any point you have concerns or would like Management oversight regarding your Veeam Support Experience, you can escalate the issue directly to Support Management using the Talk to a Manager link from the Case Portal.

Case Management

Your organization will need to designate a few case administrators who are responsible for opening cases with Veeam, and receiving maintenance information. They should have the appropriate technical skills and system-level access to work with Veeam Support Engineers in resolving open issues. These support contacts will be your interface to Veeam Support, and should be notified of all issues that surface within your organization. They will escalate issues to Veeam Support as necessary. Be prepared to provide the following information:

- Your name, company name, and Support ID
- Case number (if applicable)
- Product name, release level, and any maintenance applied to the product

Submitting a support case

Only case administrators, partner administrators, and license administrators are able to submit support cases. Please make sure to define valid case administrators for your Veeam licenses. For further information on managing your case administrators, see the user guide here. For quicker support, please have your valid Support ID, if calling to open a support case.

Any information you can provide regarding the issue you are experiencing could have a significant impact on how fast the issue is diagnosed and resolved. You will be asked to provide the following information:

- Issue description, impact on your system and business operations, issue severity, and the exact text of error messages and diagnostic details.
- Steps to reproduce the problem, known workarounds
- Contact number where you can be reached
- Best time to reach you, and contact method (i.e. email/phone)

To file a case, you may use any method below. We encourage you to set the initial severity level for the problem when submitting a case, and highly recommend submitting Severity 1 issues by phone.

Via the web

Only the license administrator or designated case administrators can file a case using a web browser in the Customer Center: support.veeam.com. Please follow the new case wizard to open a case. Upon submitting the case, you will receive an electronic confirmation with a unique case number sent to your email address. You will also be able to see the case in the open cases management tab.

Via the phone

To open a case using the phone, you will need to have your Support ID. Call one of the phone numbers mentioned in Contacts below. After you log the case with the Veeam Support Engineer, your case will be assigned a unique number given to you over the phone.

If the issue you have reported requires collecting and analyzing diagnostic information, the Veeam Support Engineer may request such information from you or collect it during a brief remote session. While the Veeam Support Engineer will attempt to gather as much detail as possible, they will not investigate the log files online. To make log analysis efficient, we use log parsing tools and other resources available only internally. Once the Veeam Support Engineer receives the required diagnostic information, they will investigate it offline and get back to you.
Premier Support Customers

Contact your SAM who will assign a ticket to the most appropriate Senior Support Engineer. We start issue analysis within 30 minutes after a call/ticket is logged. Your dedicated Support Account Manager is available to you during your local business hours and will act as the direct point of contact for the coordination of issue management and problem resolution.

United States Federal Government support

As a US Federal Government agency, Veeam Support will assist you to determine the problem and solution utilizing the methods described above. US based Federal Support is available Monday through Friday 8 a.m.—9 p.m. EST, Saturday 12 p.m.—12 a.m. EST, and Sunday 12 p.m.—8 p.m. EST (weekend support for Production SLA or Severity 1 cases only). To contact Veeam Support at any time, call our US Federal Government phone number listed in the phone number section below. Further information pertaining to our solutions for US Federal Government can be found at www.veeam.com/federal.html.

Customer Support issue resolution

A Veeam Support Engineer will contact you by phone and/or email or a combination of both as appropriate during the resolution process. Severity levels may be adjusted with customer consent and mutual agreement on the degree of the impact based on the Severity definitions.

Veeam Support provides trained resources to research and resolve issues on a timely basis. While an issue is open, the support team will keep you informed of the resolution status, and will notify you when a reported issue has been resolved. If at any point during the resolution process, you become dissatisfied with the handling of your issue, simply contact the case owner and request an escalation to the manager. This allows us to understand your concerns and make adjustments in resources if necessary.

We will make three attempts, on separate business days, to contact you for updates or information on an open case. If we are unable to make contact with you, we may close the case without your consent. If the issue continues to exist, you may open a new case and reference the old one.

Resolution of a support case can include any of the following actions:

- Software that provides a fix for the problem (case closed)
- Permanent business or system workaround (case closed)
- Temporary business or system workaround (case severity level is reduced)
- Action plan for the development of a fix or workaround: Milestones and dependencies are set, communicated, and tracked (case severity level might be changed)
- Issue is a customer-specific customization or enhancement, and is not covered under maintenance (customer notification, case closed)
- Customer may be required to upgrade if fix is included in the current GA release
Beyond the scope of Veeam Support's responsibility

• It is beyond the scope of Veeam Support's responsibility to provide installation, configuration, and upgrades of our products. Walkthroughs of installations and upgrades are not supported.
• Veeam Support does not write scripts on demand. Custom script troubleshooting is not supported.

Third-party software support

We will assist you in problem analysis to determine whether the issue is caused by third-party software or hardware. In order to isolate the problem, and if we believe we have reason, we may ask you to remove third-party software or hardware product.

If it is impossible to identify the cause of the problem we may contact the third-party vendor using TSANet or ask you to open support case with the third-party vendor support organization.

Feature requests

Veeam always welcomes feature requests, as we highly value feedback from our community on how to continue to make our products even better. If you have a suggestion for our software’s functionality or feature set, please visit our Veeam Community Forums and create a topic describing your request or create a case with our Support Team and describe the desired behavior and a use case, and the Veeam Support Engineer will submit a Feature Request on your behalf.

Customer satisfaction surveys

We periodically survey customers to obtain additional feedback on recent experiences with Veeam Customer Support, and the survey results are reviewed by management. When a support case is closed, an email may be sent to the customer contact associated with the case.

Product lifecycle

Level of support services provided depends on the lifecycle phase determined for specific version of the product. Current versions of the products are eligible for full support that includes support services and updates/fixes, while support for older versions may be limited. A list of known workarounds or existing fixes and assistance with upgrading to a supported version is available for customers using old or discontinued versions.

The list is updated each time there is a release. For the current list of products and their status please see the product release matrix located at www.veeam.com/support/releasestatus.pdf

Previous versions support

• New Releases — All new products issued for General Availability (GA).
• Current Releases — To maximize the quality of our service, Veeam limits technical support to the products listed on the release matrix.
• Releases designated as End of Fixes — Support is available, existing program fixes are available, but no new fixes will be created and no enhancements will be made.
• Releases designated as End of Support or Withdrawal from the Market — No support is available.
• For unsupported releases, new product enhancements and fixes will not be available. Veeam does not have an obligation to provide support for software that has been publicly designated End of Support, Withdrawn from the Market, or similarly designated.
Product maintenance

Our goal is to go beyond quickly solving problems, and actually prevent similar problems from occurring in future in the first place.

As a result, stringent quality control procedures are built into the development and release cycle of new products and releases. A typical product goes through multiple test phases — Quality Assurance, Alpha Test, Beta Test, and Controlled Release before it is made generally available.

Issues sometimes occur with complex software operating in equally complex and demanding environments. Fixes and resolutions are often rolled into the next product release, and others are included as part of the next maintenance release, and most urgent are addressed with a hotfix that can be applied on specific product version. Please note that access to hotfixes, patches and updates requires active maintenance contract. Users of Community, Free and NFR licensed products receive fixes by downloading periodic generally available product releases. When applicable, we announce the availability of new releases on the web and through email.

Contacts

Web support page
www.veeam.com/support.html

Veeam Licensing Policy
https://www.veeam.com/licensing-policy.html

Phone numbers

<table>
<thead>
<tr>
<th>Region</th>
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</thead>
<tbody>
<tr>
<td>North America</td>
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<tr>
<td>Canada</td>
<td>+1 647 694 0922</td>
</tr>
<tr>
<td>United States</td>
<td>+1 614 339 82 52</td>
</tr>
<tr>
<td>United States Federal Government</td>
<td>+1 240 399 50 82</td>
</tr>
<tr>
<td>United States Toll-Free</td>
<td>1 800 973 1940</td>
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<td>United States Toll-Free</td>
<td>1 800 774 5124</td>
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<tr>
<td>Belgium</td>
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<td>0 800 000 9562</td>
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<td>Israel</td>
<td>+972 2 372 4351</td>
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<td>Saudi Arabia Toll-Free</td>
<td>800 814 6659</td>
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<td>South Africa</td>
<td>+27 11 062 3011</td>
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<td>UAE Toll-Free</td>
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<tr>
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<td>+61 2 6108 4305</td>
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<td>Australia</td>
<td>+61 2 8014 4545</td>
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<td>Country</td>
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<tr>
<td><strong>Czech Republic Toll-Free</strong></td>
<td>800 022 924</td>
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<tr>
<td><strong>Denmark</strong></td>
<td>+45 78 77 54 76</td>
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<tr>
<td><strong>France</strong></td>
<td>+33 1 70 61 83 74</td>
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<tr>
<td><strong>Germany</strong></td>
<td>+49 89 2109 4962</td>
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<td><strong>Ireland Toll-Free</strong></td>
<td>1 800 818 910</td>
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<td><strong>Israel</strong></td>
<td>+972 2 372 4351</td>
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<td><strong>Italy</strong></td>
<td>+39 042 5047505</td>
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<tr>
<td><strong>Netherlands</strong></td>
<td>+31 8 58880655</td>
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<td><strong>Norway</strong></td>
<td>+47 854 04 385</td>
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<td><strong>Poland</strong></td>
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<tr>
<td><strong>Russia</strong></td>
<td>+7 495 646 77 06</td>
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<tr>
<td><strong>Spain</strong></td>
<td>+34 911 829 760</td>
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<td><strong>Switzerland</strong></td>
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<td><strong>Turkey</strong></td>
<td>+90 212 975 01 75</td>
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<td><strong>UK Toll-Free</strong></td>
<td>0 800 051 89 36</td>
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<tr>
<td><strong>Argentina</strong></td>
<td>+54 11 5984 2088</td>
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<td><strong>Brazil</strong></td>
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<td><strong>Mexico</strong></td>
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<tr>
<td><strong>Peru Toll-Free</strong></td>
<td>0 800 70 008</td>
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EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Veriato ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 5901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in making its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

   l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the
Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) Renewals. All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) Future Fees or Penalties. All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) Taxes. Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) Third Party Terms. When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) Dispute Resolution and Standing. Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) Advertisements and Endorsements. Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) Public Access to Information. EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) Confidentiality. Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

u) Alternate Dispute Resolution. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) Ownership of Derivative Works. Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

1. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRECIELIST INFORMATION AND TERMS

VERIATO LICENSE, WARRANTY AND SUPPORT TERMS

Details of the software licensed and Maintenance (defined below) should be provided on an order. Usage rights and other terms are defined in Exhibit A – Product Guides. The software, updates, documentation, and license serial number (Software) provided under an order, are licensed and are not sold.
1. **TRIAL LICENSE.** If the Software is provided without the payment of a license fee, then it is provided under a trial license. Veriato grants Ordering Activity a non-exclusive term license to operate the Software for the sole purposes of deciding whether it wants to purchase a license. The Software is provided AS IS, with no warranty during this time period.

2. **LICENSE GRANT.** Subject to the other terms of this agreement, Veriato grants Ordering Activity, under an order, a non-exclusive and non-transferable perpetual license up to the license capacity purchased to: operate the Software in its business operations and make one copy of the Software for archival and backup purposes.

3. **RESTRICTIONS AND OWNERSHIP.** Ordering Activity cannot:
   - sublicense, rent or lease the Software or use it as a service provider or as part of a service;
   - reverse engineer (except to the extent expressly permitted by applicable law despite this limitation), decompile, or disassemble the Software; or
   - copy any features, functions or graphics of the Software to develop a competitive product.
   - Utilize the software for the purposes of competitive analysis or for any other purpose outside of Ordering Activity’s normal business operations.

Ordering Activity is entitled only to those rights as are expressly granted by this agreement. Veriato retains all ownership and intellectual property rights in and to the Software.

4. **RESERVED.**

5. **RESERVED.**

6. **WARRANTY DISCLAIMER.** THE SOFTWARE IS PROVIDED ‘AS IS.’ VERIATO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. **RESERVED.**

8. **RESERVED.**

9. **ANNUAL MAINTENANCE.** If Ordering Activity purchases the Software technical support and update service for a fee (Maintenance), then the following will apply. Details on the Maintenance programs are located [http://www.Veriato.com/support/ FOR INFORMATIONAL PURPOSES ONLY](http://www.Veriato.com/support/)

10. **RESERVED.**

11. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227-19, as applicable. manufacturer is: Veriato Corporation, 1555 Indian River Blvd., Building B-210, Vero Beach, FL 32960.

12. **RESERVED.**

13. **EXPORT LAWS.** Ordering Activity agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Software or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.

14. **RESERVED.**

**Exhibit A - Product Guide**

This Product Guide states the usage rights and other terms associated with each Veriato product that Ordering Activity has purchased (the "Product Terms"). Here is how you find the Product Terms for Ordering Activity’s products:

1. Determine the License Duration. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. The License Duration will either be:
   - Perpetual
   - Term
   - Subscription

For more information about License Duration, see the License Duration table below.

2. Determine the License Category. It can be found in the Description field on the Quote, Order Form, or other Agreement. For Online Purchases, the license type is found in the Product Name. An example is Spector360 Per Monitored End Point. The License Category is Monitored End Point.

For more information about License Category, see the License Category table below.
### License Duration Table

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<th>License Duration</th>
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<tr>
<td>Perpetual</td>
<td>The license will never expire. The Product can be upgraded to the latest version within the active maintenance period.</td>
</tr>
<tr>
<td>Term</td>
<td>The license is granted for a fixed period of time and may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service. When the license expires at the end of the time period, recording will cease unless a new license is applied.</td>
</tr>
<tr>
<td>Subscription</td>
<td>The license is granted for a fixed period of time. When the license expires at the end of the time period, the product will cease to operate, and access to data or reporting will no longer be available.</td>
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### License Category Table

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<tr>
<th>License Category</th>
<th>Description</th>
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<td>Monitored End Point</td>
<td>Each computer or device to be monitored. These licenses may not be moved from computer to computer except in cases where a currently licensed computer or device is taken out of service.</td>
</tr>
<tr>
<td>Session Host</td>
<td>Each server or machine hosting thin client computing sessions and/or virtual desktops (for example, by using Citrix, Microsoft, VMware or similar visualization software products or service) to be monitored. These licenses may not be moved from Session Host to Session Host, except in cases where the initially licensed Session Host is taken out of service.</td>
</tr>
<tr>
<td>Node</td>
<td>Each unique IP address and/or hostname that is monitored, scanned, or otherwise managed by the Software.</td>
</tr>
<tr>
<td>Host</td>
<td>Each server or desktop computer that has an instance of the Software installed on it.</td>
</tr>
<tr>
<td>Floating</td>
<td>Once client software has been installed on a computer, the license may be transferred to another computer, as long as the total count of licenses for client computers does not exceed the number of floating licenses purchased.</td>
</tr>
<tr>
<td>Device</td>
<td>Each PC, Mac, Tablet, or Smartphone the Software is installed on. These licenses may not be moved from Device to Device, except in cases where the device is taken out of service.</td>
</tr>
</tbody>
</table>

Ordering Activity is hereby notified that the Software may collect certain information from the Ordering Activity and transmit such information back to Veriato. Such information may include, without limitation, statistics relating to how often the Software and tools are started and completed, the duration of use of the Software, performance metrics relating to the Software, and Software configuration settings.
In addition, Ordering Activity is hereby notified that (1) the Software may require a registration process whereby machine specific identifiers (that have been encrypted and are unique but anonymous) such as the username and email address for the user are transmitted to Veriato’s licensing server to allow Veriato to generate a unique key that is bound to the specific computer on which the Software may be used, (2) the Software may communicate with Veriato’s servers and allow Ordering Activity to download updates when they are available, (3) the Software may provide a ‘Feedback’ facility that allows Ordering Activity to send suggestions and ideas for improving the Software (“Feedback”), (4) the Software may include a mechanism to transmit information to Veriato regarding unhandled exceptions, and (5) the Software may make connections to Veriato servers to verify license validity.
This Master License Agreement (“Agreement”) is entered into by and between Veritas Technologies LLC, a Delaware corporation, and the undersigned Ordering Activity under GSA Schedule contracts identified above (“Customer” or “Ordering Activity” or “End User”). This Agreement consists of these terms and conditions (“Master Terms”) and any Addenda executed under these Master Terms. This Agreement applies to the Veritas software products available for purchase through the applicable GSA Schedule 70 contract from an authorized Veritas reseller, and any mention in the Agreement of “Professional Services” or other services available for additional fees does not add such services to the reseller’s GSA Schedule contract.

Customer and Veritas agree as follows:

1. **Definitions.** All capitalized terms may be used in the singular or in the plural, as the context requires.
   a. “Addendum” to this Agreement means any addendum, including its exhibits or attachments, executed between the parties from time to time, which references this Agreement and supplements or modifies these Master Terms.
   c. “Certificate” means the machine-generated certificate sent to Customer by Veritas to confirm a purchase of the applicable Licensed Software and/or Maintenance/Support and/or (at Veritas’ discretion) certain Services.
   d. “Customer” means the end user licensee named above.
   e. “Documentation” means the user manuals and release notes accompanying the Licensed Software.
   F. **RESERVED.**
   g. “EULA” means Veritas’ end user license agreement accompanying the Licensed Software. The only portion of the EULA that shall apply to the Licensed Software is the authorized Use Level set forth therein, including the Product Use Rights Supplement. “Product Use Rights Supplement” means the document which provides usage rights, restrictions and terms specific to the Licensed Software. Such Product Use Rights Supplement is incorporated into the EULA. For the avoidance of doubt, if an Ordering Activity places its order for Licensed Software, then such Ordering Activity, upon request, will be provided with the Product Use Rights Supplement of the applicable EULA for review at the time it places an order.
h. “Licensed Software” means the Veritas software products in object code form, that are commercially available on Veritas’ applicable in-country price list in effect at the time of Customer’s order, and any software updates provided under Maintenance/Support.

i. “Maintenance/Support” means the commercially available Veritas maintenance/technical support services ordered by Customer for the Licensed Software, provided pursuant to Veritas’ then-current maintenance/support policies and processes.

j. “MSRP” means Veritas’ then-current in-country suggested list price in effect at the time of Customer’s order.

k. “Ordering Activity” means a government entity authorized to purchase under the applicable General Services Administration federal supply schedule at the time an order is placed.

l. “Professional Services” means Veritas’ commercially-available professional services offerings, subject to the additional terms and conditions of the Professional Services Terms Addendum in Attachment 1.

m. “Services” means collectively, Professional Services and Business Critical Services.

n. “Subscription Software” means Licensed Software licensed on a non-perpetual (term-limited) basis, as set forth in the applicable Addendum or Certificate.

o. “Veritas” means the licensor entity named above.

p. “Territory” means the geographic area in which Customer is authorized to purchase, install and use the Licensed Software. For purposes of this Agreement, Customer’s Territory is: the United States or any U.S. Government installation sites world-wide.

q. “Use Level” means the license unit of measurement or model, including operating system or machine tier limitation, if applicable, by which Veritas measures, prices and sells the right to use a given Licensed Software.
product, in effect at the time an order is placed, as indicated in the applicable Addendum, Certificate or EULA, in that order of precedence.

1. LICENSE GRANT.
1.1 Veritas grants Customer, a non-exclusive, non-transferable license in the Territory to use (and to allow Customer’s Ordering Activities to use) the Licensed Software in accordance with the Documentation, solely in support of Customer’s and Ordering Activities internal business operations, in the quantities and at the Use Levels purchased from Veritas. The term of each Licensed Software license granted under this Agreement shall be perpetual, except for Subscription Software, for which Customer purchases a term-limited license as set forth in an applicable Addendum or Certificate. For archival purposes, Customer may make a single uninstalled copy of the Licensed Software and Documentation. All copies made pursuant to this section shall be complete copies, and shall include all copyright, trademark, and other notices in the original. Customer may not otherwise copy the Licensed Software or Documentation without Veritas’ prior written consent.

Customer or Ordering Activities may allow consultant(s) or outsourcer(s) to use Customer’s Licensed Software licenses to deliver dedicated services to Customer or to an Ordering Activity, so long as such use is consistent with Customer’s own permitted scope of use, and is compliant with the terms of this Agreement. Customer and Ordering Activity agree that each is responsible for such third party access and use of the Licensed Software, to the same extent as if such consultant(s), outsourcer(s) or were Customer’s employees.

Veritas retains all title, copyright and other proprietary rights in the Licensed Software and Documentation, and in all copies, improvements, enhancements, modifications and derivative works thereof, including without limitation all patent, copyright, trade secret and trademark rights. Customer’s rights to use the Licensed Software and Documentation shall be limited to those expressly granted in this Agreement and the applicable Addendum. All rights not expressly granted to Customer are retained by Veritas.

2. License Restrictions. Customer shall not, without Veritas’s prior written consent, conduct, cause or permit the: (a) use, copying, modification, rental, lease, sublease, sublicense, or transfer of the Licensed Software or Documentation, except as expressly provided in this Agreement; (b) creation of any derivative works based on the Licensed Software or Documentation; (c) reverse engineering, disassembly, or decompiling of the Licensed
Software (except that Customer may decompile the Licensed Software for the purposes of interoperability only to the extent permitted by and subject to strict compliance under applicable law); (d) use of the Licensed Software or Documentation in connection with a service bureau or like activity whereby Customer, without purchasing a service bureau license from Veritas, operates or uses the Licensed Software or Documentation for the benefit of a third party; or (e) use of the Licensed Software or Documentation by any party other than Customer. In addition, Customer shall only use the number and type of Licensed Software licenses for which it has purchased an appropriate quantity and Use Level.

3. **Orders.** Customer may acquire copies of the Licensed Software, Maintenance/Support, Professional Services, and/or Business Critical Services by submitting a Purchase Order to Veritas or to a Veritas Authorized Reseller.

4. **Delivery – Orders to Veritas Authorized Reseller.** Customer will place all Orders through its chosen reseller, however, Veritas’ delivery of all items shall be Ex Works (EXW) Veritas’ shipping point – Incoterms ® 2010. For any tangible Veritas products, title passes to Customer when such items are made available to the carrier at Veritas’ shipping point. Veritas shall not be responsible for delivery under terms Customer and a Veritas Authorized Reseller may negotiate.

5. **Maintenance/Support.** Customer may purchase Maintenance/Support for the applicable Licensed Software. Maintenance/Support is provided and performed subject to Veritas’s then-current policies and processes. Veritas may amend its Enterprise Technical Support Policy from time to time in its sole discretion; provided, however, that for a period of one (1) year from the date of the Ordering Activity’s order, Veritas agrees that any such changes shall not significantly degrade the material elements of the Maintenance/Support plan offering provided to Customer. Substantive revisions of such Maintenance/Support policies or processes shall apply to Customer only when Maintenance/Support is renewed. Maintenance/Support terms and conditions are attached.

6. **SERVICES.**
   - **Professional Services.** Customer may purchase Services, which are provided and performed pursuant to the Professional Services Terms Addendum in Attachment 1 and any applicable statement(s) of work.
   - **Business Critical Services.** Customer may purchase such Business Critical Services, which are provided and performed pursuant to Attachment 3.
7. PAYMENT TERMS; TAXES

8.1 Payment Terms – Orders to Veritas Authorized Reseller.
For orders placed with a Veritas Authorized Reseller, payment shall be in accordance with the terms and conditions negotiated between the Veritas Authorized Reseller and the Customer.

8.2 Taxes.
Taxes will not apply to charges for products or services directly paid for by the Federal Government, if such exemption is allowed by the tax jurisdiction in which the products or services are delivered.

8. WARRANTIES.
8.1 Media. If Veritas provides Customer tangible media for Licensed Software, Veritas warrants that the magnetic media upon which the Licensed Software is recorded will not be defective under normal use, for a period of ninety (90) days from delivery. Veritas will replace any defective media returned to it within the warranty period at no charge to Customer.

8.2 Licensed Software. Veritas warrants that the Licensed Software, as delivered by Veritas and when used in accordance with the Documentation, will substantially conform to the Documentation for a period of ninety (90) days from delivery. If the Licensed Software does not comply with this warranty and such non-compliance is reported by Customer to Veritas within the ninety (90) day warranty period, Veritas will do one of the following, selected at Veritas’s reasonable discretion: either (a) repair the Licensed Software, (b) replace the Licensed Software with software of substantially the same functionality, (c) terminate the license and refund the relevant license fees paid for such non-compliant Licensed Software, or (d) in the case of software updates provided under Maintenance/Support, refund the relevant Maintenance/Support fees. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications or enhancements, or misapplication.

8.3 Maintenance/Support and Business Critical Services. Veritas warrants, for a period of thirty (30) days from the date of performance of Maintenance/Support, that such Maintenance/Support will be performed in a manner consistent with generally accepted industry standards. For Maintenance/Support not performed as warranted in this provision and provided Customer has reported such nonconformance to Veritas within thirty (30) days of performance of such non-conforming
Maintenance/Support, Veritas will, in its reasonable discretion, either correct any nonconforming Maintenance/Support or refund the relevant fees paid for the nonconforming Maintenance/Support.

8.4 Professional Services.
Veritas will provide the Professional Services described in the Statement of Work (“SOW”) in a good and workmanlike manner and in accordance with generally accepted industry standards.

8.5 Disclaimer of Warranties; Exclusive Remedies.
THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, CONCERNING THE LICENSED SOFTWARE AND RELATED MAINTENANCE/SUPPORT. THE REMEDIES SET FORTH ABOVE IN THIS SECTION 9 ARE CUSTOMER’S EXCLUSIVE REMEDY AND VERITAS’S SOLE LIABILITY WITH RESPECT TO THE APPLICABLE EXPRESS WARRANTIES SET FORTH ABOVE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW VERITAS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY OR OTHER WARRANTIES OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THIS AGREEMENT AND ITEMS OR ACTIVITIES CONTEMPLATED HEREUNDER. VERITAS DOES NOT WARRANT THAT THE LICENSED SOFTWARE SHALL MEET CUSTOMER’S REQUIREMENTS OR THAT USE OF THE LICENSED SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE.

9.1 Veritas shall defend, indemnify and hold Customer harmless from any claim asserting that the Licensed Software infringes any intellectual property right of a third party, and shall pay any and all damages finally awarded against the Customer by a court of final appeal, or agreed to in settlement by Veritas and attributable to such claim. Veritas’s obligations under this provision are subject to Customer’s doing the following: notifying Veritas of the claim in writing, as soon as Customer learns of it; providing Veritas all reasonable assistance and information to enable Veritas to perform its duties under this Section. Notwithstanding the foregoing, Customer, through the Attorney General, acting by and through the attorneys of the US Department of Justice, may participate in the defense of any such claim. Customer has the right to approve any settlement that affirmatively places on
Customer an obligation that has a material adverse effect on
Customer other than the obligations to cease using the affected
Licensed Software or to pay sums indemnified hereunder. Such
approval will not be unreasonably withheld. Further, nothing
contained herein shall be construed in derogation of the U.S.
Department of Justice’s right to defend any claim or action brought
against the U.S., pursuant to its jurisdictional statute 28 U.S.C.
§516.

9.2 If the Licensed Software is found to infringe, or if
Veritas determines in its sole opinion that it is likely to be
found to infringe, then Veritas shall either (a) obtain for
Customer the right to continue to use the Licensed Software;
or (b) modify the Licensed Software so as to make such
Licensed Software non-infringing, or replace it with a non-
infringing equivalent substantially comparable in
functionality in which case Customer shall stop using any
infringing version of the Licensed Software, or (if Veritas
determines in its sole opinion that (a) and/or (b) are not
commercially reasonable), (c) terminate Customer’s rights
and Veritas’s obligations under this Agreement with respect
to such Licensed Software, and refund to Customer the
license fee paid for the relevant Licensed Software, and
provide a pro-rated refund of any unused, prepaid
Maintenance/Support fees paid by Customer for the
applicable Licensed Software.

9.3 Notwithstanding the above, Veritas will have no
liability for any infringement claim to the extent that it is
based upon: (a) modification of the Software other than by
Veritas; (b) combination, use, or operation of the Licensed
Software with products not specifically authorized by Veritas
to be combined with the Software as indicated in the
Documentation; (c) use of the Licensed Software other than
in accordance with the Documentation and this Agreement;
or (d) Customer’s continued use of infringing Licensed
Software after Veritas, for no additional charge, supplies or
offers to supply modified or replacement noninfringing
Licensed Software as contemplated under 10.2(b) above.

THIS SECTION 10 STATES CUSTOMER’S SOLE AND
EXCLUSIVE REMEDY AND VERITAS’ SOLE AND
EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR
MISAPPROPRIATION OF ANY INTELLECTUAL
PROPERTY RIGHTS OF A THIRD PARTY.

10. LIMITATION OF LIABILITY. EXCEPT AS LIMITED
BY APPLICABLE LAW, THE FOLLOWING SHALL APPLY
NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL
PURPOSE OF ANY LIMITED REMEDY AND
REGARDLESS OF THE LEGAL BASIS FOR A CLAIM: IN
NO EVENT SHALL EITHER PARTY BE LIABLE TO THE
OTHER PARTY OR TO ANY PERSON
FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

THE FOREGOING SHALL APPLY EVEN IF (SUCH PARTY, ITS RESELLERS, SUPPLIERS OR ITS AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING FROM VERITAS’S OBLIGATIONS UNDER SECTION 10 (INTELLECTUAL PROPERTY CLAIMS), OR LIABILITY ARISING FROM BREACH OF SECTION 12 (CONFIDENTIALITY) OR FROM CUSTOMER’S BREACH OF ITS PERMITTED SCOPE OF AUTHORIZED USE UNDER THIS AGREEMENT, AND REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, EACH PARTY’S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED FOR

THE LICENSED SOFTWARE, MAINTENANCE/SUPPORT SERVICES OR HARDWARE GIVING RISE TO THE CLAIM. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT A PARTY’S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW. This Section 11, “Limitation of Liability”, shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government’s right to EXPRESS remedies provided in the applicable Schedule Contract (i.e. clause 552.238-72 – Price Reductions, clause 52.2124(h)

– Patent Indemnification, Liability for Injury or Damage (Section 3 of the Price List), and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

11. CONFIDENTIALITY.

11.1 “Confidential Information” means the non-public information that is exchanged between the parties, provided that such information is: (a) identified as confidential at the time of disclosure by the disclosing party (“Discloser”), or (b) disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information (“Recipient”). A Recipient may use the Confidential Information that it receives from the other party solely for the purpose of performing activities contemplated under this Agreement (“Purpose”). For a
period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient shall hold the Confidential Information in confidence and not disclose the Confidential Information to any third party. A Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to agents and independent contractors with a need to know in order to fulfill the Purpose who have signed a nondisclosure agreement at least as protective of the Discloser’s rights as this Agreement.

11.2 This provision imposes no obligation upon a Recipient with respect to Confidential Information which:
(a) is or becomes public knowledge through no fault of the Recipient; (b) was in the Recipient’s possession before receipt from the Discloser and was not subject to a duty of confidentiality; (c) is rightfully received by the Recipient without any duty of confidentiality; (d) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (e) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser’s Confidential Information as required by law or court order provided: (i) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure; and (ii) discloses only as much of the Confidential Information as is required. The Recipient’s obligations with respect to the Confidential Information hereunder will survive any termination of the Agreement. Upon request from the Discloser or upon termination of the Agreement the Recipient shall return to the Discloser all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same, except information that qualifies as a “Government Record” under the Federal Records Act (44 USC 3301). Veritas recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by Veritas.

11.3 Each party will retain all right, title and interest to such party’s Confidential Information. Neither party to this Agreement acquires any patent, copyright or other intellectual property rights or any other rights or licenses under this Agreement except the limited right to use for fulfillment of the Purpose, as set forth in section 12.1 above. Nothing in this provision shall be construed to preclude either party from developing, using, marketing,
licensing, and/or selling any product or service that is developed without use of the Confidential Information.

12. **Verification.** Customer or Ordering Activity as appropriate, agrees to keep accurate business records relating to its use and deployment of the Licensed Software. Upon thirty (30) days prior written notice, Customer agrees to provide Veritas written reports related to Customer's use of the Licensed Software to verify Customer's compliance with its obligations under this Agreement. Such report shall include, at a minimum, the product name (including any options, agents and extensions), version number, quantity of each product, and the operating system/platform, hardware model, Host ID and street address location of the Designated Computer on each such copy is installed. In the event that Customer fails to provide reports acceptable to Veritas; once annually, Veritas may verify Customer's compliance with this Agreement by reviewing (upon five (5) business days’ prior written notice) Customer’s use and deployment of the Licensed Software. Either Veritas or an independent public accounting firm reasonably acceptable to both parties shall perform the audit during Customer’s regular business hours with minimal disruption to Customer’s ongoing business operations and adherence to any security measures the Customer deems appropriate, including any requirements under Federal security regulations that may require personnel clearances prior to accessing sensitive information or facilities. Any nondisclosure agreement Customer may require the independent public accounting firm to execute shall not prevent disclosure of the audit results to Veritas. All audits shall be subject to Customer’s reasonable safety and security policies and procedures. In the event unauthorized deployments of Veritas products are disclosed by the audit, Veritas will submit a claim to the contracting officer of the Customer or relevant Ordering Activity.

13. **TERM AND TERMINATION.**

13.1 **Term.** Unless terminated as set forth in the applicable GSA Schedule Contract, these Master Terms shall continue indefinitely, and each Addendum shall continue for the term set forth in such Addendum.

13.2 **Termination.**

1. **Reserved.**

2. **Cause.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Clause (Contract Disputes Act) in accordance with FAR 52.233-1. If Veritas terminates this Agreement for Cause in accordance with FAR 52.233-1, Customer must immediately discontinue use of and destroy all copies of the Licensed Software in its possession or control, including any master copy, and (within ten (10) days of Veritas’ written request) certify in writing to Veritas through a corporate officer that all such copies have been destroyed.

3. **Survival.** The provisions of this Agreement regarding confidentiality, restrictions on use of intellectual property, limitations on liability and disclaimers of warranties and damages, audit, and Customer’s payment obligations accrued prior to termination, shall survive any termination. The license grants for Licensed Software and terms regarding Maintenance/Support purchased prior to termination shall survive such termination.

14. **GENERAL**

14.1 **Governing Law; Severability; Waiver.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States. Such application of law excludes any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement shall remain in full force and effect. A waiver of any breach or default under this Agreement shall not constitute a waiver of any other right for subsequent breach or default.

14.2 **Assignment.** Except with respect to the Licensed Software as set forth in Section 2.2 above, and subject to FAR 42.12 (Novation and Change of Name Agreements and its successor regulations), neither party may assign this Agreement, in whole or in part and whether by operation of contract, law or otherwise, without the other party's prior written consent. Such consent shall not be unreasonably withheld or delayed. For purposes of this provision, a change of control shall constitute an assignment. Notwithstanding the foregoing, either party may, upon written notice to the non-assigning party and in accordance with the provisions of FAR 42.1204, (i) assign this Agreement to a successor in interest...
to all or substantially all of its assets, whether by sale, merger, or otherwise, (ii) assign this Agreement to a parent company; or (iii) assign this Agreement to a wholly-owned subsidiary. All terms and conditions of the Agreement shall be binding upon any assignee hereunder; assignee's acceptance of these terms shall be evidenced by its performance hereunder.

14.3 Export. Veritas products (Licensed Software, hardware, and technology) and Services (collectively, "Veritas Solutions") are subject to U.S. (including, but not limited to, the U.S. Department of Commerce Export Administration Regulations ("EAR") and the U.S. Office of Foreign Assets Control ("OFAC") regulations), European Union, Singapore, and other government export controls and sanctions regimes, and to the import regulations of applicable jurisdictions. Diversion contrary to U.S. or other applicable law of Veritas Solutions is prohibited. Customer agrees to comply with all such applicable export controls and economic sanctions laws and regulations. Customer is prohibited from exporting or re-exporting Veritas Solutions: (i) to any embargoed or sanctioned country or region, including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea Region of Ukraine; (ii) to any party listed on the U.S. Commerce and Treasury Departments lists (e.g., Denied Persons List, Specially Designated Nationals), or other such lists published by the U.S., the European Union, and applicable jurisdictions; (iii) to any country to which such export or re-export is restricted or prohibited, or to which an export license or other governmental approval is required, without first obtaining such license or approval; (iv) to any military entity or to any other entity for any military purpose, nor for use in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons, without first obtaining any required export license or other governmental approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of U.S. or other applicable jurisdictions. For physical products, Customer shall serve as Importer of Record for customs purposes in applicable jurisdictions, and in certain cases, Exporter of Record. More information can be found at: https://www.veritas.com/about/legal/export-compliance.

14.4 Government Rights. This Section applies only to U.S. Government entities. The Veritas Licensed Software and Documentation are deemed to be commercial computer software as defined in FAR 12.212. Any use, modification, reproduction release, performance, display or disclosure of the Veritas Licensed Software or any related Documentation by the U.S. Government shall be solely in accordance with the terms of this Agreement, and all other provisions of this Agreement shall apply to the U.S. Government, except (a) as modified by any addendum agreed to in writing by Veritas and the U.S. Government and (b) that any provisions contrary to federal law shall be read out of this Agreement without impacting the validity and enforceability of its other provisions.

14.5 Entire Agreement. Any subsequent modifications to this Agreement shall be made in writing and must be duly signed by authorized representatives of both parties.
or they shall be void and of no effect. Unless an Ordering Activity and Veritas negotiate alternative terms, this Agreement prevails.

**Order of precedence.** Notwithstanding anything in this Agreement to the contrary, any inconsistencies in this Agreement shall be resolved by giving precedence in the following order:

14.5.1 The schedule of supplies/services.
14.5.2 Reserved.
14.5.3 The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause,
14.5.4 The clause at 52.212-5,
14.5.5 Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements— Unenforceable Clauses provision (i.e., this Agreement),
14.5.6 Solicitation provisions if this is a solicitation.
14.5.7 Other paragraphs of this clause.
14.5.8 Reserved.
14.5.9 Reserved.
14.5.10 Other documents, exhibits, and attachments.
14.5.11 The applicable specification.

14.6 **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

14.7 **Notices.** All notices required to be sent hereunder shall be in writing addressed to the relevant Contracting Officer or to Veritas’s corporate headquarters, with a simultaneous cc: to the attention of Veritas’s Legal Department/General Counsel. Notices shall be effective upon receipt and shall be deemed to have been received as follows: (a) if personally delivered by courier, when delivered; (b) if mailed by first class mail, on the fifth business day after deposit in the mail with the proper address; or (c) if by certified mail, return receipt requested, on the date received.

14.8 **Signatures.** Facsimile signatures and signed facsimile copies of this Agreement, its Addenda, attachments and exhibits shall legally bind the parties to the same extent as originals. This Agreement with its accompanying Addendum/Addenda may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties. The signatories hereto represent that they are duly authorized to sign this Agreement on behalf of their respective companies.
14.9 Subcontractors. Veritas may assign the Service(s) (Maintenance/Support or Business Critical Services) or any part thereof and may additionally subcontract the Agreement and / or Service(s), provided that it remains responsible for any subcontractors performing on its behalf.

Attachment 1 – Professional Services Terms Addendum
Attachment 2 – Hardware Appliance Warranty
Attachment 3 – Business Critical Services
a. **Statements of Work** (a) During the Term (as defined in Section 2 below) Veritas and the undersigned Ordering Activity under GSA Schedule contracts ("Customer" or "Ordering Activity") may agree upon a written statement of work, quote/order form, or certificate under this Addendum ("SOW"), that may include descriptions of services to be performed by Veritas ("Professional Services") and deliverables ("Deliverables") to be provided by Veritas, fees, duration and renewal of the Professional Services, and other responsibilities undertaken by Customer and/or Veritas. Certain Professional Services may require software, hardware and associated documentation to be separately provided by Veritas as part of the Service ("Service Components"). This Addendum will control in the event of any conflict with a SOW, unless otherwise specified in the SOW. However, the SOW may contain terms and conditions specific to the applicable Professional Services ordered which terms will have no effect on other SOWs.

b. **Term; Termination.** "Term" means the applicable effective period of Professional Services under a Purchase Order or SOW and will continue until termination. The Term for any Professional Services provided under this Addendum, which may include an initial set-up period, will be as set forth in the applicable Purchase Order or SOW and may be extended by mutual agreement of the parties. This Addendum and/or a SOW may be terminated in accordance with the terms of the applicable GSA Schedule contract.

c. The Purchase Order issued by the Ordering Activity shall include any additional terms and conditions negotiated between Veritas and the Ordering Activity regarding payment for Professional Services fees, travel and living expenses incurred in the course of performance and reseller fees.

d. **RIGHTS IN DELIVERABLES.**

(a) **Ownership Rights.** Subject to Veritas’s rights in Veritas Information and Veritas Derivative Work as each are defined below, all Deliverables created specifically for and provided to Customer by Veritas under an SOW will, upon final payment, become the property of Customer for Customer’s internal business purposes. Any inventions, designs, intellectual property or other derivative works of Veritas Information, will vest in and be the exclusive property of Veritas ("Veritas Derivative Work"). Any inventions, designs, intellectual property or other derivative works of Customer Information (as defined below) will vest in and be the exclusive property of Customer ("Customer Derivative Work").

(b) **Pre-Existing Work.** Any pre-existing proprietary or Confidential Information of Veritas or its licensors used to perform the Professional Services, or included in any Deliverable, including, but not limited to Service Components, software, appliances, methodologies, code, templates, tools, policies, records, working papers, know-how, data or other intellectual property, written or otherwise, including Derivative Works will remain the exclusive property of Veritas and its licensors (collectively, "Veritas Information"). Any Customer pre-existing information, including but not limited to any Customer proprietary and Confidential Information provided to Veritas by Customer will remain the exclusive property of Customer or its licensors ("Customer Information"). For the purposes of this Addendum, Veritas Information and Customer Information will be deemed Confidential Information.

a. **Retention.** Customer acknowledges that Veritas provides similar services to other customers and that nothing in this Addendum or a SOW will be construed to prevent Veritas from carrying on such business. Customer acknowledges that Veritas may at its sole discretion develop, use, market, distribute and license substantially similar Deliverables. Notwithstanding the preceding sentence, Veritas agrees that it will not market or distribute any Deliverables that include the Confidential Information of Customer.

b. **License Grant.** In consideration of Customer’s payment of applicable Fees, Veritas grants Customer a limited, nonexclusive, non-transferable license, to access and use, in accordance with the SOW and solely for Customer’s internal business purposes: (i) Veritas Information, to the extent such information is necessary to utilize the Professional Services or incorporated into any Deliverable; and (ii) Service Components in the format provided by Veritas, for use on systems under Customer’s control, solely in connection with the Professional Services for which such Service Components are provided.

c. **License Restrictions.** Customer will not act to infringe the intellectual property rights of Veritas or its licensors, including Veritas Information. Other than as expressly permitted under this Addendum or applicable law, Customer will not copy, sublicense, sell, rent, lease or otherwise distribute Veritas Information, or permit either direct or indirect use of Veritas Information by any third party. Customer will not modify, reverse engineer, disassemble, decompile, or create derivative works of Veritas Information, or otherwise attempt to build a competitive product or service using Veritas Information. Notwithstanding the foregoing, the license grant set forth above may be further limited as set forth in any
applicable SOW.
d. In the event that Customer, based on its prime contract with the U.S. Government, requires that data from analysis tasks performed under a SOW be transferable to a specific U.S. Government agency, then Customer shall identify the prime contract number and the U.S. Government Agency in that SOW. Veritas will allow the transfer request to the specified U.S. Government Agency under the prime contract number identified in the SOW. The rights in technical data transferred to the U.S. Government under the prime contract number identified in a SOW are set forth in Section (g) below. This provision will only apply to an Ordering Activity if the parties so state in an applicable SOW with such Ordering Activity.

e. **Government Rights.** The data resulting from analysis tasks performed under an applicable SOW are deemed to be Commercial Items as defined in FAR Part 12 and its successor regulations, subject to restricted rights as defined in DFARS 252.227-7015, “Technical Data – Commercial Items”, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of such data by the U.S. Government agency identified in the applicable SOW shall be solely in accordance with the terms of this Agreement.

E. **INTELLECTUAL PROPERTY INDEMNIFICATION.**

a. To the extent the Addendum includes provisions providing an express intellectual property indemnity for Licensed Software, such provision(s) are supplemented to add the Deliverables to the scope of the parties’ obligations under such indemnification provisions, to the same extent as for such Licensed Software. Where Customer’s use of the Deliverables is terminated pursuant to such provisions, the Deliverables shall be returned to Veritas and Veritas’s sole liability, in addition to its indemnification obligations herein, shall be to refund to Customer the fees paid to Veritas for the relevant Services or portion thereof.

b. In the event that any willful misconduct or grossly negligent act or omission of Veritas or its employees during the performance of Professional Services on Customer’s premises causes or results in the (i) loss, damage to or destruction of physical property of the other Party, and/or (ii) death or injury to any person, then such Party will indemnify, defend and hold the Party harmless from and against any and all resulting claims, damages, liabilities, costs and expenses (including reasonable attorney’s fees), subject to the Limitation of Liability of the Master Agreement, as supplemented below.

c. **Non-Solicitation.** During the Term of any applicable SOW, and for a period of one (1) year thereafter, neither Party will actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of either Party associated with the performance of Professional Services under the applicable SOW without the prior written consent of the other Party. This provision will in no way restrict the right of either Party to solicit generally in the media for required personnel, and will not restrict employees, contractors, or representatives of either Party from pursuing on their own initiative employment opportunities from or with the other Party.

g. **Data Privacy.** For the purpose of providing Professional Services pursuant to this Addendum, Veritas will require Customer to supply certain personal information e.g. business contact names, business telephone numbers, business email addresses. Customer acknowledges that Veritas is a global organization, and such personal information may be accessible on a global basis by Veritas affiliates or Veritas partners and subcontractors, including in countries that may have less protective data protection laws than the country in which Customer is located. By providing such personal information, Customer consents to Veritas using, transferring and processing this information on a global basis for the use described above. For any question regarding the use of personal information, Customer may contact Veritas Technologies LLC - Privacy Lead, 500 East Middlefield Road, Mountain View, CA 94043, U.S.A. Telephone (650) 9331000 Email: privacy@veritas.com.

h. **Miscellaneous.** (a) While on Customer’s premises, Veritas will ensure that its personnel follow all reasonable instructions, as such are provided to Veritas prior to the performance of the Professional Services. (b) Veritas is an independent contractor and will not be deemed an employee or agent of Customer. (c) Veritas has the right to subcontract the performance of the Professional Services to third parties, provided that Veritas remains responsible for the contractual obligations according to this Addendum and any SOW.
Attachment 2
Hardware Appliance Warranty

All Appliance Support is delivered pursuant to the Appliance Support Policy attached hereto as a convenient reference. Veritas may amend its Appliance Support Policy from time to time in its sole discretion; provided, however, that for a period of one (1) year from the date of the Ordering Activity’s order, Veritas agrees that any such changes shall not significantly degrade the material elements of the Appliance Support offering provided to Customer. Substantive revisions of such Appliance Support policies or processes shall apply to Customer only when Appliance Support is renewed.

ATTENTION: PLEASE READ THE TERMS AND CONDITIONS OF THIS HARDWARE WARRANTY AGREEMENT (THE “WARRANTY AGREEMENT”) CAREFULLY BEFORE USING THE HARDWARE. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN THE UNDERSIGNED ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS THAT WILL BE UTILIZING THE HARDWARE (REFERENCED BELOW AS “YOU” OR “YOUR” OR “ORDERING ACTIVITY”) AND VERITAS TECHNOLOGIES LLC AND/OR ITS AFFILIATES (“VERITAS”). BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS WARRANTY AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT OPEN THE HARDWARE PACKAGE AND/OR INDICATE YOUR REFUSAL BY MAKING NO USE OF THE HARDWARE.

• HARDWARE/SOFTWARE. The hardware (“Hardware”) that accompanies this Warranty Agreement is to be used only with the Licensed Software. The term “Hardware” includes any Veritas add-on parts or units, equipment, computer peripherals, storage devices or other components or Veritas spare parts authorized by Veritas to be installed with the Hardware appliance unit sold to You and the warranty terms under this Agreement shall be applicable to such item when included in the Hardware. “Licensed Software” means the Veritas and/or third party software product, in object code form, that is pre-loaded, pre-installed, or included as a media kit accompanying the Hardware, including any documentation provided with such software. You may not use the Licensed Software separate from the Hardware unless You have purchased a separate license for such Licensed Software. Your use of the Licensed Software shall comply with the terms and conditions of the end user license agreement that accompanies the Licensed Software (the “Software Agreement”).

• LIMITED WARRANTY. Veritas warrants solely to You that the hardware components of the Hardware shall be substantially free from material defects in material and workmanship under normal authorized use and service and will substantially conform to the written documentation accompanying the Hardware for a period (the Warranty Period”) equal to the greater of: (a) twelve (12) months from the date Veritas ships the applicable Hardware; (b) reserved; or (c) the warranty period required under applicable law. Your sole and exclusive remedy for breach of this warranty, and Veritas’ entire liability, shall be, at Veritas’ sole option and discretion, for Veritas to use commercially reasonable efforts to repair or to provide a replacement of the defective hardware component with either a new or refurbished replacement hardware component.

VERITAS SHALL NOT BE RESPONSIBLE FOR ANY SOFTWARE, FIRMWARE, INFORMATION, OR DATA PROVIDED BY YOU OR A THIRD PARTY THAT IS CONTAINED IN, STORED ON OR INTEGRATED WITH ANY HARDWARE COMPONENT RETURNED TO VERITAS FOR REPAIR OR REPLACEMENT, WHETHER UNDER WARRANTY OR NOT.

Any repaired parts or components or replacement parts or components provided by Veritas pursuant to any warranty service shall be warranted only for the remainder of the Warranty Period; provided, however, that Your warranty for such part or component may become void due to improper installation or other damage to such parts or components.

All defective Hardware, or component thereof, which has been replaced, shall become the property of Veritas. All defective hardware components of the Hardware which have been repaired shall remain Your property. THE FOREGOING IS YOUR SOLE AND EXCLUSIVE REMEDY, AND VERITAS’ SOLE AND EXCLUSIVE LIABILITY FOR VERITAS’ BREACH OF THIS LIMITED WARRANTY.

• WARRANTY AND RETURN PROCESS. Upon discovery of any failure of the hardware components in the Hardware to conform to the applicable warranty during the Warranty Period, You are required to contact Veritas within ten (10) days after such failure and seek a return material authorization (“RMA”) number. Veritas will promptly issue the
requested RMA as long as Veritas determines that You meet the conditions for warranty service. The allegedly defective hardware component shall be returned to Veritas, securely and properly packaged, freight and insurance prepaid, with the RMA number prominently displayed on the exterior of the shipment packaging. Veritas will have no obligation to accept any hardware component which is returned without an RMA number. Transportation costs, if any,
incurred in connection with the return of a hardware component to Veritas, shall be borne by You. Veritas shall pay any transportation costs incurred with the redelivery of the repaired or replaced hardware component. If Veritas reasonably determines that (i) the hardware component thereof, is functional or (ii) the allegedly defective hardware component is not covered by the terms of the warranty provided in Section 2, or that a warranty claim is made after the Warranty Period, expenses, if any, incurred by Veritas for such warranty claim, including, without limitation, testing costs, administrative costs for processing the warranty claim and/or transportation costs will be as mutually agreed to by the parties.

• HARDWARE WARRANTY REQUIREMENTS. In order to exercise any of the warranty rights contained in this Warranty Agreement, You must have available an original sales receipt or bill of sale demonstrating proof of purchase with Your warranty claim and must comply with Veritas’ then-current applicable RMA processes.

• HARDWARE WARRANTY SERVICE RESTRICTIONS/EXCLUSIONS. The warranties contained in this Warranty Agreement will not apply to any Hardware which has been altered, supplemented, upgraded or modified in any way not authorized by Veritas or which has been repaired by a party other than Veritas or its authorized designee.

VERITAS SHALL HAVE NO OBLIGATIONS UNDER THIS WARRANTY AGREEMENT TO THE EXTENT THAT FAILURE OF A HARDWARE COMPONENT TO COMPLY WITH THE LIMITED WARRANTIES SET FORTH HEREIN RESULTS FROM OR IS ATTRIBUTABLE TO: (i) EVENTS OCCURRING AFTER RISK OF LOSS PASSES TO YOU SUCH AS LOSS OR DAMAGE DURING SHIPMENT; (ii) NEGLIGENCE OR MISUSE OR ABUSE OF THE HARDWARE; (iii) USE OF THE HARDWARE OTHER THAN IN ACCORDANCE WITH VERITAS’ PUBLISHED SPECIFICATIONS OR USER MANUAL(S); (iv) ANY FAILURE BY YOU OR A THIRD PARTY TO COMPLY WITH ENVIRONMENTAL AND STORAGE REQUIREMENTS FOR THE HARDWARE SPECIFIED BY VERITAS, INCLUDING, WITHOUT LIMITATION, TEMPERATURE OR HUMIDITY RANGES; (v) USE OF THE HARDWARE IN COMBINATION WITH ANY THIRD-PARTY DEVICES OR PRODUCTS THAT HAVE NOT BEEN PROVIDED OR RECOMMENDED BY VERITAS; (vi) IMPROPER INSTALLATION OR ELECTRICAL SUPPLY, IMPROPER MAINTENANCE, OR ANY OTHER MISHANDLING (SUCH AS, BUT NOT LIMITED TO, LOSS OF CORRECT LINE VOLTAGES, USE OF INCORRECT FUSES, USE OF INCOMPATIBLE, DEFECTIVE, OR INFERIOR DEVICES, SUPPLIES, OR ACCESSORIES, IMPROPER OR INSUFFICIENT VENTILATION) BY ANYONE OTHER THAN VERITAS (OR ITS REPRESENTATIVES); OR (vii) YOUR FAILURE TO IMPLEMENT, OR TO ALLOW VERITAS OR ITS DESIGNEE TO IMPLEMENT, ANY CORRECTIONS OR MODIFICATIONS TO THE HARDWARE MADE AVAILABLE TO YOU BY VERITAS.

• WARRANTY DISCLAIMERS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 2 ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VERITAS MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE HARDWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.

• LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL VERITAS OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS BE LIABLE TO YOU FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS WARRANTY AGREEMENT, EVEN IF VERITAS OR ITS LICENSORS, RESELLERS, SUPPLIERS OR AGENTS HAS BEEN ADVISED SUCH DAMAGES MIGHT OCCUR. IN NO CASE SHALL VERITAS’ LIABILITY EXCEED THE TWO TIMES THE FEES YOU PAID FOR THE HARDWARE GIVING RISE TO THE CLAIM. NOTHING IN THIS AGREEMENT SHALL OPERATE SO AS TO EXCLUDE OR LIMIT VERITAS’ LIABILITY TO YOU FOR DEATH OR PERSONAL INJURY ARISING OUT OF NEGLIGENCE OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW. THE DISCLAIMERS AND LIMITATIONS SET FORTH ABOVE WILL APPLY REGARDLESS OF WHETHER OR NOT YOU ACCEPT THE HARDWARE.

• U.S. GOVERNMENT RESTRICTED RIGHTS. This Hardware You have purchased may include or can be used with the Licensed Software developed by Veritas Technologies LLC. If so, for U.S. government procurements, the Licensed Software is deemed to be commercial items, as defined in FAR 2.101, and the technical data associated with the contractor's commercial items is subject to the limited rights restrictions defined in FAR 52.227- 14 "Rights in Data - General" and DFARS 252.227-7015, “Technical Data - Commercial Items”, as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of the technical data
pertaining to the Licensed Software by the U.S. government shall be solely in accordance with the terms of this Warranty Agreement.

- **EXPORT REGULATION.** You acknowledge that the Hardware, Licensed Software and related technical data and services (each or collectively "Controlled Technology") are subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported. You agree to comply with all relevant laws and not to export any Controlled Technology in contravention to U.S. law nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. All Veritas products, including the Controlled Technology are prohibited for export or re-export to Cuba, North Korea, Iran, Syria and Sudan and to any country subject to relevant trade sanctions. You hereby agree that You will not export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.

- **GENERAL.**
- **COMPLIANCE WITH APPLICABLE LAW.** You are solely responsible for Your compliance with, and You agree to comply with, all applicable laws, rules, and regulations in connection with Your use of the Hardware.

- **GOVERNING LAW; SEVERABILITY; WAIVER.** This Warranty Agreement will be governed by the Federal laws of the United States of America. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this Warranty Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this Warranty Agreement shall remain in full force and effect. A waiver of any breach or default under this Warranty Agreement shall not constitute a waiver of any other subsequent breach or default.

- **ENTIRE AGREEMENT.** This Warranty Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist and this Agreement is the complete and exclusive agreement between You and Veritas relating to the Hardware and supersedes any previous or contemporaneous oral or written communications, proposals, and representations with respect to this subject matter. This Warranty Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by You, even if signed and returned. In the event of any conflict between the Hardware user documentation and this Warranty Agreement, the documents shall govern in the following order: this Warranty Agreement and the user documentation. This Warranty Agreement may only be modified by a signed written agreement between You and Veritas that accompanies or follows this Warranty Agreement.

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**EU BATTERIES DIRECTIVE**

Products are marked with this symbol to show that they were produced after 13th August 2005, and should be disposed of separately from normal domestic/commercial waste so that they can be recycled. Batteries in this product should be collected separately and not disposed of with domestic / commercial waste. Substances in batteries can have a potential negative impact on health and environment and therefore should be disposed of in the correct manner. Please contact Veritas at regulatory.compliance@veritas.com (or at any other link provided by Veritas) for details of the collection and recycling schemes available.

PN: 20660

STD. ENGLISH_NONPRODUCT SPECIFIC HARDWARE WARRANTY_V1_12DEC2017
Attachment 3
Business Critical Services

- BUSINESS CRITICAL SERVICES PREMIER
- BUSINESS CRITICAL SERVICES REMOTE PRODUCT SPECIALIST
- BUSINESS CRITICAL SERVICES DEDICATED BCAM
- BUSINESS CRITICAL SERVICES – CLEARED SUPPORT/VERIFIED SUPPORT
BUSINESS CRITICAL SERVICES
CERTIFICATE

Thank you for your purchase of Veritas Business Critical Services (“BCS”). The terms “You”, “Your” or “Customer” refer to the BCS recipient/contract owner and the term “Veritas” refers to Veritas Technologies LLC and/or its subsidiaries. This document (“Certificate”) is a legal agreement by and between You and Veritas. This Certificate applies to the BCS identified on the front of this Certificate.

If you do not have an executed agreement for BCS, then BCS is performed pursuant to this Agreement. This “Agreement” means, collectively and in the following order of precedence, (i) this Certificate (including all pages hereof), (ii) the applicable BCS service description, and as published at http://go.veritas.com/supportserviceterms or successor address (“Service Description”), (iii) the underlying Essential Support agreement (“Support Agreement”); and (iv) any relevant terms in the license agreement between Veritas and Customer (“License Agreement”). Capitalized terms not otherwise defined in this Certificate shall have the meaning given elsewhere in the Agreement. For the avoidance of doubt, if an Ordering Activity places its order for Business Critical Services, upon request, the applicable Service Description will be provided to the Ordering Activity for review at the time of order.

CERTIFICATE TERMS

a. **PREREQUISITES.** Customer must hold a valid License Agreement for the underlying Eligible Software (as defined in the Service Description) and have and maintain a current support agreement for Essential Support for the Eligible Software. Veritas is not obligated to provide any credits, refunds or extensions of BCS when BCS is suspended for Customer’s failure to maintain Essential Support.

b. **BCS.** Veritas will provide BCS as described in the applicable Service Description for the specific BCS offering(s) Customer has purchased. Veritas will provide such BCS only in support of Customer’s internal business purposes.

c. **PAYMENT.** Customer agrees to pay the applicable BCS fees in accordance with the GSA Schedule Pricelist. In the absence of a mutually executed agreement specifying payment terms, the payment terms of the Veritas quote related to Customer’s BCS shall apply. If Customer is purchasing BCS through a Veritas-authorized distributor/reseller, the fees and payment terms applicable to BCS shall be as separately agreed between Customer and such distributor/reseller.

d. **TERMINATION.** Reserved.

e. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL VERITAS OR ITS SUPPLIERS BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE TO CUSTOMER OR ANY PERSON OR ENTITY FOR: I) ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND; OR II) COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS OR SERVICES, LOST BUSINESS PROFITS OR REVENUE OR LOST OR CORRUPTED DATA, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF GOODWILL OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; EVEN IF ADVISED OF THE POSSIBILITY AND WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THE AGREEMENT OR USE OF THE BCS OR THE PERFORMANCE, DEFECTIVE PERFORMANCE, NON- PERFORMANCE OR DELAYED PERFORMANCE BY VERITAS OF ANY OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT. IN NO CASE SHALL VERITAS’ LIABILITY EXCEED THE PURCHASE PRICE FOR THE BCS GIVING RISE TO THE CLAIM. NOTHING IN THE AGREEMENT SHALL EXCLUDE OR LIMIT VERITAS’ LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW (INCLUDING, BUT NOT LIMITED TO, VERITAS’ LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR FRAUD).
f. PRIVACY AND DATA PROTECTION. To provide BCS to Customer pursuant to this Certificate, Veritas will require Customer to supply certain personal data (such as business contact names, business telephone numbers, business email addresses). Customer acknowledges that Veritas is a global organization, and such personal data may be accessible on a global basis by Veritas affiliates, by Veritas partners and subcontractors, including in countries that may have less protective data protection laws than the country in which Customer is located. By providing such personal data, Customer consents to Veritas using, transferring and processing this information on a global basis for the use described above. Where Customer's processing of the personal data provided to Veritas under this Certificate is subject to the General Data Protection Regulation (EU) 2016/679, or other applicable laws that relate to the
processing of personal data and privacy that may exist in the European Economic Area and/or Switzerland, Veritas shall process such personal data in accordance with Veritas’ standard data processing terms. All questions and requests on privacy matters may be addressed to Veritas Technologies LLC – Privacy Program Office at Veritas’ headquarters location published at veritas.com or by e-mail at privacy@veritas.com.

g. **PERFORMANCE BY THIRD PARTIES.** Veritas has the right to subcontract the performance of BCS to third parties, provided Veritas remains responsible for the contractual obligations of the Agreement.

h. **ASSIGNMENT.** Customer may not assign the rights granted hereunder or the Agreement, in whole or in part and whether by operation of contract, law or otherwise, without Veritas’ prior written consent, except to the extent expressly permitted under the License Agreement. Such consent will not be unreasonably withheld or delayed. Customer shall have no right to sell, resell or use the benefits of BCS to or for any third party.

i. **ENTIRE AGREEMENT.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire agreement between Veritas and Customer pertaining to BCS and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication between the parties regarding such subject matter. This Agreement prevails over any conflicting or additional terms of any purchase order ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned.
VERITAS BUSINESS CRITICAL SERVICES – CLEARED SUPPORT SERVICES
VERIFIED SUPPORT

a. **CSS-VS Services**: Commencing on the issue date set forth on the face of this Certificate, Veritas will provide to Licensee CSS-VS Services for the Supported Products (as defined below), listed on the face of this Certificate, for the period set forth on the face of this Certificate (“Term”).

   • **CSS-VS Services.** CSS-VS Services shall mean: (i) support services consisting of initial verification of Licensee's entitlement and subsequent remote diagnostic and troubleshooting performed only by United States citizens in the fifty (50) states of the United States and (ii) performed at up to a total of three (3) Supported Data Centers as designated in writing by Licensee to Veritas.

   • **Supported Products.** The following URL [http://go.veritas.com/cleared-support-services](http://go.veritas.com/cleared-support-services) lists, the Supported Products, for which CSS-VS Services are provided under this Certificate, subject to purchase by Licensee of Essential Support for each Product Title designated by Licensee to be covered hereunder. Licensee acknowledges that the list of Supported Products may be revised and updated by Veritas from time to time without notice to Licensee.

   • **RENEWAL TERM; FEES FOR RENEWAL TERM.** RESERVED.

b. **Prerequisites for CSS-VS Services:**

   • **Required License Agreement and Maintenance/Support.** Licensee must hold a valid license agreement ("License Agreement") for the underlying Software Product Title and have a current support agreement for Essential Support for each Software Product Title. Designated Contacts for CSS-VS Services shall be those same Designated Contacts established in connection with Essential Support for each Product Title designated by Licensee for coverage hereunder.

   • **Payment.** Licensee's right to receive CSS-VS Services is subject to payment of applicable annual fees for (i) all required Essential Support and (ii) CSS-VS Services.

c. **Terms and Conditions:**

   • **Limitations.** Licensee shall have no right to sell, resell, outsource, or otherwise transfer the benefits of CSS-VS Services to any third party under any circumstances. Licensee shall not assign, delegate, or subcontract any of its rights or obligations under this Certificate absent Veritas's written consent, except to the extent expressly permitted under the License Agreement.

   • **TERMINATION.** RESERVED.

   • **Acknowledgement of Use of Personal Data.** Licensee recognizes that Veritas will require Licensee to supply certain personal data (such as business contact names, business telephone numbers, business e-mail addresses), in order for Veritas to provide CSS-VS Services and to keep Licensee apprised of support and product updates. Licensee acknowledges that Veritas is a global organization, and such personal data may be accessible on a global basis to enable Veritas to provide CSS-VS Services. If and by providing such personal data, Licensee consents to Veritas using, transferring and processing this personal data on a global basis for the purposes described above.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached X1 Discovery, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 26 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause §§ 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination. Clauses in the Manufacturer Specific Terms referencing termination, suspension and/or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) Unreasonable Delay. Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) Assignment. All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

j) Waiver of Jury Trial. Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Contractor’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
ATTACHMENT A

CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

X1 DISCOVERY, INC.

These terms correspond to the X1D Search 8 software product ("Software").

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3. Support. The terms of this License will also govern all updates or upgrades provided by Contractor through X1D which replace or supplement the Software, unless such update or upgrade is accompanied by a separate license, in which case the terms of that license will govern. Ordering Activity are not entitled to any updates, enhancements, upgrades or modifications to the Software or any support or maintenance services unless Ordering Activity have entered into an agreement for such support or maintenance services and are in good standing under such agreement. Contractor does not guarantee that any future updates or upgrades of the Software will be made available to Ordering Activity or will be available free of charge. Additionally, Contractor may automatically download and install updates or other changes to the Software. Without limiting the generality of the foregoing, Contractor may cease offering support of any kind pertaining to the usage of older releases of Software whenever a new release, whether for free or for pay, of Software becomes available.

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5. Changes. X1D products and services are constantly evolving and Contractor may change or discontinue the Software or impose new or additional rules, policies, terms or conditions on Ordering Activity’s use of the Software and all or part of the terms of this License, without notice or liability to Ordering Activity. ORDERING ACTIVITY'S CONTINUED USE OF THE SOFTWARE FOLLOWING CONTRACTOR THROUGH X1D'S POSTING OF ANY CHANGED TERMS WILL CONSTITUTE ORDERING ACTIVITY'S ACCEPTANCE OF THE CHANGED TERMS.

6. Termination. This License is effective until terminated. Ordering Activity may terminate this License at any time. If Ordering Activity licensed the Software under a term license, the License shall terminate upon the expiration of the stated license term. Upon termination, Ordering Activity must uninstall, remove, and delete all copies and installations of the Software.

7. Data Collection and Privacy. Use of the Software is subject to our Privacy Policy.

INFORMATION COLLECTED

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Volunteered: If you register with us, subscribe to or use downloadable software or web-based applications, fill out a profile page, purchase products or services, send us an email, or share personal information with us in any other way, we will collect and store whatever information you share. This obviously depends on what information you choose to provide but it may include your name, email address, credit card information or other billing information. The collection of this information is part of regular business practices and is necessary in order to complete transactions and properly run and administer these services. You do not have to share this information with us, but without it you may not be able to access certain content or features or participate in certain areas of the Site.

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Support. X1 Services do not transmit results of any searches conducted by the user back to X1. To be clear, your case related information or other content is not provided back to X1. However, if you experience an error, the X1 Services will send log information to X1 for service and support purposes and such log data may include information about a user's profile, computer or device, and search history.

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We use this information to provide you with better service. It also helps our advertisers and partners provide you with more relevant offers, which in turn helps cover the cost of our services to you. Among other things, the information we collect enables X1 to:

- customize the content you see fulfill your requests for products and services and validate your user rights improve services contact and communicate with you.

WHEN DO WE SHARE OR DISCLOSE YOUR INFORMATION?

Anonymous Information. Anonymous information is information that does not identify you personally, like your IP address and Referring website addresses. We may share anonymous information with others, such as advertisers, sponsors and business partners.

All Information (Both Anonymous and Personally Identifiable). In certain circumstances, we may share information we have collected, including personally identifiable information. For example:

- We might share your personally identifiable information during due diligence or in preparation for or after a sale, merger, consolidation, change in control, transfer of substantial assets, reorganization or liquidation.
- If you give us permission, we may share your personally identifiable information with third parties who might send you marketing and promotional information.
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12. Reserved.

13. Reserved.


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Upload, post or otherwise transmit via the Site any content that: (i) is harmful, obscene, indecent, pornographic, defamatory, racist, violent, offensive, threatening, harassing, or otherwise objectionable to Evolution or other users of the Site; (ii) includes unauthorized disclosure of personal information; (iii) violates or infringes anyone's intellectual property rights; or (iv) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment. X1 reserves the right to edit or remove content that violates this Agreement.

Do anything that smacks of bad online citizenship, such as use our Services for spam or attempt to reverse engineer or hack into our systems.

Access or scrape the Site or the Services by any automated means unless you are a search engine crawling the Site for the sole purpose of creating a publicly accessible search index; or bypass any technical protections or throttling that we institute.

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Anything we ask you not to do.

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1. **Scope.** This Rider and the attached Xirrus ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3001 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

w) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2i, as may be revised from time to time.

x) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

y) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

z) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

aa) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by, and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

bb) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

cc) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

dd) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

ee) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

ff) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

gg) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
hh) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

ii) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

jj) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

kk) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

li) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

mm) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

nn) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

oo) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

pp) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.

qq) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

rr) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

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**ATTACHMENT A**

**CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS**

**Xirrus**

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**XIRRUS LICENSE, WARRANTY AND SUPPORT TERMS**

Attachment A - Xirrus

Software License and Warranty Agreement

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1.0 DEFINITIONS
1.1 “Documentation” means the user manuals and all other all documentation, instructions or other similar materials in whatever media or format as provided or made available by Xirrus accompanying or associated with the Software covering the installation, application, and use thereof.
1.2 “Licensor” means XIRRUS and its suppliers.
1.3 “Software” means, collectively, each of the application and embedded software programs delivered to Ordering Activity in connection with this Agreement. For purposes of this Agreement, the term Software shall be deemed to include any and all Documentation and Updates provided with or for the Software.
1.4 “Updates” means any bug-fix, maintenance or version release to the Software that may be provided to Ordering Activity from Licensor pursuant to this Agreement or pursuant to any separate maintenance and support agreement entered into by and between Licensor and Ordering Activity.

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3.1 Limited Warranty & Exclusions. Licensor warrants that the Software will perform in substantial accordance with the specifications therefore set forth in the Documentation for a period of ninety [90] days after Ordering Activity’s acceptance of the terms of this Agreement with respect to the Software (“Warranty Period”). If during the Warranty Period the Software does not perform as warranted, Licensor shall, at its option, correct the relevant Product and/or Software giving rise to such breach of performance or replace such Product and/or Software free of charge. THE FOREGOING ARE ORDERING ACTIVITY’S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF OR NONCOMPLIANCE WITH THE FOREGOING WARRANTY. THE WARRANTY SET FORTH ABOVE IS MADE TO AND FOR THE BENEFIT OF ORDERING ACTIVITY ONLY. The warranty will apply only if (i) the Software has been used at all times and in accordance with the instructions for use set forth in the Documentation and this Agreement; (ii) no modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor’s authorized representative; and (iii) the Software or Product on which the Software is installed has not been subject to any unusual electrical change.
3.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 3, ALL ADDITIONAL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, AGAINST INFRINGEMENT OF ANY FORM OR NATURE OF INTELLECTUAL PROPERTY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY DISCLAIMED BY LICENSOR AND ITS SUPPLIERS. THIS DISCLAIMER SHALL APPLY EVEN IF ANY EXPRESS WARRANTY AND LIMITED REMEDY OFFERED BY LICENSOR FAILS OF ITS ESSENTIAL PURPOSE.
3.4 HAZARDOUS APPLICATIONS. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF A NUCLEAR FACILITY, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROLS OR OTHER DEVICES OR SYSTEMS IN WHICH A MALFUNCTION OF THE SOFTWARE WOULD RESULT IN FORSEEABLE RISK OF INJURY OR DEATH TO THE OPERATOR OF THE DEVICE OR SYSTEM OR TO OTHERS (“HAZARDOUS APPLICATIONS”). ORDERING ACTIVITY ASSUMES ANY AND ALL RISKS, INJURIES, LOSSES, CLAIMS AND ANY OTHER LIABILITIES ARISING OUT OF THE USE OF THE SOFTWARE IN ANY HAZARDOUS APPLICATIONS.

THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR’S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
3.5 Reserved.
6. COMMERCIAL COMPUTER SOFTWARE

The Software and Documentation furnished and licensed under and pursuant to this Agreement are a “commercial item”, and is “commercial computer software” and “commercial computer software documentation” as those terms are defined and used in applicable U.S. federal government and comparable U.S. department and agency acquisition statutes and regulations. If Ordering Activity is the U.S. government or a department or agency thereof, Ordering Activity shall only acquire the rights and licenses as are contained in this Agreement, unless otherwise expressly agreed to in writing by Licensor in a separate written addendum to this Agreement.

7. MISCELLANEOUS

During the course of use of the Software, Licensor may collect information on your use thereof; you hereby authorize Licensor to use such information to improve its products and services, and to disclose the same to third parties provided it does not contain any personally identifiable information. Ordering Activity may not export or re-export the Software or Documentation (or other materials) without appropriate United States government licenses or in violation of the United States’ Export Administration Act and Ordering Activity shall comply with all national laws governing the Software.

LIMITED HARDWARE WARRANTY

Xirrus warrants that for the lifetime of the product (Xirrus Access Points) or a period of five years (Xirrus Arrays) or one year (all other Xirrus hardware products) from the date of purchase by the original purchaser (“Ordering Activity”); (i) the Xirrus Equipment (“Equipment”) will be free of defects in materials and workmanship under normal use; and (ii) the Equipment substantially conforms to its published specifications. Except for the foregoing, the Equipment is provided AS IS. This limited warranty extends only to Ordering Activity as the original purchaser. Ordering Activity’s exclusive remedy and the entire liability of Xirrus and its suppliers under this limited warranty will be, at Xirrus’ option, repair, replacement, or refund of the Equipment if reported (or, upon request, returned) to the party supplying the Equipment to Ordering Activity. In no event does Xirrus warrant that the Equipment is error free or that Ordering Activity will be able to operate the Equipment without problems or interruptions.

This warranty does not apply if the Equipment (a) has been altered, except by Xirrus, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Xirrus, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra- hazardous activities.

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

IN NO EVENT WILL XIRRUS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT EVEN IF XIRRUS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

Ordering Activity agrees the Equipment and related documentation shall not be used in life support systems, human implantation, nuclear facilities or systems, or any other application where failure could lead to a loss of life or catastrophic property damage or cause or permit any third party to do any of the foregoing.

Equipment including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Ordering Activity agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Equipment.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. Scope. This Rider and the attached RECSOLU, Inc., DBA Yello (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. Applicability. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) Contracting Parties. The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

b) Changes to Work and Delays. Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) Contract Formation. Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) Termination.Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) Choice of Law. Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) Equitable remedies. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) Unilateral Termination. Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.
u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.
YELLO END-USER LICENSE AGREEMENT

This End-User License Agreement (this “Agreement”) is a legal contract between Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (the “Customer” or “Ordering Activity”) and the GSA Multiple Award Schedule Contractor acting by and through its supplier, RECSOLU, Inc., DBA Yello, a Delaware corporation with its principal offices at 55 E. Monroe Street, Suite 3600, Chicago, Illinois 60603 (“Yello”). Each of Yello and Customer may hereinafter be referred to as a “Party” and collectively as the “Parties.”

This Agreement describes your rights and the conditions upon which Customer may use the Yello Services and System. By accepting this Agreement, Customer agrees to all of these terms. If Customer does not accept and comply with these terms, then Customer may not use the Services or System.

1) Definitions. The following terms used in this Agreement shall have the meanings stated below:
   a) "Admin User" means seats having full read, write and edit functionality with respect to the Services.
   b) “Authorized User” means any individual that is authorized by Customer to access and use the System on behalf of Customer in accordance with an Order.
   c) “Business Day(s)” means Monday through Friday, 8:00 AM to 6:00 PM U.S. Central Time, excluding all U.S. Federal holidays.
   d) “Cloud Services” means the software-as-a-service provided by Yello pursuant to any Order from, or for the benefit of, Customer.
   e) “Confidential Information” means any and all non-public, proprietary or confidential information, including, without limitation, trade secrets, know-how and proprietary information, firmware, software, source code, object code, data, designs, schematics, techniques, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plans or financial or personnel matters relating to either Party or its products, sales, suppliers, customers, employees, investors or affiliates. Confidential Information includes (i) the terms and conditions of this Agreement, any Order attached hereto and any purchase orders issued hereunder; (ii) information disclosed in a written or other tangible form which is clearly marked with a “confidential” or “proprietary” legend or other comparable legend; (iii) information disclosed orally or visually which is identified as confidential at the time of disclosure; and (iv) any other information which a reasonable person would deem confidential under the context of disclosure or due to the nature of the information itself, provided that “Confidential Information” shall not include the items listed in Section 5(b).
   f) “Customer Data” means the information and data that is submitted by or on behalf of the Customer to be processed by the System.
   g) “Disclosing Party” means the Party disclosing, supplying or otherwise making available its Confidential Information to the other Party.
   h) “Error” means a material failure of the System to conform to the Service Levels or other requirements of this Agreement or any Order, provided that notwithstanding the foregoing, “Error” shall not include, and Yello shall not be liable for or have any obligation to remedy any related issues, caused by (i) any use of the System by Customer or its Authorized Users which is not in accordance with the terms and conditions of this Agreement or any Order, (ii) any occurrence that is attributable to an interface or link, or attempted interface or link, by Customer, its Authorized Users or anyone acting on their behalf between the System and any telecommunications hardware, software or connections not provided by Yello hereunder, (iii) any misuse or improper or illegal use of the System, (iv) any malfunction of any telecommunications hardware, software or connections not provided by Yello hereunder or (v) any issue that can be resolved by
restarting a system or allowing for momentary systems or internet browser load spikes to pass.

i) “Indemnified Party” means the Party seeking indemnification pursuant to Section 7(a) or 7(b).

j) “Indemnifying Party” means the Party responsible for indemnification pursuant to Section 7(a) or 7(b).

k) “IP Rights” means, on a worldwide basis, all patents (including originals, divisionals, continuations, continuations-in-part, extensions, foreign applications, utility models, and re-issues), patent applications, copyrights (including all registrations and applications therefor), trade secrets, service marks, trademarks, trade names, trade dress,
trademark applications, moral rights, and any and all other proprietary and intellectual property rights, and any goodwill relating to any of the foregoing.

l) “Modification” means any enhancement, modification, update, upgrade, improvement, new release or other change to the System.

m) “Order” means a document mutually executed by the Parties pursuant to which Customer procures specific Services from Yello, which document shall specify, among other things, a description of the Services to be provided, any Service Levels, the compensation for such Services, the term of the Order, and any other details specifically related to such Services.

n) “Other Services” means any services described in an Order that do not constitute Cloud Services, including professional services or consulting services.

o) “Receiving Party” means the Party receiving or otherwise being provided access to the Confidential Information from the other Party.

p) “Reports” means any reports that incorporate Customer Data generated by or through the Cloud Services or System by, or for the benefit of, Customer.

q) “Service Levels” means any service level agreement with respect to Services as stated in an applicable Order.

r) “Services” means any Cloud Services and/or Other Services.

s) “Spin Off” means the creation of a separate entity through the sale or distribution of shares of an existing entity or the division of a parent entity. This includes a divestiture and a split-up resulting from a dissolution.

t) “Staff” means seats having read-only functionality with respect to the Services.

u) “System” means Yello’s cloud-based software, data, and related materials (in each case, including any modifications, corrections, enhancements or upgrades, whether made pursuant to this Agreement, any Order or otherwise) made available to Customer as part of any Cloud Services described in an Order.

2) SERVICES

a) Yello shall provide Customer with a limited, non-transferable (except to a permitted assignee as set forth in Section 12(c) below) license to use the Services in accordance with the terms and conditions of any applicable Order, including, if applicable, providing access for Authorized Users to the System. The terms of each Order are incorporated into this Agreement by reference and shall be binding upon the Parties. In the event of a conflict or ambiguity between any provision of this Agreement and an Order, the provision of the Order shall govern, but only with respect to the subject matter and scope of such Order.

b) Yello shall provide the implementation and support services described in an Order to provide Customer with access to the System. Customer will work with Yello to set an accommodating schedule to integrate and implement the System to maximize its usage by the Customer.

c) The portion of the System used by Customer will be password protected. Yello will utilize at least industry standard protections to limit access to such portion of the System to Authorized Users who have the requisite access codes, and to Yello’s administrators who have a need to access the System. Yello will grant access codes to the Authorized Users designated in writing by Customer and will use reasonable efforts to assist Customer in promptly disabling access codes for any Authorized User upon Customer’s written request. Customer is solely responsible for maintaining the confidentiality of its passwords.

d) Yello shall cause its agents and personnel to comply with all of the terms and conditions of this Agreement and any Order. Customer consents to Yello’s use of subcontractors and cookies in the provisioning of the Services.

e) Yello shall provide at least five (5) Business Days’ notice of any preventive maintenance which will render the System temporarily unavailable and any such preventive maintenance will be conducted outside of Business Day hours. In the event of emergency maintenance or repairs which will render the System temporarily unavailable are necessary, Yello shall use its commercially reasonable efforts to (i) provide at least four (4) hours’ notice prior to its performance of such emergency maintenance or repairs; (ii) perform
such emergency maintenance or repairs outside of Business Day hours; and (iii) minimize the period of
time required for the performance of such emergency maintenance or repairs.

f) Yello shall maintain commercially reasonable controls and safeguards that are designed to mitigate
security risks to the System and to protect any Customer Data that is processed by Yello.

g) Yello will maintain commercially reasonable safeguards that are designed to protect against the
destruction or loss of Customer Data in Yello’s possession, including commercially reasonable backup
procedures.

h) Customer shall notify Yello of the existence of any Errors promptly upon discovering and verifying the
same. Yello shall provide written notice to Customer upon resolution of any Error identified by Customer
and reproducible by
Yello, which resolution shall be implemented without additional cost to Customer. Customer shall reasonably assist Yello in identifying and attempting to resolve Errors.

i) Customer shall not introduce any viruses, Trojan horses, worms or other “malware” into the System.

j) Customer agrees to use the System solely for the legitimate business purposes of Customer’s talent recruitment efforts, and to not operate the System for the benefit of any other person or entity, such as a time sharing, service bureau, hosting, service provider or like purposes. Customer is solely responsible for any misuse of the System, including any hijacking of the System, that is attributable to Customer.

k) Customer hereby acknowledges and agrees that it is not authorized to submit health data, financial data, or social security information into the System or Services ("Unauthorized Information"). Yello disclaims all liability in connection with, and Customer agrees to indemnify and hold Yello harmless for, any and all Losses (as defined below) resulting from, Customer's or Customers' candidate's insertion of Unauthorized Information into the System or Services.

l) Customer shall be responsible for the following:
   i) Managing user authentication and authorization to the Services and System, including user provisioning procedures;
   ii) Adopting strong operating system and application password management procedures, including using passwords that cannot be easily compromised;
   iii) Reporting any issues or bugs to Yello via an email to infosec@yello.co or directly to a representative of Yello, within twenty-four (24) hours following discovery;
   iv) Ensuring the legality of data that Customer inputs into the Services or System and the means by which Customer acquired such data;
   v) Using commercially reasonable efforts to protect its local IT systems against corruption by possible viruses, Trojans or similar malware;
   vi) Using commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Yello within twenty-four (24) hours following any discovery of such unauthorized access or use;
   vii) Ensuring that Authorized Users are aware of their responsibilities and obligations under this Agreement, and comply with them;
   viii) Using the Services only in accordance with the applicable documentation and applicable laws and government regulations;
   ix) Ensuring that, upon termination of any Authorized User’s contract of employment or engagement, such terminated Authorized User’s access to the Services is revoked within twenty-four (24) hours of such termination;
   x) Complying with and causing its employees, agents, representatives, contractors, and subcontractors to comply with all applicable laws and regulations related to receipt and use of the Services; and
   xi) Complying with and causing its employees, agents, representatives, contractors and subcontractors to comply with all personnel, facility, safety and security policies, rules and regulations and other reasonable instructions of Yello, when performing work at a Yello facility or accessing any Yello systems or Services, and conducting its work at Yello facilities or on Yello systems or Services in such a manner as to avoid endangering the safety, or interfering with the convenience or efficiency of, Yello’s representatives or customers.

3) **PAYMENT AND TAXES**

a) Customer will pay the GSA Schedule Contractor on behalf of Yello the applicable fees associated with the Services as set forth in an Order in accordance with the GSA Schedule Pricelist. All fees and dollar amounts referred to under this Agreement or any Order are in United States Dollars ("USD"). Yello will invoice Customer for such fees at the same time set forth in the applicable Order.

b) If any payment for Services is more than thirty (30) days past due of the invoicing and payment terms designated on the applicable Order, then such payments shall be subject to a finance fee as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.
c) Customer agrees to be responsible for and pay and discharge when due any and all federal, state and local sales, use or other similar taxes that may be levied, assessed, imposed or charged in connection with the performance of this Agreement (other than taxes based upon the income or revenue of Yello). If Customer has an applicable tax exemption certificate, Customer shall provide Yello with evidence of such exemption within five (5) days of mutual execution of the respective Order.

d) Purchases through Resellers. In the event Customer purchases the Services through a reseller, the invoicing and payment terms agreed between Customer and such reseller shall apply in lieu of the payment terms set forth herein.
4) **REPRESENTATIONS AND WARRANTIES**

a) Yello hereby makes the following representations and warranties:
   
i) Yello is validly existing and in good standing under the laws of the jurisdiction of its formation.
   
ii) Yello has all requisite company power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
   
iii) Any Services shall be performed by Yello in a professional, competent and workmanlike manner in accordance with general industry standards. Yello shall ensure that all of its personnel have the proper skills and training necessary to perform the applicable Services. Customer’s sole and exclusive remedy for a breach of this subsection is the proper re-performance of the Services affected by such breach.
   
iv) Yello shall comply in all material respects with applicable federal, state and local laws, rules and regulations applicable to its provision of the Services. Yello will ensure that it has the permits and licenses necessary to perform the Services.
   
v) Yello is not aware of any facts that indicate the System infringes on any third party’s IP Rights.
   
vi) Yello is not aware of any viruses, Trojan horses, worms or other “malware” in the System, and Yello has taken commercially reasonable steps to protect the System against any such “malware.”

b) Customer hereby makes the following representations and warranties:
   
i) Customer is validly existing and in good standing under the laws of the jurisdiction of its formation.
   
ii) Customer has all requisite power and authority to execute and deliver this Agreement and any Order and to carry out and perform its obligations under the terms of this Agreement and any such Order.
   
iii) Customer is not aware of any facts that indicate the Customer Data infringes on any third party’s IP Rights.
   
iv) Customer shall comply with all applicable federal, state, and local laws.

c) **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ORDER, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY DISCLAIMS ALL, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.**

5) **CONFIDENTIALITY**

a) Each Receiving Party agrees to keep confidential the Disclosing Party’s Confidential Information subject to the terms and conditions of this Section 5. The Receiving Party will safeguard the Confidential Information of the Disclosing Party using the same degree of care as it uses to safeguard its own Confidential Information, but in no case less than a reasonable degree of care. The Receiving Party will limit (i) access to the Disclosing Party’s Confidential Information to those of its personnel and agents with a need to know such Confidential Information for the performance of obligations under this Agreement and (ii) use of the Disclosing Party’s Confidential Information to the exclusive purposes set forth in this Agreement. Unless otherwise agreed to by the Parties in writing, the Confidential Information of the Disclosing Party is and will remain the sole and exclusive property of the Disclosing Party, and the Receiving Party will have no right in or to the Disclosing Party’s Confidential Information.

b) Confidential Information will not include information to the extent that the Receiving Party can show that (i) such information is or became publicly available other than through any act or omission of the Receiving Party in breach of this Agreement; (ii) such information was received by the Receiving Party from a third party, which third party, to the Receiving Party’s knowledge, had no obligation of confidentiality to the Disclosing Party; (iii) such information was in the possession of the Receiving Party at the time of the disclosure; or (iv) such information was independently developed by the Receiving Party without reference
to the Disclosing Party’s Confidential Information.

c) Notwithstanding the foregoing, in the event a subpoena or other legal process is served upon the Receiving Party that, pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, compels disclosure of the Disclosing Party’s Confidential Information, the Receiving Party may disclose such portion of the Disclosing Party’s Confidential Information required to be disclosed, provided that the Receiving Party notifies the Disclosing Party promptly of such request (unless such notice is prohibited by law, rule or regulation), and cooperates with the Disclosing Party, at the Disclosing Party’s expense, in the Disclosing Party’s efforts to contest the legal validity or scope of such subpoena or other legal process.

d) Each Party acknowledges that it would be difficult to fully compensate for damages that may result from the breacher threatened breach of the provisions of this Section 5 and, accordingly, the other Party shall be entitled to seek injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, to
enforce such provisions. This provision with respect to injunctive relief will not, however, diminish a Party's right to seek other legal, contractual or equitable remedies, or to claim and recover damages in the event of a breach of this Section 5.

c) Except when disclosure is permitted pursuant to this Section 5 or as may otherwise be required pursuant to the requirement of a governmental agency or law with jurisdiction over the Receiving Party, neither Party will disclose the economic terms of this Agreement to any third party without prior written approval from the other Party, provided that Yello may note in its marketing materials that Customer is a client (but may disclose no other terms or conditions of the relationship) during the term of this Agreement to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

d) In the event Yello becomes aware of any security breach that compromises Customer’s Confidential Information, Yello will promptly notify Customer, investigate, and use its commercially reasonable efforts to remedy said breach.

6) INTELLECTUAL PROPERTY

a) Yello agrees that, as between Yello and Customer, Customer owns the Customer Data and all Reports generated with such Customer Data. During the term of this Agreement, Customer may provide Yello with Customer Data for use in the provision of the Services. Customer hereby grants to Yello a non-exclusive, non-transferable (except to a permitted assignee in connection with an assignment pursuant to Section 12(c) below) license to use the Customer Data solely in the provision of the Services. In addition, Yello may also use statistics generated from the provision of the Services to Customer in an aggregated form for purposes of benchmarking system performance, system metrics and other business purposes but only if all personally identifiable information and any relationship to or association with Customer has been removed from, and Customer is not identifiable as a result of, such statistics (for example, using the number of QR Code scans made by Customer at a particular conference, without attribution to Customer, in preparing aggregate conference statistics).

b) Except for (i) the limited rights to access the System pursuant to the terms and conditions set forth herein or any Order and (ii) Customer’s rights in the Customer Data, Customer agrees that, as between Customer and Yello, Yello owns all, and Customer is not granted any rights in, to, or with respect to (A) the System and all IP Rights therein or (B) any other IP Rights of Yello, and all such rights therein are reserved for Yello. Customer agrees to use the System and the Cloud Services solely for the legitimate business purposes for which they are intended and to not operate the System or the Cloud Services for the benefit of any other person or entity. Customer further agrees not to modify, adapt, translate, disassemble or reverse engineer any aspect or portion of the System.

7) INDEMNIFICATION

a) Yello shall indemnify and hold Customer harmless from any and all losses, damages, costs (including reasonable attorneys’ fees), settlements and liabilities (collectively, “Losses”) resulting from third party claims, suits, actions or proceedings arising from or relating to (i) the infringement, misappropriation or other violation by Yello of any United States IP Rights of any third party and (ii) the gross negligence or willful misconduct of Yello or its personnel or agents; provided that notwithstanding the foregoing, Yello shall not be liable for any Losses relating to any alleged infringement, misappropriation or other violation of any IP Rights of any third party to the extent based upon Customer’s use of the Cloud Services or System: (i) in combination with other products or services if such Losses would have been avoided but for such combination; or (ii) in violation of this Agreement.

b) Customer shall indemnify and hold Yello harmless for any and all Losses resulting from third party claims,
suits, actions or proceedings arising from or relating to (i) the use by Customer or the Authorized Users of the Cloud Services or the System other than in accordance with this Agreement and any Order (including using the Cloud Services or System for illegal purposes) or (ii) the gross negligence, willful misconduct, or a violation of law of Customer or its personnel or agents in connection with this Agreement or the Cloud Services.

c) Upon becoming aware of events giving rise to an indemnification claim under Section 7(a) or 7(b) above, the Indemnified Party shall provide prompt written notice of such claim, including a reasonable description of the basis thereof, to the Indemnifying Party and allow the Indemnifying Party to control the defense of such third party claim at the Indemnifying Party’s expense. The Indemnifying Party shall not settle any claim without the Indemnified Party’s written consent (which consent shall not be unreasonably withheld, conditioned or delayed) if such settlement would result in injunctive relief against, a monetary contribution from, or admission of wrongdoing by, the Indemnified Party. If the Indemnifying Party elects to control the defense of such third-party claim, the Indemnified Party shall have the right to participate in such defense at its own expense. The Indemnified Party
shall provide reasonable non-monetary assistance to the Indemnifying Party in connection with the defense and/or settlement of any third-party claim.

d) If a third party claim alleging infringement of any IP Rights with respect to the Cloud Services or System is successful against Yello or Customer, Yello may, at its option and expense, either (i) procure from such third party the right for Customer to continue using the System and receiving the Cloud Services or (ii) modify the System and Cloud Services to make them non-infringing, but functionally substantially equivalent. If Yello determines that neither of these alternatives is reasonably available, either Party may terminate this Agreement and Customer will receive a refund of any prepaid but unused fees. THIS SECTION STATES YELLO’S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

8) LIMITATIONS ON LIABILITY

a) THE AGGREGATE LIABILITY OF YELLO FOR ALL CLAIMS OR LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING PRODUCT LIABILITY), STRICT LIABILITY, INFRINGEMENT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO YELLO UNDER THE APPLICABLE ORDER(S). THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

b) NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT IN THE EVENT OF WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR REVENUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ORDER OR THE SERVICES OR SYSTEM, EVEN IF THE PARTIES HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

9) INSURANCE REQUIREMENTS

a) During the Term of this Agreement, Yello shall maintain commercially reasonable levels of insurance coverage to secure the performance of its obligations under this Agreement, including, but not limited to, comprehensive general liability, automobile/umbrella liability, and worker’s compensation.

b) Upon written request, Yello will provide Customer with written evidence of the coverage described in Section 9(a).

10) INDEPENDENT CONTRACTOR RELATIONSHIP

a) In connection with this Agreement, the Parties acknowledge that they are independent contractors. Neither this Agreement nor any Order shall create a relationship of employment, agency, or partnership between the Parties, nor shall they give either Party any authority to bind or commit the other Party.

b) Neither Yello nor any of its personnel or agents shall be entitled to any benefits provided by Customer to its employees. Yello shall be solely responsible for payment of all employment related and compensation related charges to its personnel and agents in connection with the performance of the Services.

c) This Agreement shall not be deemed to be an exclusive contract. Subject to the Parties’ obligations in
Section 5, Customer may utilize any other vendor to provide similar services, and Yello may provide similar services to any other customer.

11) TERMINATION

a) This Agreement shall commence on the Effective Date of the respective Order, and shall continue in full force and effect until terminated pursuant to the provisions of this Section 11.
b) This Agreement may be terminated at any time upon the mutual written agreement of the Parties.
c) Either Party may terminate this Agreement or any Order if the other Party materially breaches any provision of this Agreement or any Order, as applicable, and such breach is not cured within thirty (30) days following written notice, where such written notice provides a reasonable description of such breach.
d) Yello may immediately terminate this Agreement or any Order if Customer materially breaches either Section 5 (Confidentiality) or Section 6 (Intellectual Property) of this Agreement.

c) Sections 1, 3, 5, 6, 7, 8, 10, 12, and this Section 11(e), and any other provisions of this Agreement which expressly provide that they survive shall survive the expiration or termination of this Agreement. Other than with respect to the provisions of this Agreement which survive expiration or termination, neither Party will be liable to the other Party for damages in connection with this Agreement following expiration or termination of this Agreement or any Order except for those arising due to a material breach by a Party of this Agreement or any Order prior to such expiration or termination. Both Parties waive any right it may have to receive compensation or reparation under the law of any jurisdiction in the event of such an expiration or termination other than as a result of a material breach of this Agreement or any Order arising prior to such expiration or termination.

12) GENERAL PROVISIONS

a) **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

b) **Notice.** Any notices required or permitted under this Agreement must be in writing and delivered in person or sent by U.S. Postal Service or other delivery service requiring acknowledgment of receipt by signature to the following applicable address: (i) if to Yello: RECSOLU, Inc., DBA Yello, 55 E. Monroe, Suite 3600, Chicago, IL 60603, Attn: Legal Dept, contracts@yello.co; and (ii) if to Customer: the address set forth in the Order.

c) **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that either Party may assign this Agreement, without the other Party’s written consent, to (i) an affiliate; (ii) a successor in interest resulting from merger or consolidation with such assigning Party or to any person or entity which acquires all or substantially all of the assets of such Party’s business to which this Agreement relates; and (iii) its financing sources as collateral subject to 31 USC 3727 and FAR clause at 52.212-4(b). Any assignment in violation of this Section 12(c) shall be null and void and of no force and effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

d) If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction or arbitrator, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provision of this Agreement, which shall otherwise remain in full force and effect.

c) Yello and Customer intend that this Agreement shall not benefit or create any right or cause of action in favor of or for the benefit of any person or entity other than the Parties.

f) **This Agreement, and any Order entered into in connection with this Agreement, shall be governed by and construed in accordance with the Federal laws of the United States. EACH PARTY HERETO HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ADDENDUM, ORDER OR OTHER AGREEMENT WHICH, IN ANY WAY, ARISES OUT OF OR RELATES TO THIS AGREEMENT.**

g) **Reserved.**

h) **The headings assigned to the Sections and subsections of this Agreement are for convenience only and shall not limit the scope and applicability of the Sections and subsections.**

i) **Neither Party shall be deemed to be the drafter of this Agreement and if this Agreement is construed in any court or arbitration proceeding, said court or arbiter shall not construe this Agreement or any provision hereof against either Party as the drafter hereof.**

j) **This Agreement, together with the Order(s) being entered into in connection herewith, the underlying GSA Schedule Contract, and Schedule Pricelist, sets forth the entire understanding and agreement of the Parties, and supersedes all prior agreements, arrangements and communications, whether oral or written, between the Parties with respect to the subject matter**
hereof. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein.

k) No amendment, change, or modification of this Agreement or any Order shall be effective unless it is made in writing, is signed by an authorized representative of each Party, and expressly states that it amends this Agreement or a respective Order. No waiver of any breach of this Agreement or any Order shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

l) No terms or conditions of either Party’s invoice, purchase order, or other administrative document (unless signed by both parties) will be effective as a modification of the terms and conditions of this Agreement, regardless of the other Party’s failure to object to such.
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached Yubico Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS 1770 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law ((31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer ("Licensee") is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.21, as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ’s jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer’s Specific terms shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer’s Specific Terms nor the Schedule Price List shall be deemed “confidential information” notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer’s Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer’s Specific Terms and the Schedule Contract.

u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA
YUBICO LICENSE, WARRANTY AND SUPPORT TERMS

The terms & conditions of this Attachment shall be incorporated into each contract between Yubico and Ordering Activity for the purchase and sale of the Product, and shall govern each such purchase and sale and the use of the Product and Service. As used herein, “Yubico” means the Yubico entity, Yubico, Inc., that supplied the Product to Ordering Activity, “Product” means YubiKey or YubiHSM, as applicable, and “Service” means the YubiCloud one-time password validation service.

A. Limited Warranty. Yubico warrants that the Product will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to the original purchaser (the “Warranty Period”). If a defect in material or workmanship arises within the Product during the Warranty Period and the Product is returned to Yubico within the Warranty Period, Yubico will, at its sole option and subject to applicable laws: (a) repair or replace any defective Product with a new or refurbished product; or (b) refund the original purchase price of the Product. The Warranty Period for any repaired or replacement Product will persist for the longer of the remainder of the original one (1) year Warranty Period or ninety (90) days from the date the repaired or replacement product is shipped to the user. This Paragraph A sets forth Yubico’s sole obligation and Ordering Activity’s sole remedy for any breach of the Limited Warranty.

B. Restrictions. The Limited Warranty extends only to the original purchaser of the Product and is non-transferrable. The Limited Warranty does NOT apply to a Product that: (a) is altered or modified, other than by Yubico; (b) is not maintained in a normal and customary fashion or is operated outside of Yubico’s recommended guidelines; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (d) has had its original serial number altered or removed, other than as a result of normal wear and tear; or (e) Yubico has provided free of charge. In no event does Yubico warrant that the Product is error free, will operate properly or at all in all computer environments and configurations, or that Ordering Activity will be able to operate the Product without problems or interruptions. Yubico does not warrant that the Product or any equipment, system or network on which the Product is used will be free of vulnerability to intrusion or attack.

C. Grant of License. The Product may contain certain object code software deployed onto its secure hardware prior to delivery to the user (“Firmware”) and/or provided separately for use with the Product (“Driver Code”) (collectively, “Software”). Yubico grants Ordering Activity a personal, nonexclusive, non-sublicensable, non-assignable and non-transferable license to use the Software solely as part of Ordering Activity’s use of the Product and in accordance with the terms and conditions of this Attachment. Ordering Activity may use the Firmware only as originally deployed onto the Product. Ordering Activity may not separate the Firmware from the remainder of Product or use the Software on another device. Ordering Activity may not distribute, license, sell, rent, or otherwise provide the Software to third parties. Ordering Activity acknowledges that the Software may have bugs or security vulnerabilities and that in no event does Yubico warrant that the Software is error-free or that the Software or the Product as a whole is free of all possible security vulnerabilities.

D. Rights Protection. The Software is licensed not sold. All title to the Software and other Yubico intellectual property rights related to the Software such as, but not limited to, copyright, trade secrets, patents, trademarks and service marks, shall at all times remain with Yubico and its licensors as applicable. Ordering Activity agrees that the techniques, ideas, algorithms, design, concepts, code, and processes contained or enabled in the Product constitute Yubico’s intellectual property rights and are subject to confidentiality protection. As such, Ordering Activity agrees not to reverse engineer, disassemble or decompile, or otherwise attempt to derive the source code for, or perform cryptographic analysis upon, the Product to the extent this restriction is permitted by law.

E. Compliance with Laws. In connection with the use and transport of the Product, including the Software, Ordering Activity shall comply with all applicable export, import, and other relevant laws. Determination of the applicable law is Ordering Activity’s responsibility. Ordering Activity acknowledges and understand that the Product, including the Software, is cryptographic in nature and that it therefore is highly regulated. Ordering Activity is strictly prohibited from exporting, reexporting or importing the Product and/or Software, regardless of method, without first complying with all applicable government use, import, and export laws, rules, regulations, and orders, and obtaining any necessary approvals or permits. Obtaining any necessary export or import approval for the Product is Ordering Activity’s responsibility.

F. Warranty Disclaimer. THE SERVICE IS PROVIDED FREE OF CHARGE AND “AS IS” WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER. WITH RESPECT TO THE PRODUCT, INCLUDING THE SOFTWARE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESS LIMITED WARRANTY. ALL OTHER STATUTORY AND IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF NONINFRINGEMENT, ARE DISCLAIMED. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Ordering Activity. The Limited Warranty gives Ordering Activity specific legal rights, and Ordering Activity may also have other rights which vary by jurisdiction.

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL YUBICO OR ITS AFFILIATES BE LIABLE FOR ANY LOSS DATA OR UNAUTHORIZED ACCESS TO COMPUTER SYSTEMS, DATA OR OTHER INFORMATION EXCEPT AS EXPRESSLY PROVIDED HEREIN, YUBICO PROVIDES THE PRODUCT “AS IS.” BY USING THE PRODUCT, THE USER ASSUMES ALL RESPONSIBILITY FOR AND RISK OF USE OF THE PRODUCT. WITHOUT LIMITING THE SCOPE OF THE FOREGOING, YUBICO DOES NOT WARRANT THAT THE PRODUCT OR THE SERVICE WILL FUNCTION WITHOUT DEFECTS OR THAT THE PRODUCT OR THE SERVICE IS OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL MECHANISMS OR THAT ALL PROGRAMMING ERRORS CAN BE FOUND IN ORDER TO BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND CONSISTENT WITH THIS ATTACHMENT, YUBICO DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, ERRORS, OMISSESIONS, COMPLETENESS, OR USEFULNESS OF THE PRODUCT, THE SERVICE, AND ANY SOFTWARE, PROCEDURE, METHOD, APPARATUS, TECHNICAL SUPPORT OR PROCESS PROVIDED TO ORDERING ACTIVITY IN

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

YUBICO

ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT is by and between the Ordering Activity under the GSA Schedule ("Ordering Activity" or "Customer"), and Yubico, Inc., a Delaware corporation having a place of business at 530 Lytton Avenue, Suite 301, Palo Alto, CA 94301 ("Yubico"). In this Agreement, "Party" means, individually, Customer or Yubico as the context requires and "Parties" means, collectively, Customer and Yubico.

BACKGROUND OF THE AGREEMENT

A. Customer has entered into or is currently entering into an agreement(s) with Yubico: (i) for the purchase of YubiKey and/or YubiHSM products; and/or (ii) to license Yubico’s Software (as defined below);
B. Customer desires Yubico to provide it with enterprise-wide maintenance and support services for the YubiKey, YubiHSM and/or Software products that it has or will acquire from Yubico;
C. Customer may obtain maintenance and support services for additional YubiKey, YubiHSM and/or Software products by entering into one or more additional Order Schedules; such additional Order Schedules shall be subject to and become part of this Agreement; and
D. Yubico is willing to provide Customer with maintenance and support services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. DEFINITIONS

1.1. "Agreement" means this Enterprise Maintenance and Support Services Agreement, including all attached exhibits and Order Schedules that reference this Agreement.

1.2. "Customer Support Contact(s)" means individuals designated by Customer who are trained on the use of the Product and/or Software and authorized by Yubico to report Problems to Yubico Support Contacts. Customer Support Contacts, and their contact information, are listed on one or more Order Schedules.

1.3. "Documentation" means Yubico's written materials which it makes accessible to customers and potential customers describing the technical features and functions of the Software and/or Product.

1.4. "End User" means Customer’s employees and consultants authorized by Customer to use the Product and/or Software.

1.5. "Error" means any material error or defect in the Software that causes the Software not to substantially conform in all material respects with its Documentation.

1.6. "Error Corrections" means patches and bug fixes developed by Yubico to correct Errors.

1.7. "Order Schedule" means a purchase order issued by Customer and accepted by Yubico, for the Product Maintenance Services and Software Support Services described in this Agreement.

1.8. "Problem" means a problem or error encountered in the reasonable and authorized use of the Software or Product that (i) degrades the performance of the Software or Product as compared to Yubico’s Documentation applicable to such Software or Product, or (ii) renders one or more features of the Software or Product wholly or partly inoperable.

1.9. "Problem Report" means a reasonable description of a Problem encountered by Customer or its End Users, including: the End User who encountered the Problem, the date and time the Problem was encountered, the steps taken by the Customer Support Contact to resolve the problem prior to submitting a Problem Report and a reproducible test case.

1.10. "Product" means the YubiKey or YubiHSM, as applicable.

1.11. "Severity 1 Problem" means multiple users cannot access software of critical importance to the Customer’s business with no possible Workaround or a failure with multiple users affected per site, multiple sites affected and no possible Workaround. The resulting situation is critical to the operation of the Customer’s business.

1.12. "Severity 2 Problem" means multiple users cannot access software of high importance to the Customer’s business with no practical or easily implementable Workaround or a failure which affects several users in a single site. The resulting situation has moderate impact on the operation of the Customer’s business.

1.13. "Severity 3 Problem" means multiple users cannot access software of low importance to the Customer’s business and a practical Workaround exists or a failure which affects a single user. The resulting situation as some minimal impact on the operation of the Customer’s business.
1.14. “Severity 4 Problem” includes requests for new or enhanced features, general questions relating to the Software or Product and all other Problems that are not Severity 1-3 Problems. The resulting situation does not affect the daily business of the Customer.


1.16. “Software” means one or more of Yubico’s: (i) YubiKey Smart Card Minidriver; (ii) Yubico PIV Tool; (iii) YubiKey PIV Manager; and (iv) YubiHSM Key Storage Provider (KSP).

1.17. “Updated Product” means a replacement Product designed to correct an identified critical security issue in an existing Product.

1.18. “Updates” means Error Corrections, minor enhancements and patches and other minor changes to the Software that are generally made available by Yubico to its Customers at no additional cost pursuant to Enterprise Maintenance and Support Services Agreements. Updates do not include enhancements to or new versions of Software that provide substantial new, enhanced or different features, functions or performance.

1.19. “Workaround” means a change in the procedures recommended by Yubico or data supplied by Customer to avoid a Problem without substantially impairing Customer’s use of the Software or Product.

1.20. “Yubico Support Contacts” are those individuals designated by Yubico to assist Customer with Problems. Customer Support Contacts shall communicate with Yubico Support Contacts in order to report and resolve a Problem. Contact information for the Yubico Support Contacts is listed in one or more Order Schedules.

2. PRODUCT MAINTENANCE SERVICES

2.1. Scope of Services. Product Maintenance Services comprise the provision of Updated Products when Yubico has become aware of a critical security vulnerability with a previous version of a Product that could materially adversely affect the security of Customer’s data. The determination of whether a critical security vulnerability exists that could materially adversely affect a Customer’s data shall be made by Yubico in its sole discretion.

2.2. Updated Products. Yubico will notify Customer when Updated Products are available that address a critical security vulnerability, and Yubico will provide such Updated Products to Customer without additional charge.

2.3. Prompt Replacement of Existing Products. Customer agrees to use commercially reasonable efforts to promptly replace the compromised existing Products with the Upgraded Products and provide evidence of the destruction of the compromised Products to Yubico if requested.

3. SOFTWARE SUPPORT SERVICES.

3.1. Scope of Services. Software Support Services comprise the following services:

a. The provision of Updates as such Updates become available; and

b. Depending upon the Service Level selected and purchased by Customer, Yubico will work to correct Problems with the Software by e-mail, telephone or electronically from Yubico’s remote support center, or provide onsite support for an additional fee in accordance with the GSA pricelist.

3.2. Updates. As permanent solutions are developed for known Errors in the Software, they will be incorporated from time to time in planned Updates. Yubico will provide Customer, free of additional charge, with such Updates as they are released. Yubico will provide documentation that Yubico considers reasonably necessary to assist in a smooth transition for mitigating the errors. In the event Yubico decides in its sole discretion to update the associated Documentation, Yubico will provide a copy of the same to Customer at no additional charge.

3.3. Installation of Updates. All Updates will be made available to Customer electronically via secure download from Yubico’s designated site. Customer agrees to use commercially reasonable efforts to promptly download and install all Updates supplied hereunder in order to maintain the Software at the most current revision level. Yubico is obligated hereunder to provide Software Support Services only (i) for the current revision level of the Software, and (ii) for the pre-updated version of the Software for six (6) months following the release of an Update. Customer is solely responsible for all costs of installation of Updates.

4. PROBLEM REPORTING

4.1. Customer Obligations. Prior to submitting a Problem Report, Customer shall make all reasonable efforts to resolve the Problem without assistance from Yubico. Customer Support Contacts shall attempt to reproduce any problems reported to them by Customer’s End Users and only report reproducible Problems to Yubico. For Problems that Customer is unable to resolve itself, Customer Support Contacts shall report the Problem to Yubico by submitting a Problem Report to Customer’s designated Yubico Support Contact. Customer Support Contacts and Yubico Support Contacts will be set forth in the applicable Order Schedule. All communications concerning Problem identification and resolution shall occur between Customer Support Contacts and Yubico Support Contacts. Valid Problem Reports must be submitted to Yubico in English or languages on Yubico’s Supported Languages List, which will be made available upon request.

4.2. Problem Resolution. Yubico shall address reported Problems in accordance with the severity level assigned to such Problem by Yubico, the Service Level selected and paid for by Customer, and as otherwise set forth in Exhibit B (‘Technical Response Schedule’) attached hereto. Yubico shall exert good faith, commercially reasonable efforts to achieve the response...
times set forth in Exhibit B. However, Customer acknowledges and agrees that Yubico may not be able to achieve the response times set forth in Exhibit B at all times and under all circumstances.
5. EXCLUSION FROM PRODUCT MAINTENANCE AND SOFTWARE SUPPORT SERVICES

5.1. Customer Errors. Yubico will have no obligation of any kind to provide Product Maintenance Services or Software Support Services of any kind for problems in the operation or performance of Products or Software to the extent caused by any of the following (each, a “Customer-Generated Error”): (a) non-Yubico software or hardware products or use of the Software or Product in conjunction therewith; (b) modifications to the Software or Product made by any party other than Yubico without Yubico’s express prior written authorization; (c) Customer’s use of the Software or Product other than in a reasonable manner and as authorized by Yubico; and (d) Customer’s use of other than the most current Product and the most current version of the Software or any Error Corrections or Updates provided by Yubico (or pre-updated version of the Software for six (6) months following the release of an Update).

6. FEES

6.1. Maintenance and Support Services Fees. Customer will pay Yubico the total fees for all Services (“Service Fees”) as specified in all accepted Order Schedules, in accordance with the GSA pricelist. For clarity, if Customer chooses to purchase Services then Customer must select a single level of Service (i.e., Gold or Silver) for all of the Products and Software it has acquired. Yubico cannot provide Services for only a subset of Customer’s Products and Software, nor can Yubico provide Customer with different service levels for different Products and Software.

7. WARRANTY AND DISCLAIMER OF WARRANTIES

7.1. Updated Product Warranty. Updated Products are warranted under the original Product warranty and, accordingly, the warranty for any Updated Product shall persist for the longer of the remaining period of the original one (1) year Product warranty or ninety (90) days from the date Yubico ships the Updated Product to Customer.

7.2. Software Support Services Warranty. Yubico warrants that the Software Support Services will be performed in a workmanlike manner by qualified personnel familiar with the Software and its operations. This warranty will be in effect for a period of thirty (30) days from completion of Yubico’s performance of the affected Software Support Service.

7.3. Sole Remedy. As Customer’s sole and exclusive remedy and Yubico’s entire liability for any breach of the warranty set forth in Section 7.2 regarding Yubico’s provision of Software Support Services, Yubico will, at its option: (a) promptly re-perform the service in an attempt to correct any Errors; or (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund to Customer an equitable portion of the fees paid if the Problem cannot be resolved.

7.4. Disclaimer. Yubico does not warrant that the Updated Products, Updates, Error Corrections, Workarounds and Services provided pursuant to this Agreement will meet Customer’s requirements, or that the Updated Products, Updates, Error Corrections and Workarounds will work in the combinations that Customer may select, or that the operation of the Updated Products, Updates, Error Corrections, Workarounds and Services will be error-free or that all errors in the Products and/or Software will be corrected. Yubico will have no obligation or liability for any Customer-Generated Errors.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, (I) ALL UPDATED PRODUCTS ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE ORIGINAL PRODUCTS THAT ARE REPLACED BY THE UPDATED PRODUCTS, AND (II) ALL UPDATES ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE SOFTWARE MODIFIED OR REPLACED BY THE UPDATES.

BY USING THE UPDATED PRODUCTS, UPDATES, ERROR CORRECTIONS, WORKAROUNDS AND THE SERVICE, CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM SUCH USE, INCLUDING WITHOUT LIMITATION LOSS OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS, OR UNAUTHORIZED ACCESS TO DATA, SOFTWARE PROGRAMS AND/OR COMPUTER SYSTEMS.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM YUBICO OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YUBICO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

8. RESERVED

9. TERM AND TERMINATION

9.1. Term. The initial term (“Initial Term”) of this Agreement is from the date of shipment and for 12 months as set forth in the applicable Order Schedule.

9.2. Reinstating Expired or Terminated Agreement. Once expired or terminated, Customer may only reinstate this Agreement upon payment of the then-applicable GSA Service Fees, plus an additional amount equivalent to the Service Fees that would have been due for the period of time from the termination or expiration date of the Agreement until the date the Agreement is reinstated.
9.3. **Survival.** Sections 1, 6.1, 7, 9.2, 10 and this Section 9.3 will survive any termination or expiration of this Agreement.

10. **GENERAL**

10.1. **Assignment.** This Agreement is not assignable or transferable by either Party, in whole or in part, by operation of law or otherwise, without the other Party's express prior written consent, which consent may be withheld for any reason. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors, assignees and transferees.

10.2. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the Federal laws of the United States. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

10.3. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

10.4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

10.5. **Waiver.** The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

10.6. **Export Control.** Customer agrees to comply fully with all relevant export laws and regulations of the United States and other countries ("Export Laws") to ensure that the Software, Updated Product, Updates, Workarounds and Error Corrections, or any direct or derivative products thereof, are not: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

10.7. **Entire Agreement.** This Agreement, including the attached Exhibits, the underlying GSA Schedule Contract, Schedule Pricelist, and all accepted Order Schedules constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

**Yubico Support Contacts:**
E-mail: enterprise-support@yubico.com
Web: yubi.co/support
Phone: 1-(844) 876-5300
### Technical Response Schedule

#### Silver and Gold Support Services.

<table>
<thead>
<tr>
<th>Service Components</th>
<th>Silver Support Services</th>
<th>Gold Support Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of Coverage</td>
<td>Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time)</td>
<td>24 hours per day, 7 days per week, 365 days per year for Severity 1 problems. Business hours: Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time) Severity 2 – 4.</td>
</tr>
</tbody>
</table>

#### Problem Reporting

- E-mail Problem Reporting only. If e-mail report of a Problem is sent outside of the hours of coverage, then it will be deemed to be received by Yubico Support Contacts upon the next start of the Hours of Coverage.

- Unlimited Problem Reporting, seven (7) days a week, twenty-four (24) hours a day web and toll free telephone access to at least one Yubico Support Contact.
<table>
<thead>
<tr>
<th>Severity 1 Problem</th>
<th>Response time: One (1) business day.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Response time: One (1) hour. A Severity 1 Problem requires you to have dedicated resources available to work on the issue with Yubico on an ongoing basis during your contractual hours, as required. Severity 1 Problems will have priority over Severity 2 - 4 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity 2 Problem</th>
<th>Response time: One (1) business day.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Response time: Eight (8) business hours. Severity 1 Problems will have priority over Severity 2 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services customers.</td>
</tr>
</tbody>
</table>
| Severity 3 Problem | Response time: Three (3) business days.  
Severities 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems. |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Severity 4 Problem | Response time: Five (5) business days.  
All other Problems will have priority over Severity 4 Problems. |
|                   | Response time: Three (3) business days.  
All other Problems will have priority over Severity 4 Problems. |
EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope.** This Rider and the attached ZeroFox, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS IT70 contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.), the Prompt Payment Act (31 U.S.C. §§ 3901 et seq.), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ’s jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

   a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.

   b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

   c) **Contract Form.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

   d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

   e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.

   f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

   g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

   h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

   i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.

   j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.231-3 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

   k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated
3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS
ZEROFOX, INC.

ZEROFOX, INC. LICENSE, WARRANTY AND SUPPORT TERMS

1. ORDER FORMS.
Subject to the terms and conditions of this Agreement, ZeroFOX agrees to sell the Services that are identified in a mutually executed Purchase Order. Upon mutual execution of the Purchase Order, this agreement shall be considered an integral part of this Agreement.

2. USE OF APPLICATION SERVICES.

2.1 Right to Use Application Services.

(a) ZeroFOX agrees to provide access to Application Services within the scope of the Access Rights purchased by Ordering Activity pursuant to a mutually executed Purchase Order. Ordering Activity acknowledges that the Access Rights may be used only by Ordering Activity’s Authorized End Users for Ordering Activity’s internal business purposes, and only during the Access Term.

(b) Ordering Activity acknowledges (i) that it is responsible for procuring and operating all computer systems, software, and telecommunications services required to meet the minimum technical specifications necessary for Ordering Activity’s Authorized End Users to access and use the Application Services, and Ordering Activity may be unable to access or utilize some or all aspects of the Application Services unless such minimum technical specifications are met, and (ii) nothing in this Agreement may be interpreted as an implied license or to require ZeroFOX to deliver a copy of any software or other product utilized by ZeroFOX to provide the Application Services.

2.2 Authorized End Users. Ordering Activity shall be fully responsible for compliance with this Agreement by, as well as the acts and omissions of, all users who access the Application Services under its Authorized End User login credentials. Ordering Activity shall not authorize access to or permit use of the Application Services by persons other than Authorized End Users. ZeroFOX will issue to Ordering Activity the number of unique sets of login credentials (each consisting of a user name and password) set forth on the applicable Purchase Order for the Application Services and, unless otherwise approved in writing by ZeroFOX in its sole discretion, Ordering Activity will ensure that no more than one Authorized End User will have access to or will use each set of login credentials.

2.3 Documentation License. Subject to the terms and conditions of the Purchase Order, ZeroFOX hereby grants to Ordering Activity a nonexclusive, non-transferable, non-sublicensable right and license during the Term to reproduce copies of the Documentation solely for use by Ordering Activity in connection with the exercise of rights granted in this Agreement. Ordering Activity acknowledges that no right is granted to distribute, publish, modify, adapt, translate or create derivative works of the Documentation. Ordering Activity acknowledges that the Documentation is ZeroFOX’s Confidential Information, and hereby agrees to accurately reproduce all proprietary notices, including any copyright notices, trademark notices or confidentiality notices, that are contained within any copies of the Documentation. ZeroFOX recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

3. RESERVATION OF RIGHTS AND RESTRICTIONS.

3.1 Proprietary Rights; No Implied Licenses. Ordering Activity acknowledges that, as between the Parties, ZeroFOX owns all Intellectual Property Rights and other proprietary interests that are embodied in, or practiced by, the Application Services, the ZeroFOX Products and Platform, and the Documentation. To be clear, however, the preceding sentence does not constitute a representation or warranty regarding ownership of any intellectual property rights or other proprietary interests.

3.2 Compliance with Laws. Ordering Activity represents and warrants that it shall use the Application Services and Reports only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities, including without limitation the National Labor Relations Act, the Family Medical Leave Act, the Stored Communications Act, the Computer Fraud and Abuse Act and any federal, state or local laws regarding employee privacy, off-duty conduct or discrimination.

3.3 General Restrictions on Use. Ordering Activity agrees not to act outside the scope of the rights that are expressly granted by ZeroFOX in this Agreement. Ordering Activity will not (a) make the Application Services available to anyone other than Ordering Activity and its Authorized End Users; (b) sell, resell, license, sublicense, rent, lease or distribute the Application Services or any Reports, or include any Application Services or Reports or any derivative works thereof in a service bureau or outsourcing offering; (c) copy, modify or make derivative works based upon the Application Services; (d) “frame” or “mirror” any Reports contained in, or accessible from, the Application Services on any other website, server, wireless or Internet-based device; or (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component underlying the Application Services is compiled or interpreted, and Ordering Activity hereby acknowledges that nothing in this Agreement shall be construed to grant Ordering Activity any right to obtain or use such source code. Ordering Activity acknowledges and agrees that compliance with the restrictions set forth in this Article 3 is an essential basis of this Agreement.

4. TREATMENT OF CONTENT.

4.1 Selection of Ordering Activity Content and Third Party Content. Ordering Activity understands that the Application Services are capable of processing Ordering Activity Content that is uploaded by Ordering Activity to ZeroFOX’s servers. Ordering Activity further understands that the Application Services may include features that enable Ordering Activity to specify Third Party Content to be retrieved via the Application Services automated functionality from a variety of third-party websites and other third-party resources, including Social Media Sites. As between the Parties, Ordering Activity alone is responsible for selection of all Ordering Activity Content and Third Party Content, and ZeroFOX disclaims all risks associated with the content, accuracy, completeness, consistency, integrity, legality, reliability and appropriateness of Ordering Activity Content and Third Party Content and the use of all such content by Ordering Activity and by ZeroFOX in connection with providing the Services contemplated by this Agreement as set forth on any mutually executed Order Form.

4.2 Rights in Content.

(a) Ordering Activity Content. Ordering Activity hereby grants to ZeroFOX a non-exclusive license to use, store, process, analyze and display in reports all Ordering Activity Content during the Term for the limited purposes of performing ZeroFOX’s obligations under this Agreement. Prior to uploading Ordering Activity Content, Ordering Activity shall, at its own expense, obtain all licenses, consents or other permissions from appropriate third parties as may be necessary for Ordering Activity’s use of the relevant Ordering Activity Content as necessary to enable Ordering Activity to grant the rights granted by this Section 4.2.

(b) Third Party Content. Ordering Activity acknowledges that the Content may contain or be accompanied by third-party software, data or other materials that are subject to and provided in accordance with terms that are in addition to or different from the terms set forth in this Agreement.

(c) Employee Generated Content. Ordering Activity acknowledges that Ordering Activity Content and Third Party Content may include content generated by its employees and that Ordering Activity’s collection, monitoring and use of such content may be restricted by federal and state employment laws. Ordering Activity shall, at its own expense, obtain all consents or permissions required to lawfully use employee-generated content as contemplated by this Agreement and Ordering Activity shall only use such content in compliance with applicable law.

4.3. Content Disclaimers.

(a) ZeroFOX shall have no obligation to preview, verify, modify, filter or remove any Third Party Content (although ZeroFOX may do so in its sole discretion), and ZeroFOX shall not be responsible for any failure to remove, or for any delay in removing, harmful, inaccurate, unlawful or otherwise objectionable Third Party Content.
For purposes of this Agreement, certain capitalized words and phrases will have the meanings set forth or cross-referenced below.

**Access Rights** are contractual rights to access and use the Application Services according to the technical procedures and protocols established according to this Agreement. The scope of any particular Access Rights may be defined by the terms of the applicable Order Form, including the Access Term, number of Social Entities, Authorized Sources or other use restrictions.

**Access Term** shall have the meaning given such term in the Order Form.
EXHIBIT 1 SERVICE LEVEL AGREEMENT

This Exhibit 1 sets forth Service Levels governing the contractual relationship between ZeroFOX and the Ordering Activity.

**SERVICE LEVEL STANDARDS:** The following defines service level standards for the Services:

<table>
<thead>
<tr>
<th>Service/Activity</th>
<th>Service Level</th>
<th>Service Level Credit</th>
<th>Service Level Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Availability of the</strong></td>
<td>The Services will be available to users for normal use 98.00% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades, and will be communicated with at least 24 hours of notice. Any downtime that might require more than 2 hours will be scheduled at least 7 days in advance.</td>
<td>5% of the recurring monthly fee for the Services for the month of the failure.</td>
<td>Credit to be remitted to Customer following the agreed upon dispute date</td>
</tr>
<tr>
<td><strong>Services</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Restore Time</strong></td>
<td>In the event of unscheduled downtime the system shall be restored to a fully operational state within 48 hours.</td>
<td>5% of the recurring monthly fee for the Services for the month of the failure.</td>
<td>Credit to be remitted to Customer following the agreed upon dispute date</td>
</tr>
<tr>
<td><strong>Reports</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Social Entities</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Social Media Sites</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Support Services</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Use Restrictions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ZeroFOX Products</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ZeroFOX Platform</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Resolution of Critical Malfunction

Failure to comply with the requirements with respect to Critical malfunctions in a month. Critical Malfunction shall mean a failure of the Software which severely impacts Customer’s ability to provide service and which cannot be temporarily eliminated through the use of a "Bypass" or "Work Around.

5% of the recurring monthly fee for the Services for the month of the failure.

Credit to be remitted to Customer following the agreed upon dispute date.

EXHIBIT 2 SILVER SUPPORT SERVICES AGREEMENT

1. This Silver Support Services Agreement (the “Agreement”) is hereby incorporated into this Attachment A. SILVER SUPPORT SERVICES. During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following support services (the "Silver Support Services"): 

<table>
<thead>
<tr>
<th>Service</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone or Email Support</td>
<td>Monday-Friday 9:00AM - 6:00PM</td>
</tr>
<tr>
<td>Annual Takedown Limit</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Platform QuickStart (Setup &amp; Onboarding)</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Support Response Time</td>
<td>2 Days</td>
</tr>
<tr>
<td>Weekly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Monthly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Product Upgrades</td>
<td>Included</td>
</tr>
<tr>
<td>Additional FoxScript Development</td>
<td>$1000/per FoxScript</td>
</tr>
</tbody>
</table>

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2 Support Email Address: support@zerofox.com

2. “Social Entities” which are identified by Customer, to represent people, organizations or brands, keywords or data, or hashtags, may not be changed without the prior written consent of ZeroFOX.

3. Additional Professional Services. Silver Support Services do not include managed services, on-site support, training, senior incident management support and technical analysis, implementation or documentation services (collectively, “Professional Services”). Any Professional Services to be provided will be included in an Order Form, with additional terms set forth in a Statement of Work. ZeroFOX shall be under no obligation to perform Professional Services until an Order Form and Statement of Work in relation thereto has been mutually executed.

EXHIBIT 3 PLATINUM FULLY-MANAGED SERVICES AGREEMENT

This Platinum Fully-Managed Services Agreement (the “Agreement”) is hereby incorporated into this Attachment A.

1. PLATINUM FULLY-MANAGED SERVICES. During the Access Term, ZeroFOX agrees to perform for Ordering Activity the following services (the “Managed Services”) if Ordering Activity has purchased such Managed Services:
a. ZeroFOX will monitor alerts provided by the Application Services for social entities that are identified by Ordering Activity, such as people, organizations or brands, keywords or data, or hashtags (each, a "Social Entity"). Ordering Activity will initially designate the specific Social Entities to be monitored by ZeroFOX, up to the number of Social Entities designated on the applicable Order Form. Social Entities may not be changed without the prior written consent of ZeroFOX. As part of the Managed Services, ZeroFOX will:
   i. monitor the Social Entities defined in the Order Form;
   ii. create FoxScript rules based on criteria established by Ordering Activity or ZeroFOX, as applicable;
   iii. monitor alerts identified by the Application Services, and investigate and analyze such alerts;
   iv. create an automated takedown process based on guidelines established by Ordering Activity;
   v. submit takedowns to social media networks on behalf of Ordering Activity;
   vi. make provision for token refreshing as needed; and
b. All Managed Services will be performed remotely unless otherwise set forth on an Order Form. ZeroFOX is under no obligation to perform on-site services as part of this Agreement.
c. ZeroFOX will provide commercially reasonable telephone and / or email support for problem determination and resolution during normal business days.
d. Summary of services are:

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone or Email Support</td>
<td>Monday-Friday</td>
</tr>
<tr>
<td></td>
<td>8:00AM - 8:00PM EST</td>
</tr>
<tr>
<td>Dedicated Customer Success Expert</td>
<td>12 Hours/Quarter</td>
</tr>
<tr>
<td>Annual Takedown Limit</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Platform QuickStart (Setup &amp; Onboarding)</td>
<td>Per Sales Order</td>
</tr>
<tr>
<td>Support Response Time</td>
<td>Less Than 24 Hours</td>
</tr>
<tr>
<td>Weekly Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Monthly Executive Reporting</td>
<td>Included</td>
</tr>
<tr>
<td>Annual Personalized Training</td>
<td>Included</td>
</tr>
<tr>
<td>Annual Optimization &amp; Tuning</td>
<td>Included</td>
</tr>
<tr>
<td>Data Export</td>
<td>Included</td>
</tr>
<tr>
<td>Product Upgrades</td>
<td>Included</td>
</tr>
<tr>
<td>FoxScript Development</td>
<td>1 Per Quarter</td>
</tr>
</tbody>
</table>

Support Phone Number: 1-855-ZFOX-FOX (1-855-9369369), Option 2
Support Email Address: support@zerofox.com
EMC SOFTWARE USE RIGHTS

EMC® software products (“Software”) are licensed by EMC to customers who order directly from EMC (“Direct End-Users”) under a signature bearing agreement between EMC and the Direct End-User or under the terms of an End-User License Agreement (“EULA”) that is between EMC and the entity making productive use of the Software. The EULA is either in a hard-copy format that is shrink-wrapped to the software media packaging or stated in an electronic “click-wrap” or click-to-accept format that must be electronically accepted prior to downloading and/or installing the Software. EMC also provides Software to its Channel Partners (organizations that resell the license directly to or through additional tiers of resellers to the organization that makes productive use of the Software ["Indirect End-User"]). Channel Partners are required to obtain a written, signed license with the Indirect End-User in a format that meets EMC license requirements, unless the Software is accompanied by the EMC EULA. The information in this Software Use Rights ("SUR") document is provided to further define the license rights and limitations for Software products.

Software is licensed via a unit of measure ("UOM") that quantifies the scope of the license rights being granted on the basis of the particular licensing model used by EMC for such Software. These licensing models are described in this document. The UOM applicable to the Software being offered pursuant to an EMC Quote may be designated in the Software product description in the EMC Quote by the codes described in the following table:

<table>
<thead>
<tr>
<th>UOM Code</th>
<th>UOM (Unit of Measure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Registered Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>CB</td>
<td>Raw Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>CC</td>
<td>Usable Capacity of data measured in terabytes</td>
</tr>
<tr>
<td>FA</td>
<td>Foundation</td>
</tr>
<tr>
<td>FB</td>
<td>Foundation related Service Connector</td>
</tr>
<tr>
<td>FC</td>
<td>Foundation related Application Instance</td>
</tr>
<tr>
<td>FD</td>
<td>Foundation related Advanced Logging Instance</td>
</tr>
<tr>
<td>FE</td>
<td>Foundation related Service Instance</td>
</tr>
<tr>
<td>IA</td>
<td>Instance measured per server</td>
</tr>
<tr>
<td>IB</td>
<td>Instance measured per virtual machine</td>
</tr>
<tr>
<td>IC</td>
<td>Instance measured per storage array</td>
</tr>
<tr>
<td>ID</td>
<td>Instance measured per node</td>
</tr>
<tr>
<td>IE</td>
<td>Instance measured per engine</td>
</tr>
<tr>
<td>MA</td>
<td>Managed Entity measured per device</td>
</tr>
<tr>
<td>MB</td>
<td>Managed Entity measured per inbox or mailbox</td>
</tr>
<tr>
<td>MC</td>
<td>Managed Entity measured per user</td>
</tr>
<tr>
<td>PA</td>
<td>Process Rate measured in pages per year</td>
</tr>
<tr>
<td>UA</td>
<td>Named User</td>
</tr>
<tr>
<td>UB</td>
<td>Concurrent User</td>
</tr>
<tr>
<td>ZA</td>
<td>Central Processing Unit cores (quantity 1-6 cores)</td>
</tr>
<tr>
<td>ZB</td>
<td>Central Processing Unit cores (quantity 7-12 cores)</td>
</tr>
<tr>
<td>ZC</td>
<td>Individual Central Processing Unit Core</td>
</tr>
</tbody>
</table>

EMC SOFTWARE MODELS

REGISTERED CAPACITY MODEL

Model Description
Licensing and pricing is based upon the Registered Capacity of one or more storage array, Server, or other device(s) on which the Software is licensed for use. The Registered Capacity describes the maximum quantity of data for which the
functionality of the Software is authorized for use. The total capacity of the device may exceed the Registered Capacity that the Software is licensed to operate on.

Software that is licensed on the basis of Registered Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. Each storage array or other hardware device requires the purchase of (i) an initial base product (independent of Registered Capacity) and (ii) an additional quantity of add-on products that reflect the amount of Registered Capacity on which the applicable Software is authorized for use. Customers may subsequently determine they need to use the Software in connection with an amount of data that exceeds the current Registered Capacity. In such cases, customers must either purchase an appropriate number of additional licenses to cover the increase in the Registered Capacity, or purchase a new base product plus Software in instances where a capacity limitation has been reached.

Model Specific Terms and Conditions
- The purchase of a base product license plus add-on product licenses (which are measured by Registered Capacity) are both needed to use the Software product(s).

RAW CAPACITY MODEL

Model Description
Licensing and pricing is based upon the total capacity of the storage array or other devices on which the Software is licensed for use. Software licensed on the basis of Raw Capacity is typically licensed for use only on a specifically identified storage array. This model uses a “base plus capacity” approach as described in the Registered Capacity model above, where the customer purchases one base product license and then purchases incremental capacity add-on product licenses to equal the raw capacity of the system on which the Software will operate.

Model Specific Terms and Conditions
- A base product license plus add-on product licenses (which are measured by Raw Capacity) are both needed to use the Software product(s).

USABLE CAPACITY MODEL

Model Description
Licensing and pricing are based upon the Usable Capacity of one or more storage arrays, Servers, or other devices on which the Software is licensed for use. The Usable Capacity describes the maximum quantity of data for which the functionality of the Software is authorized for use. The Usable Capacity of a licensed device is calculated by EMC on the basis of the Raw Capacity minus Overhead. Raw Capacity is the total data storage capacity of a licensed device. Overhead is that portion of Raw Capacity which EMC determines is reserved for or allocated to spares, RAID types and applications running on a licensed device and on which the software functionality is not to be used.

Software that is licensed on the basis of Usable Capacity is typically licensed for use only on a specifically identified storage array or other hardware device. The Customer or EMC may subsequently make a change to the Raw Capacity, configuration, RAID level or overall environment of a licensed device that increases the Usable Capacity to an amount in excess of the quantity for which the Software has been licensed. In these cases, Customer must purchase an appropriate additional license to cover the increase in the Usable Capacity.

Model Specific Term and Conditions
- The purchase of a base product license plus add-on product licenses (which are measured by Usable Capacity) are needed to use the Software product(s).

INSTANCE MODEL

Model Description
Licensing and pricing is based upon the nature of the hardware platform on which the Software operates. It includes servers that run a single instance, partition, or virtual machine as well as servers that run multiple instances, partitions, or virtual machines (both physical and virtual machines). Each partition running the application constitutes an instance.
This model is also used with server-based Software and Software that is licensed to a specific storage array or to an engine within a storage array. An engine consists of a CPU, cache and data storage (regardless of the speed, performance or capacity of the engine components), as designated by EMC. Adding an engine to an existing storage array enclosure is designated as an upgrade to the existing storage array.

Model Specific Terms and Conditions
- Server-based Software licensed in accordance with the Instance model is generally priced for a particular OS type, such as Windows, Solaris, etc.
- An Instance license may provide support for only a single application type, such as Exchange or Oracle.

MANAGED ENTITY LICENSING MODEL

Model Description
Licensing and pricing is based upon the total number of entities being managed or inspected by the Software. An entity is defined as any singular item being managed or monitored by the EMC Software and can include third-party hardware, a running instance of a software program, an abstract resource (such as an email inbox), or a user. The Software licensed under this model may be used on or with a specific entity or quantity of entities of a specified type.

Examples of physical devices include, but are not limited to: routers, switches, firewalls, load balancers, storage arrays, NAS data movers, NAS systems, blades, and IP phones.

Examples of instances of a software program include, but are not limited to: databases, volume managers, file systems, operating systems, hypervisors, backup software systems, and CMDB systems. An example of an abstract resource is an email inbox being inspected or managed by the Software product. An example of a user as a managed entity is a user that authenticates to a VPN or some other system using the Software product.

Model Specific Terms and Conditions
- Managed Entity Metric Considerations: Under this licensing model, some Software will be licensed by the total number of entities the Software is interacting with while other Software will be licensed for specifically identified entities.

PROCESS RATE LICENSING MODEL

Model Description
Licensing and pricing is based upon the cumulative amount of work done by the Software over a specified time period.

Model Specific Terms and Conditions
- Tiered pricing (price per mailbox decreases as the number of email mailboxes purchased increases).
- Licensing for EMC EmailXtender is limited to the sole and exclusive benefit and use of the user. License rights may not be further assigned or sublicensed to any other party for any other purpose.

NAMED USER LICENSING MODEL

Model Description
Licensing and pricing is based upon the total number of unique named users or seats accessing the Software, whether such users are actively using the Software, or accessing the Software at any given time. If a named user of the Software leaves the employ of the customer, or moves into a role that doesn't require access to the Software, the seat does not have to be relinquished by the customer, but can be reassigned to a different named user.

CONCURRENT USER LICENSING MODEL

Model Description
This model specifies the maximum number of concurrent users who are accessing the Software at any instance in time.

CENTRAL PROCESSING UNIT ("CPU") MODEL

Model Description
Licensing and pricing is based upon the total number of CPUs present in the computer upon which the Software will operate. A two-tier system is used based on the number of cores present. These two tiers can be combined as needed on CPUs with greater than 12 cores. Neither tier can be split across more than one CPU.

**INDIVIDUAL CENTRAL PROCESSING UNIT (“CPU”) CORE MODEL**

**Model Description**
Licensing and pricing is based upon the number of “Cores” on which the Software will operate. A “Core” is defined on the basis of the environment in which the Software operates.

When operating the Software in a “bare metal” environment, which means a physical machine without a hypervisor product capable of creating Virtual Machines, and excludes operation within a cloud service environment, a “Core” equals a single, computational unit of the processor.

When operating the Software in a hypervisor (Virtual Machine) environment, a “Core” equals a single unit of virtual processing power (commonly referred to as a “vCPU”) configured to each Virtual Machine. A Virtual Machine is a software container able to run its own operating system and execute applications, just as a physical computer does.

When operating the Software in a public cloud services environment, a “Core” equals a single, basic, most granular unit of computational power as defined by the cloud service provider. This may include, but is not limited to such units expressed as the number of “vCPUs,” “virtual CPUs,” “virtual cores,” and “dynos.”

**FOUNDATION LICENSING MODEL**

**Model Description**
Licensing and pricing is based upon the number of Foundations on which the Application Instances will operate. A single Foundation includes use on up to all of the virtual machines running on physical servers at one physical location owned or operated by the licensee.

**SERVICE CONNECTOR LICENSING MODEL**

**Model Description**
Licensing and pricing is based on the total number of Foundations (no more than one (1) Service Connector per Foundation) to which a licensee wishes to allow an independent application service, such as a database or a messaging system, to connect to the Foundation. A Service Connector is not needed for a Foundation if all of the information to be processed or acted upon is already housed within the applicable Foundation.

**APPLICATION INSTANCE LICENSING MODEL**

**Model Description**
Licensing and pricing is based on the total number of Application Instances that a licensee wishes to simultaneously run on the applicable Foundation or on Pivotal’s online Platform-as-a-Service offering (currently called Pivotal Web Services (“PWS”)). Each Application Instance represents a single process running on a single virtual machine within the Foundation or PWS.

**ADVANCED LOGGING INSTANCE LICENSING MODEL**

**Model Description**
Licensing and pricing is based on the total number of Advanced Logging Instances that a licensee wishes to run simultaneously on the applicable Foundation. Each Advanced Logging Instance enables the licensee to track and observe the operation and execution of the single Application Instance with which it is it is associated.

**FOUNDATION RELATED SERVICE INSTANCE LICENSING MODEL**

**Model Description**
Licensing and pricing is based on the total number of Service Instances that a licensee wishes to simultaneously run on the applicable Foundation. Each Service Instance represents a single, unique configuration of a service (such as a database or other software or middleware) within a Foundation platform that utilizes resources (such as CPU, cores,
virtual machines, memory, messaging, development and/or data storage) within the same or an another licensed Foundation.

**ADDITIONAL INFORMATION**

**Software Access and Use Requirements**
Except as otherwise agreed in writing, licenses are required for each device/user accessing or using the Software, notwithstanding any non-EMC technology used to: (i) reduce the number of devices or users the Software directly manages; (ii) pool connections; or (iii) reduce the number of devices/users accessing or using the Software.

**Pure Custom Client**
Per-Seat licenses of Pure Custom Client are required for each user of each software application accessing a Content Server repository and deploying full read/write access to the Content Server, including applications providing end-user access via application servers, commerce servers, Web servers, or personalization servers.

**Read-Only Access**
Per-Seat licenses of Read-Only Client, or Documentum Platform Bundle, which includes Read-Only entitlement, are required for each user of each software application accessing a Content Server repository and deploying read-only access to the Content Server, including applications providing access via application servers, commerce servers, Web servers or personalization servers on your behalf. Read-Only Access is limited to the following Content Server functionality only: individual login, individualized security, query/search capability, viewing of content and properties, and personalized delivery of content based on user or information and/or security. Access to the following functionality is excluded from Read-Only Access: import or creation of new content, editing of existing content or properties (check in/checkout), creation of and participation in workflows, promotion or demotion of content in a lifecycle, creation of lifecycles, or any other operation that changes the content of a Content Server repository. The customer is responsible for proper configuration of the system to ensure that Read-Only users are limited to read-only functionality via access control settings. The Documentum Platform Bundle license provides entitlement for Read-Only access using Webtop or third-party custom clients. No other Documentum clients may be used for Read-Only access.

**Captiva InputAccel (IA) and Documentum Reporting Services (DRS)**
Each licensed installation of IA and DRS includes a single copy of SAP's Business Objects Crystal Reports Designer, which you may use solely in connection with your licensed use of IA or DRS, and only with data created or used by IA or DRS. You may not install more than one copy of Crystal Reports Designer per licensed installation of IA or DRS.

**xPlore Software**
Use of EMC's ApplicationXtender xPlore software product is only permitted with content residing in EMC's ApplicationXtender software product. No standalone use of xPlore is permitted except with the written consent of EMC.

**xCP User**
Single App is licensed for a Named User to access a single xCP-based application. If a user needs access to more than one xCP-based application, an additional xCP Single App license is required or the user should be licensed for the xCP User Unlimited license.

**Application Specific Licensing (ASL)**
Any software product EMC designates as Application Specific License products, including the underlying components of any software bundle, may only be used for the specific solution/application for which it is licensed. Use of the software or any individual components for any other purpose, including general content management functionality, is prohibited. The following is a partial list of software products designated as ASL products:

- EMC Clinical Archiving
- EMC Documentum for Life Sciences – Quality and Manufacturing
- EMC Documentum for Life Sciences – Electronic Trial Master File
- EMC Documentum for Life Sciences – Research and Development
- EMC Documentum for Life Sciences – Submissions Store and View
- EMC Engineering, Plant and Facilities Management – Asset Operations
- EMC Engineering, Plant and Facilities Management – Capital Projects
TEMPORARY TERM EXPIRING LICENSES

Evaluation and Other Non-production Use Licenses
In certain instances and at EMC’s discretion, EMC may grant a short-term license for the purpose of demonstration, evaluation, or some other non-production internal use. Such license may be issued as a 30-day license for standalone Software or a 90-day license for array-based systems Software. At the end of the temporary term, the license to use the Software expires and the Software may cease to operate. The temporary term begins once the licenses are made available (e.g., either by making the Software available for download or by delivering the CD to the customer).

Failover Expiring Licenses
Each license entitlement includes the right to run the Software on a separate computer in a failover environment for up to 30 separate days in any given calendar year for purposes of emergency management. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software. License keys for such licenses must be obtained from EMC by making a request through EMC Powerlink®.

Backup Testing Expiring License
For the purpose of testing physical copies of backups, license rights include the capability to run the Software on an unlicensed computer for up to 30 days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Emergency Expiring License
EMC will allow and support the use of emergency licenses for customer critical situations, such as getting back into production in a disaster recovery situation or resolving a situation with an incorrect License Key being delivered. Each license entitlement includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year. License keys for such licenses must be obtained from EMC by making a request through Powerlink. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the Software.

Service License
EMC will allow the use of service-related licenses for customer situations in conjunction with EMC’s support organization when initiated and used by EMC support personnel. The license includes the right to run the Software on an unlicensed separate computer for up to 30 separate days in any given calendar year.

MOVE POLICY
A “move” of a Software license is defined as when the original licensee stops using a Software product on one system or device and begins using it on another of the licensee’s own systems or devices.

<table>
<thead>
<tr>
<th>Software Type</th>
<th>Moveable?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Environment (OE)</td>
<td>No</td>
<td>Operating system-type software installed on EMC storage device or other hardware. Enables basic system functionality. This Software is licensed solely for use on the hardware device on which it is shipped; therefore, the license is not eligible to be moved to another device.</td>
</tr>
<tr>
<td>OE Application</td>
<td>Yes</td>
<td>Software applications that can only run on EMC OE Software. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC.</td>
</tr>
</tbody>
</table>
| Platform | Yes | Software applications that run on non-EMC OE’s but interacts with EMC products. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original EMC hardware system; the features, functionality, and price of the Software are the same on the new and old EMC hardware systems; the source EMC hardware system is technologically compatible with the target EMC hardware system; the move is not prohibited by the product support agreement; any applicable move fees are paid to EMC.

Given the above constraints, the following additional rules apply:
- Moves from multiple systems to one system (consolidation) are allowed.
- Moves from one system to two or more systems are not allowed, as a software license is indivisible.
- Moving a raw capacity license to a second system for use as a registered capacity license is not allowed and vice versa. |
| Host Application | Yes | Software which is not designed solely for installation and use on an EMC storage device, but which runs on a standalone server, an appliance or some other hardware device. Move permitted, provided: Software is under maintenance; customer agrees to discontinue use of the Software on the original host system; the features, functionality, and price of the Software are the same on the new and old host systems; the source host system is technologically compatible with the target host system; any applicable move fees are paid to EMC. |

**TRANSFER POLICY**

“Transfer” of a Software license is defined as when the original licensee has stopped using a Software product and wants to sell or otherwise transfer the rights to use the Software to a secondary purchaser. EMC does not allow transfers under any circumstances; in all cases, the secondary purchaser must purchase a new license to run the Software.

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H2483.14 Rev. March 19, 2015 Handout
EMC BASIC SUPPORT

The following chart lists the service features of Basic Support provided under EMC's standard warranty and/or maintenance terms.

Basic Support is available as to:

1. EMC® Equipment which is identified on the EMC Product Warranty and Maintenance Table as
   - including Basic Support during the applicable warranty period; or
   - eligible for Basic Support during a subsequent maintenance period

2. EMC Software which is identified on the EMC Product Warranty and Maintenance Table as eligible for Basic Support during a maintenance period.

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>BASIC SUPPORT – COVERAGE DETAILS</th>
</tr>
</thead>
</table>
| **GLOBAL TECHNICAL SUPPORT** | Customer may contact EMC by telephone or web interface 24x7 to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem, or, (ii) when deemed necessary by EMC Onsite Response as described below. | Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact:
  - Severity Level 1: 2 local business hours; on a 9x5 basis
  - Severity Level 2: 4 local business hours; on a 9x5 basis
  - Severity Level 3: 8 local business hours; on a 9x5 basis
  - Severity Level 4: 12 local business hours; on a 9x5 basis |
<p>| <strong>ONSITE RESPONSE</strong>   | EMC sends authorized personnel to the installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response is necessary.                                                      | Not included. Available for purchase under EMC's then-current, standard time and materials terms, conditions, and pricing. |
| <strong>REPLACEMENT PARTS DELIVERY</strong> | EMC provides replacement parts when deemed necessary by EMC.                                                                                                                                            | Included. Replacement parts will be shipped to the Customer for next local business day arrival. Local country shipment cut-off times may impact the next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC. |</p>
<table>
<thead>
<tr>
<th><strong>RIGHTS TO NEW RELEASES OF SOFTWARE</strong></th>
<th>EMC provides the rights to new Software Releases as made generally available by EMC.</th>
<th>Included.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INSTALLATION OF SOFTWARE RELEASES</strong></td>
<td>Installation of new Software Releases is not included.</td>
<td>Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
<tr>
<td><strong>24X7 REMOTE MONITORING AND REPAIR</strong></td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination.</td>
<td>Not included.</td>
</tr>
<tr>
<td><strong>24X7 ACCESS TO ONLINE SUPPORT TOOLS</strong></td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:

- **Severity 1: Critical**: a severe problem is preventing the customer or workgroup from performing critical business functions.
- **Severity 2: High**: the customer or workgroup is able to perform job function, but performance of job function is degraded or severely limited.
- **Severity 3: Medium**: the customer or workgroup performance of job function is largely unaffected.
- **Severity 4: Request**: minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC’s performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. June 4, 2014
# EMC ENHANCED SUPPORT

The following chart lists the service features of Enhanced Support provided under EMC's warranty and/or maintenance terms.

Enhanced Support is available as to:

1. EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as
   - Including Enhanced Support during the applicable warranty period; or
   - eligible for upgrade to Enhanced Support during the applicable warranty period; or
   - eligible for Enhanced Support during a subsequent maintenance period

2. EMC Software which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Enhanced Support during a maintenance period

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>ENHANCED SUPPORT &amp; COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GLOBAL TECHNICAL SUPPORT</strong></td>
<td>Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC, Onsite Response as described below.</td>
<td>Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: 1 hour; on a 24x7 basis Severity Level 2: 3 hours; on a 24x7 basis Severity Level 3: 4 local business hours Severity Level 4: 10 local business hours</td>
</tr>
<tr>
<td><strong>ONSITE RESPONSE</strong></td>
<td>EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Support necessary.</td>
<td>Included for Equipment only. Initial Onsite Response objective is next local business day, on a 9x5 basis, after EMC deems Onsite Response is necessary. Onsite Response does not apply to Software, but may be separately purchased.</td>
</tr>
<tr>
<td><strong>REPLACEMENT PARTS DELIVERY</strong></td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement part delivery objective is next local business day. Local country shipment cut-off times may impact next local business day delivery of replacement parts and the related Onsite Response. Installation of Customer Replaceable Units (CRUs) is the responsibility of the Customer. Refer to the <a href="#">EMC Product Warranty and Maintenance Table</a> for listing of parts designated as CRUs. Installation of all other non-CRU parts performed by EMC. If EMC installs the replacement part, EMC will arrange for its return to an EMC facility. If a Customer installs the CRU, the Customer is responsible for returning the replaced CRU to a facility designated by EMC.</td>
</tr>
<tr>
<td>RIGHTS TO NEW RELEASES OF SOFTWARE</td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC.</td>
<td>Included.</td>
</tr>
<tr>
<td>------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>INSTALLATION OF SOFTWARE RELEASES</td>
<td>Installation of new Software Releases is not included.</td>
<td>Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
<tr>
<td>24x7 REMOTE MONITORING AND REPAIR</td>
<td>Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.</td>
<td>Included for products which have remote monitoring tools and technology available from EMC. Once EMC is notified of a problem, the same response objectives for Global Technical Support and Onsite Response will apply as previously described.</td>
</tr>
<tr>
<td>24x7 ACCESS TO ONLINE SUPPORT TOOLS</td>
<td>Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.</td>
<td>Included.</td>
</tr>
</tbody>
</table>

*Severity Levels:
- **Severity 1**: Critical: a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2**: High: the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3**: Medium: the customer or workgroup performance of job function is largely unaffected.
- **Severity 4**: Request: minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC’s performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. June 4, 2014
EMC PREMIUM SUPPORT

The following chart lists the service features of Premium Support provided under EMC’s warranty and/or maintenance terms.

Premium Support is available as to:

1. EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as:
   - including Premium Support during the applicable warranty period; or
   - eligible for upgrade to Premium Support during the applicable warranty period; or
   - eligible for Premium Support during a subsequent maintenance period

2. EMC Software which is identified on the [EMC Product Warranty and Maintenance Table](#) as eligible for Premium Support during a maintenance period

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>PREMIUM SUPPORT &amp; COVERAGE DETAILS</th>
</tr>
</thead>
</table>
| GLOBAL TECHNICAL SUPPORT | Customer may contact EMC by telephone or web interface on a 24x7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. | Included. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact:
  Severity Level 1: 30 minutes; on a 24x7 basis
  Severity Level 2: 2 hours; on a 24x7 basis
  Severity Level 3: 3 local business hours
  Severity Level 4: 8 local business hours |
| ONSITE RESPONSE       | EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary. | Included for Equipment only. Initial Onsite Response objective is based on Severity Level, within the following time period after EMC deems Onsite Support is necessary.
  Severity Level 1: 4 hours on a 24x7 basis
  Severity Level 2: Within 12 hours on a 24x7 basis
  Severity Level 3: Next business day, local business hours
  Severity Level 4: Next business day, local business hours
  Onsite Response does not apply to Software, but may be separately purchased. |
| REPLACEMENT PARTS DELIVERY | EMC provides replacement parts when deemed necessary by EMC. | Included. Replacement part delivery objective is based upon Severity Level, within the following time period after EMC deems a replacement part is necessary:
  Severity Level 1: 4 hours on a 24x7 basis
  Severity Level 2: Within 12 hours on a 24x7 basis
  Severity Level 3: Next business day, local business hours
  Severity Level 4: Next business day, local business hours |
| RIGHTS TO NEW RELEASES OF SOFTWARE | EMC provides the rights to new Software Releases as made generally available by EMC. | Included. |
| INSTALLATION OF SOFTWARE RELEASES | EMC will perform the installation of new Software Releases. | Included for Software which EMC determines is Equipment operating environment Software. |
| 24x7 REMOTE MONITORING AND REPAIR | Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination. EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support. | Included for products which have remote monitoring tools and technology available from EMC. |
| 24x7 ACCESS TO ONLINE SUPPORT TOOLS | Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site. | Included. |

*Severity Levels:*
- **Severity 1: Critical:** a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2: High:** the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3: Medium:** the customer or workgroup performance of job function is largely unaffected.
- **Severity 4: Request:** minimal system impact; includes feature requests and other non-critical questions.

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Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC’s performance of warranty and maintenance services on Products obtained from a reseller.

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Rev. October 9, 2013
EMC Software Warranty

1. Except as otherwise agreed by EMC and the customer in a written agreement or as set forth below, the warranty duration for software provided under an agreement directly between EMC as licensor and the customer is ninety (90) days from the date of shipment, or the date of electronic availability, as applicable.

2. The warranty duration for Core Software (the programming or microcode firmware included by EMC with equipment to enable the equipment to perform its basic functions) is the same as the warranty duration of the equipment on which the Core Software is designed to operate.

3. The warranty duration for software (i) identified as “EMC Select;” or (ii) provided under a license agreement from an entity other than EMC, is as separately stated in the license agreement accompanying such software.

4. The foregoing warranty durations apply to software listed on orders submitted to EMC during the period in which the applicable warranty duration is in effect. EMC may change the warranty durations described above at any time and shall notify customer of such change via reposting to this site. However, any such change shall not apply to any software listed on an order referencing a valid EMC Quote that is dated prior to the date of such change.

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H4275.1
Rev. March 28, 2008
EMC Product Warranty and Maintenance Table

The table below sets forth EMC® product-specific warranty and maintenance terms and information. Each product identified as equipment also includes its related operating system, operating environment or microcode (also defined in many contracts as “Core software”), if any, unless the table indicates that such operating system is licensed as a separate product. Any EMC software that is licensed as a separate product and is not specifically identified on this table is governed by the terms stated in the row entitled “software.”

EMC recommends that you locate products on the following table by simultaneously pressing the “Control” key and the letter “P” key to activate the “Find” feature, and then typing in the name of the applicable product.

Additional information about available Support Options as well as other important information can be found by clicking the link found here.

Notice: In accordance with widely used business practices in the IT industry and in support of EMC's worldwide sustainability and recycling initiatives, Equipment may contain components that are (i) previously unused; or (ii) re-manufactured to contain the most current updates, meet all relevant test specifications and be functionally equivalent to previously unused components. Spare, upgrade and/or replacement components may be re-manufactured. EMC warranty terms apply equally to all components. For information on EMC's recycling and sustainability efforts please click here.

<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty</th>
<th>Available Support Options</th>
<th>Designated Customer-Replaceable Units (CRUs)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>AlphaStor Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ApplicationXTender Family Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>AppSync</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Atmos Equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk drives (Atmos software 2.2.0 or greater required)</td>
</tr>
<tr>
<td>Atmos Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None. EMC will perform the installation of software updates</td>
</tr>
<tr>
<td>Autograph Family Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Automated Failover Manager (AFM) Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a RecoverPoint or MirrorView maintenance support option.</td>
<td>Premium</td>
<td>None. The AFM is included with RecoverPoint or MirrorView software only</td>
</tr>
<tr>
<td>AutoStart Family Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>AutoSwap Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>AVALONidm Software</td>
<td>90 days; defective media replacement. Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer-Replaceable Units (CRUs)&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
<tr>
<td>---------</td>
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<td>---------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Avamar Data Store</td>
<td>2 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives</td>
</tr>
<tr>
<td>Avamar Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Backup Manager for SharePoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Blade Logic Brand Software</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Captiva Family Software (Except Pixmap tools and QuickScanPro products)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Celerra NS-120 and NS-480 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures), blade, management I/O module (in Storage Processor enclosure), I/O transceiver, standby power supply, and disk</td>
</tr>
<tr>
<td>Celerra NS20 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures), I/O transceiver module, disk</td>
</tr>
<tr>
<td>Celerra NS-960 and NS-G8 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures, X-Blade enclosure power supply, X-Blade enclosure fan, Storage Processor enclosure power supply, Storage Processor enclosure fan, and disk</td>
</tr>
<tr>
<td>Celerra NS-62 Equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in Processor Enclosures), fan blade, I/O transceiver, and disk</td>
</tr>
<tr>
<td>Celerra Nx4 equipment</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power/cooling module (in processor enclosures, and in disk array enclosures), blade, Storage Processor (SP), SP DIMM memory, SP I/O module, I/O transceiver, standby Power supply, link control card, and disk</td>
</tr>
<tr>
<td>Celerra Nx4 Core software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Celerra VG2 and VG8 Equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power/cooling Module, SFP-compliant transceiver, UltraFlex I/O Module, Management Module</td>
</tr>
<tr>
<td>Centera Family Equipment</td>
<td>2 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>With Enhanced support option, Customer is responsible for resetting of modems and nodes</td>
</tr>
<tr>
<td>Centera Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CLARIION AX4 series equipment</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>All components; installation of AX4 Core software and system-based software releases</td>
</tr>
<tr>
<td>CLARIION AX4 software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>CLARIION CX4-series Equipment</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>Power supply, cooling units, small form factor pluggable transceivers, disk drives per approval of Disk Replacement (DRU) tool, EAE power supply, LCC; installation of CX4-Series Core software and system-based software releases</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer-Replaceable Units (CRUs)*</td>
</tr>
<tr>
<td>---------</td>
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<td>---------------------------------------------</td>
</tr>
<tr>
<td>CloudArray Software (Appliance and Virtual Edition)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CloudArray Appliance Equipment</td>
<td>1 year; Limited</td>
<td>Premium</td>
<td>Disk Drives, Power Supply</td>
</tr>
<tr>
<td>Cloud Tiering Appliance (CTA) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Cloud Tiering Appliance - Virtual Edition (CTA/VE) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Cloud Tiering Appliance (CTA) Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk Drives, Power Supply</td>
</tr>
<tr>
<td>Connectrix Family of Directors</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power supplies, fans, optics, cables</td>
</tr>
<tr>
<td>Connectrix Family of Switches (except Connectrix devices listed below)</td>
<td>3 years; Enhanced</td>
<td>Enhanced, Premium</td>
<td>Power supplies, fans, optics, cables and the complete switch when applicable</td>
</tr>
<tr>
<td>Connectrix Manager Software including CMDCE, CMONE, Cisco Fabric Manager and Data Center Network Manager</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Connectrix NEX:5010, NEX-5020, AP-76000B, E5-5832B, MP-8000B, MP-7500B, MP-7800B, MP-7840B</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>CopyPoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Data Domain Software</td>
<td>90 day; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Data Domain System</td>
<td>1 year hardware only; Limited Warranty Software (DDOS) 90 day; defective media replacement Support for DDOS during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives, SAS controller on ES20, external fans, bezels, cables and rails</td>
</tr>
<tr>
<td>Data Protection Advisor</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>DatabaseXtender Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library DL1500, DL3600, and 3D 4000 Family Equipment</td>
<td>1 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library Family Equipment (except for DL1500, DL3600, and 3D 4000)</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Disk Library for Mainframe, DLm8000/6000/2000/1000, DLm8100 w/VMAX, DLm8100 w/VNX/DD, DLm1200 w/DD, DLm2100 w/VNX</td>
<td>2 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer-Replaceable Units (CRUs)*</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
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<td>---------------------------------------------</td>
</tr>
<tr>
<td>DiskXtender Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Documentum Family Software (except ApplicationXtender)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ECS Appliance Equipment</td>
<td>Equipment: 1 year; Limited</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>ECS Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>eRoom Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>File Management Appliance Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk drives, power supplies</td>
</tr>
<tr>
<td>File Management Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Geographically Dispersed Disaster Restart Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Greenplum Data Computing Appliance (DCA)</td>
<td>1 year hardware only; Limited Warranty</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Greenplum Data Integration Accelerator (&quot;DIA&quot;)</td>
<td>1 Year hardware only; Limited Warranty 90 days for software in the DIA; defective media replacement Support for software during warranty available with the purchase of a maintenance support option</td>
<td>Premium (covers both hardware and software portion of the DIA)</td>
<td>EMC will perform the installation of software updates included with the purchase of the DIA</td>
</tr>
<tr>
<td>Greenplum DCA DE (operating environment Software)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>EMC will perform the installation of software updates included with the purchase of the DCA. However, before EMC can perform the installation of an out-of-family software update (e.g., 4.0 to 4.1) for the Greenplum Database software on the DCA, Customer is required to purchase the DCA Greenplum Database Upgrade Preparation Service.</td>
</tr>
<tr>
<td>Greenplum Family Standalone Production Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>HomeBase Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>InfoMover</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Ionix ControlCenter Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Ionix Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Ionix for IT Operations Intelligence (formerly Smarts)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Ionix Network Configuration Manager (formerly Voyence)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer-Replaceable Units (CRUs)*</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------------------------------------------------------</td>
<td>---------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Isilon Family Equipment</td>
<td>1 year hardware only; Limited Warranty</td>
<td>Premium, Enhanced</td>
<td>Power supplies, power cables, NVRAM batteries, Hard Disks, Rail kits, IB switches, IB cables, Faceplates</td>
</tr>
<tr>
<td>Isilon Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>IT Compliance Analyzer Application Edition Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>IT Performance Reporter</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>IT Process Centre Request</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Management Software</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mainframe Disk Library (MDL)</td>
<td>1 year; Basic</td>
<td>Premium, Enhanced, Basic</td>
<td>Disk drives, power supplies</td>
</tr>
<tr>
<td>Equipment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mainframe Disk Library (MDL) Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>MirrorView Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Navisphere Family Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>NetWorker Family Software (except for NetWorker Fast Start)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Open Migrator/LM Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Open Replicator For Symmetrix Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>PowerExchange PWX Connector to Greenplum</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>PowerPath Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>ProSphere Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Rainfinity Appliance Equipment</td>
<td>1 year; Enhanced</td>
<td>Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)</td>
<td>Disk drives and power supply</td>
</tr>
<tr>
<td>Rainfinity Appliance Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote)</td>
<td></td>
</tr>
<tr>
<td>RecoverPoint Equipment</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>RecoverPoint Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
<td>Designated Customer Replaceable Units (CRUs)</td>
</tr>
<tr>
<td>----------------------------------------------</td>
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</tr>
<tr>
<td>Replication Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>RepliStor Software</td>
<td>No longer available for sale; maintenance only</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SAN Copy Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>ScaleIO</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>SnapView Software (excluding AXA)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Software (all other EMC Software products not listed separately in this table)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Basic</td>
<td>None</td>
</tr>
<tr>
<td>SourceOne eDiscovery Equipment</td>
<td>1 year; Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, disk drives</td>
</tr>
<tr>
<td>SourceOne eDiscovery Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SourceOne Family Software (excluding SourceOne eDiscovery)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>SRDF Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Storage Analytics Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>Storage Resource Management Suite</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix DMX Engine (operating environment software)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix DMX Family Equipment (excluding Symmetrix VMAX)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Management Console Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix Optimizer Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX Cloud Edition</td>
<td>1 year; Limited</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX/VMAXe Engine (operating environment software)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>Symmetrix VMAX/VMAXe Family Equipment (operating environment licensed separately)</td>
<td>3 years; Premium</td>
<td>Premium</td>
<td>Disk drives</td>
</tr>
<tr>
<td>Product</td>
<td>Standard Warranty</td>
<td>Available Support Options</td>
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</tr>
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<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Telestream RIP Factory Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>TimeFinder Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>VFCache</td>
<td>3 years; Enhanced</td>
<td>Premium, Enhanced</td>
<td>VFCache PCIe card</td>
</tr>
<tr>
<td>VIPR</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>VIPR SRM</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>VMAX 10K File</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VMAX NAS Gateway with VNX VG10 or VNX VCG5 Data Movers</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VNX CA</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX F</td>
<td>1 year, hardware only; Limited Warranty Software (VNX OE) – see below</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX OE (operating environment software)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>VNX optional Software products</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>VNX VG2</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VNX VG8</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VNX VG10</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VNX VG50</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Power supply, UltraFlex I/O module, SFP transceiver, management module</td>
</tr>
<tr>
<td>VNX5100</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card</td>
</tr>
<tr>
<td>VNX5150</td>
<td>3 years, Basic</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card</td>
</tr>
<tr>
<td>VNX5200</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX5400</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX5600</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX5800</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX7600</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX8000</td>
<td>1 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, fan assembly, SFP transceiver, link control card, UltraFlex I/O module, battery backup unit, management module</td>
</tr>
<tr>
<td>VNX5300</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module</td>
</tr>
<tr>
<td>VNX5350</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module</td>
</tr>
<tr>
<td>VNX5700</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module</td>
</tr>
<tr>
<td>VNX5700</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card, UltraFlex I/O module, management module</td>
</tr>
<tr>
<td>VNX57500</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced: (VNXe3300)</td>
<td>None</td>
</tr>
<tr>
<td>VNX57000</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200)</td>
<td>None</td>
</tr>
<tr>
<td>VNX57000</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced, Basic: (VNXe3100, VNXe 3150 and VNXe3200)</td>
<td>None</td>
</tr>
</tbody>
</table>

*CRUs: Customer Replaceable Units
<table>
<thead>
<tr>
<th>Product</th>
<th>Standard Warranty</th>
<th>Available Support Options</th>
<th>Designated Customer-Replaceable Units (CRUs)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>VNKE3100, VNKE3150 and VNKE3200</td>
<td>3 years, Basic</td>
<td>Premium, Enhanced, Basic</td>
<td>Disk, power supplies (DAA and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD</td>
</tr>
<tr>
<td>VNKE3300</td>
<td>3 years, Enhanced</td>
<td>Premium, Enhanced</td>
<td>Disk, power supplies (DAA and DPE), battery backup, I/O card, storage processor, AC/Fibre cables, memory, link control cards (LCC), and SSD</td>
</tr>
<tr>
<td>VNKH-VSS OE (operating environment software for VNKH-VSS)</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>VNKH-VSS100</td>
<td>3 years, Limited</td>
<td>Enhanced, Basic</td>
<td>Disks, power supply, standby power supply, SFP transceiver, link control card, Ultraflex I/O module</td>
</tr>
<tr>
<td>VPLEX Equipment</td>
<td>3 years, Premium</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>VPLEX Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>VPLEX Blue</td>
<td>1 year, hardware only; Limited</td>
<td>Premium, Enhanced, Basic</td>
<td>Power supply</td>
</tr>
<tr>
<td>Watch4Net</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Basic</td>
<td>None</td>
</tr>
<tr>
<td>Woodwing Smart Connection Enterprise Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>xPression Family Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>XtremeO Equipment</td>
<td>3 years; Limited</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>XtremeO SW Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
<tr>
<td>XtremSF</td>
<td>3 years or maximum endurance reached, whichever occurs first; Basic</td>
<td>Premium, Enhanced, Basic</td>
<td>XtremSF PCIe card</td>
</tr>
<tr>
<td>XtremSW Cache</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced, Basic</td>
<td>None</td>
</tr>
<tr>
<td>XtremSW Suite</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium, Enhanced</td>
<td>None</td>
</tr>
<tr>
<td>z/OS Storage Manager Software</td>
<td>90 days; defective media replacement Support during warranty available with purchase of a maintenance support option</td>
<td>Premium</td>
<td>None</td>
</tr>
</tbody>
</table>

* Customer Replaceable Units (CRUs): CRUs are specific assemblies, components, or individual parts of designated EMC equipment that the customer is authorized by EMC to self-replace. In the event of a failure or technical issue, the customer may remove and replace a CRU by using EMC-provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs must be serviced and/or replaced by EMC or an EMC-authorized service partner.

# EMC LIMITED WARRANTY

The following chart lists the service features of Limited Warranty provided under EMC’s standard warranty and/or maintenance terms.

Limited Warranty is available for EMC® Equipment which is identified on the [EMC Product Warranty and Maintenance Table](#) as including Limited Warranty during the applicable warranty period.

<table>
<thead>
<tr>
<th>SERVICE FEATURE</th>
<th>DESCRIPTION</th>
<th>LIMITED SUPPORT COVERAGE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>GLOBAL TECHNICAL SUPPORT</td>
<td>Customer may contact EMC by telephone or web interface on a 24X7 basis to report an Equipment or Software problem and provide input for initial assessment of Severity Level*. EMC provides (i) a technical response by remote means based on the Severity Level of the problem; or, (ii) when deemed necessary by EMC Onsite Response as described below.</td>
<td>Included for Equipment only. Initial technical response objective, based upon Severity Level, within the following time period after receipt of Customer contact: Severity Level 1: Two local business hours; on a 9x5 basis Severity Level 2: Four local business hours; on a 9x5 basis Severity Level 3: Eight local business hours; on a 9x5 basis Severity Level 4: 12 local business hours; on a 9x5 basis</td>
</tr>
<tr>
<td>ONSITE RESPONSE</td>
<td>EMC sends authorized personnel to installation site to work on the problem after EMC has isolated the problem and deemed Onsite Response necessary.</td>
<td>Not included. Available for purchase under EMC’s then-current, standard time and materials terms, conditions, and pricing.</td>
</tr>
<tr>
<td>REPLACEMENT PARTS DELIVERY</td>
<td>EMC provides replacement parts when deemed necessary by EMC.</td>
<td>Included. Replacement parts will be shipped to Customer for next local business day delivery of replacement parts. Local country shipment cut-off times may impact the same day/next local business day delivery of replacement parts. Installation of all replacement parts is the responsibility of the Customer. Customer is responsible for returning all replaced parts to a facility designated by EMC.</td>
</tr>
<tr>
<td>RIGHTS TO NEW RELEASES OF SOFTWARE</td>
<td>EMC provides the rights to new Software Releases as made generally available by EMC</td>
<td>Not included.</td>
</tr>
<tr>
<td>INSTALLATION OF SOFTWARE RELEASES</td>
<td>EMC will perform the installation of new Software Releases.</td>
<td>Not included. Customer will perform the installation of new Software Releases (including, Software that is not classified by EMC as Equipment operating environment Software as well as Software which EMC determines is Equipment operating environment Software).</td>
</tr>
</tbody>
</table>
**24x7 REMOTE MONITORING AND REPAIR**

Certain EMC products will automatically and independently contact EMC to provide input to assist EMC in problem determination.

EMC will remotely access products if necessary for additional diagnostics and to provide remote technical support.

Not included.

**24x7 ACCESS TO ONLINE SUPPORT TOOLS**

Customers who have properly registered have access on a 24x7 basis to EMC's web-based knowledge and self-help customer support tools via the EMC Online Support site.

Included.

**Severity Levels:**
- **Severity 1:** Critical: a severe problem preventing customer or workgroup from performing critical business functions.
- **Severity 2:** High: the customer or workgroup able to perform job function, but performance of job function degraded or severely limited.
- **Severity 3:** Medium: the customer or workgroup performance of job function is largely unaffected.
- **Severity 4:** Request: minimal system impact; includes feature requests and other non-critical questions.

The warranty periods and support options ("EMC Support Information") on this website apply (i) only between EMC and those organizations that procure the applicable products and/or maintenance under a contract directly with EMC (the "EMC Customer"); and (ii) only to those products or support options ordered by the EMC Customer at the time that the EMC Support Information is current. EMC may change the EMC Support Information at any time. The EMC Customer will be notified of any change in the EMC Support Information in the manner stated in the then current product ordering and/or maintenance related agreement between EMC and the EMC Customer, but any such change shall not apply to products or support options ordered by the EMC Customer prior to the date of such change.

Products or services obtained from any EMC reseller are governed solely by the agreement between the purchaser and the reseller. That agreement may provide terms that are the same as the EMC Support Information on this website. The reseller may make arrangements with EMC to perform warranty and/or maintenance services for the purchaser on behalf of the reseller. Please contact the reseller or the local EMC sales representative for additional information on EMC's performance of warranty and maintenance services on Products obtained from a reseller.

EMC will have no obligation to provide Support Services with respect to Equipment that is outside the EMC Service Area. "EMC Service Area" means a location that is within (i) a one hundred (100) mile radius of an EMC service location; and (ii) the country in which the Installation Site is located, unless otherwise defined in your governing agreement with EMC, in which case the definition in the governing agreement prevails.

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Rev. December 10, 2014
ATTACHMENT B
GOVERNMENT PRICE LIST

INSTRUCTIONS:

To view the Government Price List for this contract, please follow the below URL:

www.ecamerica.com

Then select the URL for GS-35F-0511T, and then the specific manufacturer. The Government Price List for that manufacturer is found under the "Contract Vehicles, Pricelists & Terms" section.