

Red River[®]

GENERAL SERVICES ADMINISTRATION

Federal Supply Service



Authorized Federal Supply Schedule Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*[®], a menu-driven database system.

The INTERNET address GSA *Advantage!*[®] is: <https://www.gsaadvantage.gov/>

Contract # GS-35F-260CA

Period covered by contract Mar 27, 2015 to Mar 26, 2025

RED RIVER TECHNOLOGY LLC

Corporate Headquarters:

21 Water St., Suite 500

Claremont, NH 03743

GSAOrders@RedRiver.com

November 23, 2020

INFORMATION FOR ORDERING ACTIVITIES

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions.

<u>Special Item No./Category:</u>	<u>Description:</u>
33411	Purchasing of new electronic equipment
511210	Software Licenses
518210C	Cloud and Cloud related IT Professional Services
532420L	Leasing of new electronic equipment
54151	Software Maintenance Services
54151ECOM	Electronic Commerce and Subscription Services
54151HEAL	Health Information Technology Services
54151S	Information Technology Professional Services
811212	Maintenance of Equipment, Repair Services and/or Repair/Spare Parts
OLM	Order-Level Materials

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

<u>Special Item No:</u>	<u>Model/Part No., Unit Price:</u>
33411	2GT55AV., \$1.81
511210	101-11-11-0264-000., \$17.87
518210C	50-4102., \$5.06
532420L	Leasing of new electronic equipment-Negotiated
54151	MMSSW-RS-INTSEC-UL., \$738.62
54151ECOM	TMECLD-IPEXP01., \$4.15
54151HEAL	RRPS-VP-I., \$61.96
54151S	983-9619., \$14.36
811212	FB-MC-XFM-3200E 1MO, PRM, SILVER., \$252.98

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item.

SIN/Labor Category	Job title/Functional responsibility/Model/Part#	Education	Experience	Hourly rate (including IFF)
54151S/54151HEAL	VOICE/TELEPHONY PROFESSIONAL SUBJECT MATTER EXPERT (RRPS-VP-SME)	BACHELOR'S DEGREE	10 YRS	\$ 185.88
54151S/54151HEAL	VOICE/TELEPHONY PROFESSIONAL LEVEL III (RRPS-VP-III)	BACHELOR'S DEGREE	7 YRS	\$ 144.58
54151S/54151HEAL	VOICE/TELEPHONY PROFESSIONAL LEVEL II (RRPS-VP-II)	BACHELOR'S DEGREE	5 YRS	\$ 90.88
54151S/54151HEAL	VOICE/TELEPHONY PROFESSIONAL LEVEL I (RRPS-VP-I)	HIGH SCHOOL DIPLOMA	1-3 YRS	\$ 61.96
54151S/54151HEAL	WIRELESS PROFESSIONAL LEVEL III (RRPS-WP-III)	BACHELOR'S DEGREE	7 YRS	\$ 144.58
54151S/54151HEAL	SERVER/SYSTEM PROFESSIONAL III (RRPS-SRP-III)	BACHELOR'S DEGREE	7 YRS	\$ 144.58
54151S/54151HEAL	SECURITY PROFESSIONAL/CONSULTANT SUBJECT MATTER EXPERT (RRPS-SEP-SME)	BACHELOR'S DEGREE	10 YRS	\$ 185.88
54151S/54151HEAL	SECURITY PROFESSIONAL/CONSULTANT III (RRPS-SEP-III)	BACHELOR'S DEGREE	7 YRS	\$ 144.58
54151S/54151HEAL	NETWORKING PROFESSIONAL/CONSULTANT SUBJECT MATTER EXPERT (RRPS-NP-SME)	BACHELOR'S DEGREE	10 YRS	\$ 185.88
54151S/54151HEAL	NETWORKING PROFESSIONAL/CONSULTANT III (RRPS-NP-III)	BACHELOR'S DEGREE	7 YRS	\$ 144.58
54151S/54151HEAL	NETWORKING PROFESSIONAL/CONSULTANT II (RRPS-NP-II)	BACHELOR'S DEGREE	5 YRS	\$ 90.88
54151S	PROGRAM MANAGER (RRPS-PGM)	BACHELOR'S DEGREE	8 YRS	\$ 130.98
54151S	TASK MANAGER (RRPS-TM)	BACHELOR'S DEGREE	5 YRS	\$ 75.57
54151S	Database Analyst/Programmer (RRPS-EAD-DB)	BACHELOR'S DEGREE	7 YRS	\$ 100.10
54151S	Documentation Specialist/ Technical Writer (RRPS-EAD-DS)	ASSOCIATES DEGREE	5 YRS	\$ 85.03
54151S	Project Manager (RRPS-EAD-PM)	BACHELOR'S DEGREE	10 YRS	\$ 129.82
54151S	Quality Assurance/ Configuration Analyst (RRPS-EAD-QA)	BACHELOR'S DEGREE	6 YRS	\$ 119.43
54151S	Systems Architect (RRPS-EAD-SA)	BACHELOR'S DEGREE	5 YRS	\$ 142.93
54151S	Systems Engineer (RRPS-EAD-SE)	BACHELOR'S DEGREE	6 YRS	\$ 120.29
54151S	Technical Specialist (RRPS-EAD-TS)	BACHELOR'S DEGREE	5 YRS	\$ 116.81
54151S	Web Developer (RRPS-EAD-WD)	BACHELOR'S DEGREE	3 YRS	\$ 104.81

2. **Maximum order:** \$500,000 or Red River Technology LLC and the Ordering Agency may agree to a different maximum threshold at the Task Order Level.

3. **Minimum order:** \$100

4. **Geographic coverage (delivery area):** Domestic Delivery within the 48 contiguous states.

5. **Point(s) of production (city, county, and State or foreign country):**

Manufacturer/Owner:

FM:Systems Group, LLC
 Avue Technologies Corp.
 CrestPoint Solutions, Inc.
 Dell Inc.
 Everbridge
 Harris Corporation
 HP Inc.
 Hewlett Packard Enterprise
 Infocus Corporation
 Lenovo Inc.

Production Point:

Raleigh, NC
 University Place, WA
 Pleasanton, CA
 Round Rock, TX
 Burlington, MA
 Lynchburg, VA
 Palo Alto, CA
 Palo Alto, CA
 Portland, OR
 Nuevo Leon, Mexico

Lexmark International, Inc.	Lexington, KY
Microsoft Corporation	Chevy Chase, MD
Pure Storage	Mountain View, CA
Synology America Corp.	Bellevue, WA
Transition Networks	Minnetonka, MN
Uplogix, Inc.	Austin, TX
Verizon	Ashburn, VA

6. Discount from list prices or statement of net price:

Please see GSA *Advantage!*® <https://www.gsaadvantage.gov>

7. Quantity discounts: None

8. Prompt payment terms: Net 30 days (no prompt payment discount)

9a. Notification that Government purchase cards are accepted at or below the micro-purchase threshold: Yes

9b. Notification whether Government purchase cards are accepted or not accepted above the micro-purchase threshold: Red River Technology LLC and the Ordering Agency may agree to use the Government purchase cards for dollar amounts over the micro-purchase threshold.

10. Foreign items (list items by country of origin): TAA identified with Country of Origin when submitted.

11a. Time of delivery: TBD at Task Order Level

11b. Expedited Delivery: TBD at Task Order Level

11c. Overnight and 2-day delivery. The Contractor will indicate whether overnight and 2-day delivery are available: TBD at Task Order Level

11d. Urgent Requirements: TBD at Task Order Level

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

13a. Ordering address(es): GSAOrders@RedRiver.com

Red River Technology LLC
21 Water Street, Suite 500
Claremont, NH 03743

13b. Ordering procedures: Ordering activities shall use the ordering procedures described in Federal Acquisition Regulation 8.405-3 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreements (BPA's) and a sample BPA can be found at the GSA/FSS Schedule Homepage: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules>

14. Payment address(es).

Red River Technology LLC
Attention: GSA Schedule Orders
PO Box 780924
Philadelphia, PA 19178-0924
Phone: 603-448-8880
Fax: 603-448-8844
Email: info@redriver.com

15. **Warranty provision:** Red River Technology LLC will passthrough all product warranties Red River Technology LLC receives from Original Equipment Manufacturers. Red River Technology LLC and the Ordering Agency may discuss additional warranty provisions at the task order level.

FM:Systems: End User License Agreement-Attached
Avue Technologies Corp: End User License Agreement-Attached
CrestPoint Solutions, Inc: End User License Agreement-Attached
Dell Marketing: 3-year warranty
Everbridge: Product dependent-End User License Agreement-Attached
Harris Corp: Product dependent
HP Inc: 3-year warranty
Hewlett Packard Enterprise: 1-year warranty
InFocus Corp: 1-year warranty
Lenovo Inc: Product dependent
Lexmark International Inc: Product dependent (1-year or 2-year warranty)
Microsoft Corp: Product dependent-End User License Agreement-Attached
Pure Storage: 3-year warranty-End User License Agreement-Attached
Synology America Corp: 5-year limited warranty
Transition Network Products: Product dependent (1-year, 5-year, or lifetime warranty)
Uplogix Inc: Product dependent
Verizon: 1-year warranty

16. **Terms and conditions of Government purchase card acceptance:** Red River Technology LLC and the Ordering Agency may agree to use the Government purchase cards for dollar amounts over the micro-purchase threshold.

17. **Terms and conditions of rental, maintenance, and repair (if applicable):** TBD at Task Order Level

18. **Terms and conditions of installation (if applicable):** TBD at Task Order Level

19. **Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable):** TBD at Task Order Level

20a. **Terms and conditions for any other services (if applicable):** TBD at Task Order Level

20. **List of service and distribution points (if applicable):** TBD at Task Order Level

21. **List of participating dealers (if applicable):** Not Applicable

22. **Preventive maintenance (if applicable):** TBD at Task Order Level

24a. **Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants):** TBD at Task Order Level

24b. **If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.):** The EIT standards can be found at: www.Section508.gov

25. **Data Universal Number System (DUNS) number:** 933678708

26. **NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE:** Red River Technology LLC has an Active Registration in the SAM database.

Multiple Award Schedule - Available offerings include commercial goods and services organized by 12 Large Categories, corresponding Subcategories, and SINs.

33411 Purchasing of new electronic equipment Includes desktop, laptop, tablet computers (including rugged), servers, storage equipment, hyperconverged integrated systems, supercomputers, routers, switches and other communications equipment, IT security equipment (hardware based firewalls), audio and video (AV) equipment, public address systems, monitors/displays, sensors and other Internet of Things (IOT) devices, printers and Multi-Function Device (MFD) equipment, broadcast band radio, two-way radio (LMR), microwave radio equipment, satellite communications equipment, radio transmitters/receivers (airborne), radio navigation equipment/antennas, optical/imaging systems, and associated peripherals required for operations (such as controllers, connectors, cables, drivers, adapters, etc., ancillary installation of any equipment purchased.

511210 Software Licenses Includes both term and perpetual software licenses and maintenance.

518210C Cloud and Cloud-Related IT Professional Services Includes commercially available cloud computing services such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) and emerging cloud services. IT professional services that are focused on providing the types of services that support the Government's adoption of, migration to or governance/management of Cloud computing. Specific labor categories and/or fixed price solutions (e.g. migration services, etc.) that support activities associated with assessing Cloud solutions, refactoring workloads for Cloud solutions, migrating legacy or other systems to Cloud solutions, providing management/governance of Cloud solutions, DevOps, developing cloud native applications or other Cloud oriented activities.

532420L Leasing of new electronic equipment, includes the following lease types:
Lease to Ownership, and
Lease with Option to Own

54151 Software Maintenance Services Software maintenance services creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance services includes person-to-person communications regardless of the medium used to communicate telephone support, online technical support, customized support, and/or technical expertise which are charged commercially.

54151ECOM Electronic Commerce and Subscription Services Includes value added network services, e-mail services, Internet access services, electronic subscription services, data transmission services, and emerging electronic commerce technologies.

54151HEAL Health Information Technology Services Includes a wide range of Health IT services to include connected health, electronic health records, health information exchanges, health analytics, personal health information management, innovative Health IT solutions, health informatics, emerging Health IT research, and other Health IT services.

54151S Information Technology Professional Services IT Professional Services and/or labor categories for database planning and design; systems analysis, integration, and design; programming, conversion and implementation support; network services, data/records management, and testing.

811212 Maintenance of Equipment, Repair Services and/or Repair/Spare Parts Maintenance, Repair Service, and Repair Parts/Spare Parts for Government-Owned General-Purpose Commercial Information Technology Equipment, Radio/Telephone Equipment.

OLM Order-Level Materials (OLM) OLMs are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Schedule contract or BPA. OLM pricing is not established at the Schedule contract or BPA level, but at the order level. Since OLMs are identified and acquired at the order level, the ordering contracting officer (OCO) is responsible for making a fair and reasonable price determination for all OLMs.

OLMs are procured under a special ordering procedure that simplifies the process for acquiring supplies and services necessary to support individual task or delivery orders placed against a Schedule contract or BPA. Using this new procedure, ancillary supplies and services not known at the time of the Schedule award may be included and priced at the order level.

OLM SIN-Level Requirements/Ordering Instructions:

OLMs are:

- Purchased under the authority of the FSS Program
- Unknown until an order is placed
- Defined and priced at the ordering activity level in accordance with GSAR clause 552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials. (Price analysis for OLMs is not conducted when awarding the FSS contract or FSS BPA; therefore, GSAR 538.270 and 538.271 do not apply to OLMs)
- Only authorized for use in direct support of another awarded SIN.
- Only authorized for inclusion at the order level under a Time-and-Materials (T&M) or Labor-Hour (LH) Contract Line Item Number (CLIN)
- Subject to a Not to Exceed (NTE) ceiling price

OLMs are not:

- Open Market Items.
- Items awarded under ancillary supplies/services or other direct cost (ODC) SINs (these items are defined, priced, and awarded at the FSS contract level)

OLM Pricing:

- Prices for items provided under the Order-Level Materials SIN must be inclusive of the Industrial Funding Fee (IFF).
- The value of OLMs in a task or delivery order, or the cumulative value of OLMs in orders against an FSS BPA awarded under an FSS contract, cannot exceed 33.33%.

Attachments:

Government Approved EULA's



SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this "Agreement") is made and entered into as of _____ (the "Effective Date") by and between FM:Systems, Inc., a North Carolina corporation having a place of business at 2301 Sugar Bush Road, Suite 500, Raleigh, North Carolina 27612 ("FM:Systems") and _____ ("Client"), a _____ corporation/limited liability company with an address at _____.

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Introduction

This Agreement, along with the applicable Schedule(s), together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), governs Client's use of software developed and owned by FM:Systems for facilities management and strategic planning, as well as related services provided by FM:Systems. Each Schedule to this Agreement ("Schedule") identifies the specific software and modules that Client is authorized to use (the "Software"). In addition, each Schedule, when executed by authorized personnel of each party, is a separate agreement that incorporates the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any Schedule, the terms of the Schedule shall control.

2. License

- 2.1. Subject to the terms and conditions of this Agreement and the applicable Schedule, FM:Systems grants Client, and Client accepts, a perpetual, nontransferable and nonexclusive license to use in object code form only the Software and all related documentation delivered with the Software (the "Documentation"). This license shall also be subject to the limitations and restrictions set forth in the applicable Schedule (e.g., limits on users or supported locations). The term Licensed Product means, collectively, the Software and the Documentation.
- 2.2. The Licensed Product may be used and accessed only by Client's employees or contractors ("Contractors") using the Licensed Product for its intended purpose while doing work for Client.
- 2.3. Client may not use the Licensed Product to provide time sharing, service bureau, or other similar services for the benefit of any third party. Any use of the Licensed Product (including but not limited to access to the Software via a web browser) by a third party is subject to the written consent of FM:Systems, which may be withheld in its sole discretion. Client acknowledges that access to the Licensed Product from outside the United States, or other export of the Licensed Product, may violate U.S. export laws.
- 2.4. Client acknowledges that FM:Systems is the sole owner of all intellectual property rights in and to the Licensed Product, including but not limited to the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, screen displays, and report formats associated therewith. Except as expressly authorized in this Agreement, Client will not use, copy, modify, distribute, sublicense, transfer, display, rent or unbundle the Licensed Product. In addition, Client will not reverse engineer, decompile or disassemble the Software, and will not otherwise attempt to reconstruct or discover the source code for the Software. FM:Systems reserves all rights in the Licensed Product not expressly granted to Client hereunder.

3. Services

- 3.1. FM:Systems agrees to provide installation, implementation, configuration, consulting, development, and/or training services set forth in the applicable Schedule (the "Services"), or Purchase Order.
- 3.2. Unless otherwise agreed in writing by the parties, Client shall have sole responsibility for acquiring and maintaining their own technology environment, including but not limited to PC's, digital certificates, operating systems, servers, Internet access, local area networks, and wide area networks.



- 3.3. Client shall provide FM:Systems with access to Client's technical personnel, facilities, databases, information and security clearance as necessary for FM:Systems to perform its obligations under this Agreement (including but not limited to the establishment of necessary access to Client's databases).
- 3.4. In the event that FM:Systems develops any custom software, documentation or other materials under this Agreement ("Work Product"), then Client acknowledges and agrees that FM:Systems will retain sole ownership of all such Work Product, and that such Work Product shall be deemed licensed to Client under the terms of the Software License Agreement between the parties, unless otherwise mutually agreed in writing, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost..
- 3.5. Within fourteen (14) days after the Effective Date, each party will provide notice to the other party to the attention of the designated "Project Manager" for such party. Each Project Manager will be the primary point of contact for this Agreement, and will respond promptly when contacted by the other Project Manager regarding this Agreement. Each party shall notify the other in writing of any replacement of its Project Manager.

4. Support and Maintenance

FM:Systems will provide support and maintenance services in accordance with Exhibit A, attached hereto and incorporated by reference.

5. Fees and Expenses

- 5.1. Client shall pay FM:Systems the fees set forth in the applicable Schedule or Purchase Order in accordance with the terms and conditions therein. Fees are due and payable within thirty (30) days following receipt of an invoice. All fees are in US dollars unless noted otherwise.
- 5.2. FM:Systems shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes (based on the current value of the equipment) to you or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3..

6. Mutual Confidentiality

- 6.1. "Confidential Information" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement. Confidential Information of FM:Systems includes, but is not limited to, the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with the Software; the Documentation. Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; (c) was previously known by the receiving party as shown by its written records; or (d) was independently developed by the receiving party as shown by its written records.
- 6.2. A receiving party agrees: (a) to hold the disclosing party's Confidential Information in strict confidence; and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the Confidential Information. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure. FM:Systems recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.
- 6.3. Upon the termination or expiration of this Agreement, the receiving party will return to the disclosing party all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party. The provisions of this Section 6 shall survive any termination of this Agreement.

7. Term and Termination

- 7.1. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, FM:Systems shall proceed diligently with performance of this Agreement,



pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.2. The terms provided in Sections 6, 7, 8.2, 8.3, 9, 10, and 11 of this Agreement shall survive any termination of this Agreement.

8. **Warranty.**

8.1. Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. In addition, FM:Systems warrants that the Software will substantially conform to the Documentation for a period of sixty (60) days from the effective date (the "Warranty Period"). If it does not, at FM:Systems' option, FM:Systems will either make it conform, replace it with conforming Software, or terminate the applicable Schedule and refund any Fees for the Software at issue for the current period. This is the exclusive remedy for breach of the foregoing warranty.

8.2. FM:Systems does not warrant that the Software will operate uninterrupted or error-free. Client is solely responsible for the accuracy and adequacy of the information and data furnished for processing with the Software. To the extent that data is being transmitted over the Internet hereunder, Client acknowledges that FM:Systems has no control over the functioning of the Internet and FM:Systems makes no representations or warranties of any kind regarding the performance of the Internet. The successful operation of the Software is dependent on Client's use of proper procedures and systems and input of correct data.

8.3. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, FM:SYSTEMS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

9. **Liability**

9.1. Except as set forth in Section 10 below: (a) liability arising under this Agreement, whether under theory of contract, tort (including negligence), or otherwise, shall be limited to direct damages; and (b) neither party nor their suppliers, including suppliers of managed hosting, co-location, and telecommunications services, shall have any liability to the other party or to any third party, for any incidental, punitive, indirect, special or consequential damages, including but not limited to lost profits, loss of data, cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The aggregate liability of FM:Systems and its suppliers under this Agreement shall not exceed the total Fees paid by Client to FM:Systems hereunder with respect to the Software at issue during the one-year period immediately preceding the event which gave rise to the claims. Any action by either party must be brought within one (1) year after the cause of action arose.

9.2. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

10. **Indemnification**

10.1. If a claim of copyright, trade secret, or other intellectual property rights violation is made against Client relating to the Software, Client agrees to immediately notify FM:Systems, allow FM:Systems to control the litigation or settlement of such claim, and cooperate with FM:Systems in the investigation, defense, and/or settlement thereof. FM:Systems agrees to take control of the litigation and indemnify Client by paying any settlement approved by FM:Systems, or any judgment, costs, or attorneys' fees finally awarded against the client for such claim. Client may



participate at Client's own expense. This indemnification obligation does not apply to the extent the claim is based on a combination of FM:Systems Software with other software or a modification to the Software made or suggested by Client if such claim would not have been made but for the combination or modification. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

10.2. If such a claim is made or, in FM:Systems' opinion, is likely to be made, FM:Systems, at its option, may modify the Software, obtain rights for the Client to continue using the Software, or terminate the agreement with written consent from Client for the Software product at issue.

10.3. Client shall own or otherwise obtain all required permissions from third parties for Client's use of, and FM:Systems' access to for integration and support purposes, all materials, information, content, or software that are integrated with or used in connection with the Software and that are supplied by Client or at Client's request (collectively, "Materials").

11. Miscellaneous

11.1. Force Majeure: Excusable delays shall be governed by FAR 52.212-4(f).

11.2. This Agreement, including all Schedules and Exhibits, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s), constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral agreements with respect to its subject matter. Except as provided expressly herein, this Agreement shall not be modified, amended, or in any way altered except by a writing executed by both of the parties. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving compliance.

11.3. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

11.4. Neither party may assign this Agreement without the prior written consent of the other party.

11.5. This Agreement shall be interpreted, construed, and governed by the Federal laws of the United States, without regard to conflict of law provisions.

11.6. All notices required or permitted hereunder shall be in writing, delivered personally or by telephonic facsimile, certified or registered mail, or overnight delivery by an established national delivery service at the respective addresses first set forth above. Notices to FM:Systems shall be sent to the attention of VP of Sales or to such other person designated by FM:Systems in a written notice to Client. All notices shall be deemed effective upon personal delivery; or on the day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight delivery.

11.7. The parties are and intend to be independent contractors under this Agreement. FM:Systems agrees that neither it, its employees, nor its contractors shall be considered as having an employee status with Client. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.



FM:Systems, Inc.

CLIENT: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SUPPORT AND MAINTENANCE POLICIES

1. Maintenance Services will be provided for an annual term, beginning on the last day of the month in which Client obtained a license to the Software,
2. Client agrees to pay the fee set forth in Schedule 1 for Maintenance Services for the initial annual term.
3. FM:Systems will provide support for the Software via telephone, e-mail, fax, and web between the hours of 9:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday, excluding normal business holidays. FM:Systems will use commercially reasonable efforts to communicate a qualified response or status within two business days for any unresolved problems. FM:Systems' assistance will consist only of providing general advice on the installation, operation and use of the Software and assistance with suspected problems with the Software.
4. For all reported problems, FM:Systems will work to determine the source of the problem. FM:Systems will attempt to correct all documented problems reported to FM:Systems by Client that FM:Systems is able to recreate at FM:Systems's facility, and will deliver any corrections to Client ("Error Corrections"). FM:Systems may identify errors as arising from non-FM:Systems hardware or software, or from unauthorized modifications to the Licensed Product. In such a case, FM:Systems reserves the right to charge Client for correcting such errors at its then-current rates for such services.
5. From time to time, FM:Systems will provide Client with all Updates (designated as a change to the version number to the right of the decimal point, e.g., 6.1 to 6.2, and including minor functional enhancements and error corrections) and Upgrades to Software (designated as a change to the version number to the left of the decimal point, e.g., 6.1 to 7.0, and including major functional enhancements) that FM:Systems generally makes available for no additional charge to Clients paying for maintenance. Client will implement all Updates and Upgrades as soon as is reasonably practical. Upon Update or Upgrade FM:Systems will support the prior version for two (2) years and will have no responsibility to provide Maintenance Services for any older versions of the Software . Upgrades and Updates do not include new modules or products, which port existing Software to new hardware or software platforms, which provide significant new functionality on new hardware or software platforms, or which apply to third-party products.
6. Client will be entitled to access the FM:Systems User Forum, an online community of users and peers.
7. During the annual term, Client will receive four (4) training credits which may be used for training classes through FM:Systems' Distance Learning Lab or as credit for two (2) days of training held in conjunction to FM:Systems' annual user conference. Credits do not carry over from year to year. Please visit www.fmsystems.com for class schedules, itineraries and registration.
8. Client shall perform tasks as requested by FM:Systems to aid in the resolution of problems, and shall implement all reasonable workarounds to problems as directed by FM:Systems. Upon request of FM:Systems as necessary to resolve a Client problem, Client will provide FM:Systems with a copy of requested Client data in the machine-readable format reasonably requested by FM:Systems. Client shall be responsible for maintaining adequate back-ups of all data used in connection with the Software.
9. Client may elect not to receive or renew, or may cancel, Maintenance Services.

FM:Systems will not be obligated to provide any services in addition to those set forth in these Maintenance Services terms ("Additional Services"). Unless otherwise agreed, Client shall pay FM:Systems at FM:Systems' hourly rate set forth in the Schedule Contract or Purchase Order for Additional Services provided. Additional Services include, but are not limited to, the following: (i) detailed

advice or support regarding the use and operation of the Software; (ii) on-site service of any kind; (iii) installation, data conversion, system integration or consulting services; (iv) service or maintenance of third-party software, operating software, hardware, or other equipment; (v) services caused by Client's fault, misuse, negligence or failure to perform Client's responsibilities, including failure by Client to maintain adequate data back-ups; (vi) services caused by a malfunction of or problem with any product or goods other than those licensed by FM:Systems; and (vii) services caused by the use by Client of any version of the Software other than the current or immediately prior version.



Avue Technologies Corporation

Avue Digital Services® Master Subscription Agreement

With

[Client Agency (____)]

Subscriber

Purchased Through Red River, an authorized Avue Reseller

Effective: _____

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General Provisions Governing Entire Agreement

This Master Subscription Agreement Prevails

Except to the extent provided expressly to the contrary by federal statute or regulation, this Master Subscription Agreement (MSA) shall govern in the event of a conflict with the Statement of Work or any other provision contained in the contract of which this Agreement is a part, including, without limitation, rights to data.

The "Products and Services" to be provided under the contract as stated in Box 20 of SF 1449, for example, shall include a statement that "Avue shall provide all products and services under this contract in accordance with the Avue Master Subscription Agreement."

For federal government Subscribers, the Subscribed Services are commercial items under FAR 2.101 and the MSA 's commercial license to the Subscribed Services shall be incorporated into and attached to the applicable contract.

Total Avue Platform Contract

As part of the contract to which this Agreement is incorporated, Subscriber is subscribing to the entire Avue Digital Services® (ADS) offering, including modules that may be added from time to time during the contract period. Under this "Total Avue Platform Contract" however, Subscriber will be charged for Initialization, Annual Subscription Fees, and Extranet Fees only for "activated" ADS modules. Activation is deemed to occur when Subscriber requests that Avue initiate Subscriber access to the module. Subscriber will also have the right, by a simple modification of this contract, to activate newly offered Avue modules for mutually agreed prices.

Addition of Other Components

Subscriber shall have the right to add as "Additional Subscribers" to coverage by this MSA so long as the addition is another agency within the same department or the department itself, and provided that additional eligible Economy Act purchasers outside the department may also be added to the extent permitted by law. Adding a subscriber will be accomplished with the "Additional Subscriber Attachments" (1-A, 1-B, etc.). These Additional Subscriber Attachments will identify the added entity and its Covered Subscriber Community together with the designation of the Additional Subscriber's activated Avue Modules with pricing. When the Additional Subscriber Attachments have been completed and approved by Avue, the Additional Subscriber will be deemed to be a "Subscriber" for purposes of this Agreement. The overall contract vehicle itself shall continue to be administered by the original Subscriber, which shall act solely as the contracting agent on behalf of all Additional Subscribers. For all purposes, each Additional Subscriber is independently a Subscriber, and all of the legal rights and obligations of the MSA and the Additional Subscriber Attachments shall be deemed to flow directly between the Additional Subscriber and Avue Technologies Corporation. Avue will provide all relevant services directly to the Additional Subscriber and as directed by it.

1.0 Enterprise Subscription

This Master Subscription Agreement (the "**Agreement**") (including the "General Provisions" preceding this page) for Avue Digital Services® ("**ADS**") is effective as of the date set forth in the Purchase Order, Statement of Work, or similar document (the "**Effective Date**") between Avue Technologies Corporation ("**Avue**") and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("**Subscriber**"). This MSA is an end user license agreement; when incorporated by reference in an agreement with the end user – including through a reseller – it is entered into between the end user and Avue and provides privity of contract between them with respect to its terms and conditions. Attachment 1 identifies the ADS modules covered (the "**Subscribed ADS Modules**") and the Covered Subscriber Community (CSC) entitled to access them, together with other matters about the Subscriber's Avue Subscription.

2.0 Subscription Periods

Avue sells ADS enterprise subscriptions on an annual or monthly basis that begins on the Effective Date. For annual subscriptions, the client can make a single payment on or before the Effective Date, or in 12 equal monthly installments paid beginning with the Effective Date. For monthly subscriptions, the client pays its subscription fees on a month-to-month basis starting with the Effective Date. Attachment 1 states whether the subscription is annual (and whether payable in single or monthly payments) or month-to-month and the applicable effective dates. The Subscriber may renew its Annual Subscription by issuing an appropriate written renewal order before the end of its then-current Subscription Period.

3.0 Scope of Subscription and Incidental Services

3.1 The ADS Subscription and services related to it (the "**Subscribed Services**") include for each Subscriber:

- (a) Access through the internet or the Subscriber's intranet to the Subscribed ADS Modules, including their associated user interface, application software, and content databases;
- (b) startup and ongoing configuration for each of the Subscribed ADS Modules;
- (c) ongoing software application and database management and administration, including updates and upgrades;
- (d) professional deployment services support such as training and briefings for all HR practitioners, managers, and employees;
- (e) help desk assistance for all system users; and
- (f) professional human resources staff support directly to managers using the Subscribed ADS Modules.

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

3.2 Each Avue enterprise subscription is offered on an "all-you-can-eat" basis which means Avue supports unlimited use by the client organization and its employees, as well as, depending upon the module, external users such as applicants and contractors. For its enterprise customers, Avue does *not* assess fees for ADS on a per-seat, per-server, per-transaction, or professional service fee basis. Avue enterprise subscription fees constitute fixed price, all-inclusive coverage of ADS start-up activation and use. Coverage includes the addition of client-specific occupational and workforce management content, job requirements, and business logic rules engines, as well as all the training, internal communications, marketing, and change management and support the client reasonably needs throughout the life of the subscription. Avue typically offers training and other periodic presentations to its customers in a setting where it provides modest food and refreshments throughout the day to attendees; attendees have the option of partaking or not.

3.3 The Subscriber's enterprise subscription to Avue Digital Services includes, as part of the fixed-price, for the entire life of the Subscription, at no additional charge, Avue Enterprise Direct®, including service support through the Avue Concierge®. Avue Concierge® includes Avue expert call center support directly to managers such that, used in combination with the Subscribed Modules, the Subscriber need not maintain internal HR resources to provide supervisor and management support.

3.4 Consistent with Section 7, upon the Subscriber's request and for an additional charge, Avue may provide supplemental and incidental services as mutually agreed.

3.5 Attachment 2 contains a description of the current Avue Digital Services offering. At its discretion, Avue may from time to time add, withdraw, or modify ADS modules. Avue will not, however, withdraw an ADS Module for which there is a valid outstanding subscription in place without reasonable notice to the Subscriber.

4.0 Covered Subscriber Community (CSC)

- 4.1. Avue uses a subscription model appropriate for Cloud-based, Software-as-a-Service (SaaS) offerings. Avue's price to the Subscriber is a function of the number of members in one or more identified groups– the Covered Subscriber Community (CSC) – rather than “seats” or usage.
- 4.1.1 Avue's service permits unlimited concurrent users within the CSC. Also, although not identified or counted as CSC members, non-employees who are necessary participants (“Adjunct Users”) in an automated Avue process are permitted access limited to their role in the process.
- 4.1.2 The Subscriber shall not allow or enable any user that is not a member of the CSC or an Adjunct User to access the Avue System. The Subscriber itself shall not, and shall not allow or enable any otherwise allow a member of the CSC to, use the Avue System on behalf of any other person, organization, or entity that is not part of the CSC, nor to provide Avue Material to any such other person, organization, or entity. The preceding prohibition includes without limitation product demonstrations to others outside of the Subscriber, except as may otherwise be provided in this Agreement, MSA Attachment 1, or otherwise with Avue's express written consent. Notwithstanding the preceding sentence, Agencies or components that have been designated by Avue as a Departmental Lead may make demonstrations to potential Additional Subscribers.
- 4.1.3 Unless otherwise expressly provided in this Agreement or Attachment 1, the CSC includes only employees of the Subscriber. For Subscriber agencies, individual “staff augmentation” professional service contractors to the Subscriber may each be permitted limited access as an Adjunct User to perform their contracted tasks provided they each: (a) are not employees of a competitor of Avue; and (b) agree to be bound to the terms of a system use agreement in a form reasonably satisfactory to Avue. If a professional services contractor described in this Subsection is employed by or provided through a business organization, then that business organization must also not be a competitor of Avue and must execute a written guarantee directly in Avue's favor explicitly accepting full liability for any breach by the individual of their obligations under the system use agreement.
- 4.1.4 If expressly provided in Attachment 1 and included in the CSC population for pricing purposes, the CSC may include other components or agencies that the Subscriber “cross-services” or provides shared services.
- 4.1.5 For pricing purposes, the baseline CSC is equal to the number of FTE specified in the Subscriber's authorized fiscal year budget for the year in which the subscription period begins. For certain circumstances and modules, the Subscriber may also make its “Contingent Workforce” part of the CSC coverage. “Contingent Workforce” consists of individuals that perform work on the basis that does not constitute employment, such as contractors, “gig economy workers,” and similar engagements. When made part of the CSC Contingent Workforce, members are included as a group to determine the CSC size for determining the Avue price using a method agreed upon by Subscriber and Avue.

5.0 Right to Use Avue Digital Services

5.1 Definitions. For purposes of this Article:

- 5.1.1 “ADS Material” includes any and all of the following aspects of Avue Digital Services®, whether owned by Avue and/or third parties -- databases, data, services, functions, content, functionality, rules, documents, reports, and associated Avue-provided interfaces -- which exist at any time during the Subscription Period except for data and documents that constitute Client Data. It also includes materials purchased as provided in section 7.0 and generated by the use of ADS.
- 5.1.2 “Client Data” includes:
- (a) Individual historical data elements relating to specific individuals that are customarily contained in an individual employee record. These include, for example, name, date of birth, SSN, education, occupational series, grade, salary, and similar data; and
 - (b) Individual historical data elements that are quantitative or otherwise arise from one or more specific transactions so long as these data elements can be downloaded during authorized use by the Subscriber from a report generated from the “Online Reports” interface embedded in Avue. These include, for example, individual performance ratings, transaction processing cycle time metrics, employee complaint proceeding outcomes, and similar data; and
 - (c) Documents, solely in their original form, provided to Avue by Subscriber. These include, for example, position descriptions and performance plans produced by or for Subscriber before the applicable Subscription Period.
- 5.1.3 For a Subscriber that is a U.S. Government agency (“Government Subscriber”), the following shall apply notwithstanding any other section of this Agreement:
- (a) In addition to section 5.1.2, “Client Data” shall include the following (the “Government Data”): any data in its original form that the Government Subscriber owns and provides to Avue under this Agreement. Government Data also includes data the Government Subscriber first develops and enters into an Avue-hosted database using a Subscribed ADS Module during the Subscription Period; provided any such data are not, in whole or in part, ADS Material and/or include Avue's proprietary format, display or database correlations. Government Data does not include derivative

works of ADS Material prepared by the Government Subscriber. Avue shall maintain the ability to segregate all Government Data from ADS Material, including segregating Government Data embedded in derivative works of ADS Material or other Avue proprietary information.

- (b) To the extent that the Government Subscriber does not already own the Government Data, the Government Subscriber shall have unlimited rights under FAR 52.227-14 to the Government Data, including the right to use, duplicate and disclose the Government Data for purposes of migrating such data to a non-Avue database after the Subscription Period. The Government Subscriber's unlimited rights to the Government Data shall survive the expiration or termination of this Agreement.
- (c) Avue will return all Government Data upon request to the Government Subscriber in a .csv, ASCII, or other format agreed upon by Avue and the Government Subscriber, provided such request occurs within the Subscription Period or thirty (30) days after the Subscription Period.

- 5.2 Subject to sections 5.3 through 5.9 of this Article, Subscriber shall have a non-exclusive, non-transferable, limited right to use Avue Digital Services® for access to the Subscribed ADS Modules during the applicable Subscription Period under this Agreement. This limited right includes the ability to make use, for its internal operations, of any printable output (whether in hard copy or electronic form) of data that it generates or downloads through its authorized use of Avue Digital Services®.
- 5.3 So long as separated from Avue's proprietary format, display, or database correlations, Subscriber shall have the right to use and maintain Client Data outside the Avue Digital Services® system at any time.
- 5.4 Avue Digital Services® may be used only by members of the Covered Subscriber Community and associated Adjunct Users, using an Avue provided software interface.
- 5.5 Use of Avue Digital Services® by Subscriber shall be only for the Subscriber's internal business purposes solely in the course of satisfying the Subscriber's internal business needs during the term of this Agreement.
- 5.6 ADS Material (including archival documents) may only be copied and used for: (1) processing of current human resources transactions during the Subscription Period (e.g., creating positions, staffing vacancies); (2) the continued use of a document image artifact (e.g., position description used with a subsequent position occupant) generated under the previous clause so long as it is not materially altered and does not violate any provision of Section 5 other than its use after the subscription; and (3) recordkeeping with respect to current and past human resources transactions. Use of ADS Material to feed another system in any form other than as a "read-only" image, or to compile or create a competing or successor human resources database or system (whether or not a Subscribed Module) for use by Subscriber or any other organization – e.g., a library or electronic system usable in processing future transactions independent of ADS - is strictly prohibited.
- 5.7 Except for record keeping purposes described in the preceding section, in no event shall Subscriber access, download, print, store, extract, copy, publish, transmit, transfer, or transport to another program, ADS Material for use after termination or expiration of the Subscription Period, or use independent of, the Subscribed ADS Modules. The Subscriber shall not incorporate any of the ADS Material in any other work.
- 5.8 In no event shall Subscriber access or otherwise use Avue Digital Services® (including any ADS Material) to develop a product, program, or resource that provides similar functionality or is otherwise similar to Avue Digital Services®, including, without limitation, the Subscribed ADS Modules, whether for internal use or for the use of other agencies or third parties. Subscriber shall not reverse compile, disassemble, or reverse engineer the ADS Material. Subscriber shall not sell, license, or distribute any ADS Material to third parties (including, without limitation, other government agencies) or use any ADS Material as a component of or as a basis for any material offered for sale, license, or distribution.
- 5.9 Section 5 of this Agreement and its subsections do not prevent internal use during the subscription period by Subscriber for internal Subscriber purposes of the output from the ADS Material, including but not limited to reports, position descriptions, and vacancy announcements. Additionally, except for sub-sections 5.6, 5.7, and 5.8, the provisions in Section 5 do not otherwise limit the rights of Subscriber in any way to data and information developed, entered into, and processed through Avue's information system(s) by Subscriber which is not technical data or computer software, and the reference to documents or data in their "original form" is not intended to limit the rights of Subscriber in data developed by Subscriber which may be modified or updated. By the same token, simply by using the ADS Material or inputting its own data into the ADS Material, Subscriber does not obtain any rights in the ADS Material. Nothing in this section is intended to narrow the scope of ADS Material or expand the scope of Client Data for purposes of sub-sections 5.6, 5.7, and 5.8 of this Agreement, which shall apply to any data and information developed, entered into, and processed through Avue's information system(s) by Subscriber that includes ADS Material. At any time during the term of the contract at the request of the Subscriber, and at contract closeout, Avue will provide said data in a format previously identified by Subscriber. Data formats include, but are not limited to, XML, CSV, and PDF, but do not include MS Word.

6.0 Extranet Access and Operations

- 6.1 Avue's Overall Responsibilities. Avue will be responsible for managing the Extranet Data Center, the ADS applications, and the connectivity of the Data Center to the Internet.
- 6.1.1 Avue Digital Services gives subscription access to various Avue Web-based expert system modules that provide application functionality and specialized content. Avue Digital Services offers access to the user via an "extranet" delivery mechanism that enables access to Avue Digital Services via a web browser.
- 6.1.2 Avue will provide Subscriber with Extranet access to the Subscribed ADS Modules. Access includes the applications, databases, and services required to provide extranet access to these modules for the Covered Subscriber Community identified in Attachment 1.
- 6.1.3 Avue will perform database and application upgrades, as part of the Subscribed Services. The Subscribed Services include: (1) access to the Subscribed ADS Modules (including content databases) through an Avue-provided user interface for which a valid, current subscription is in force; (2) all hardware, network, and support software required for the Data Center; (3) physically secure Data Centers which secure Subscriber data; (4) data center processes needed to ensure a stable and reliable service; (5) configuration and testing of all computer components; and (6) operations support as described in more detail in this Section 6.0.
- 6.1.4 The Extranet Services are designed to deliver access to Subscribed ADS Modules, and, specifically the Subscribed Services, from a web browser. Avue will provide the services offered via the Extranet and will be responsible for the operation of Extranet Data Centers and their connectivity to the Internet. The Internet will be the means of access for the Subscriber to connect to the extranet services. All network traffic between the browser and the Extranet Data Center will be fully authenticated and encrypted. Security will be provided using authentication gateways, firewalls, and encryption technologies.
- 6.2 Connectivity / Communications. Access to the Subscribed ADS Modules includes access via a Web browser connected to through the user's internet service provider(s) to the Internet.
- 6.3 Roles and Responsibilities:
- 6.3.1 Subscriber will be responsible for providing its users' internet access from the Subscriber's work sites using a browser that supports a secure socket layer (SSL) and is supported by Avue Digital Services (a "Supported Browser"). Subscriber will specify the Supported Browser to employees and other users.
- 6.3.2 The Subscriber will be responsible for all network issues that are within the Subscriber's LANs, WANs, or contracted ISP Services.
- 6.3.3 Avue will be responsible for all network issues within the Extranet Data Center, as well as the provision of sufficient bandwidth from the Data Center to the Internet for transmitting and receiving ADS data per the terms of this Agreement.
- 6.3.4 Avue will be responsible for the provision of sufficient network capacity (bandwidth) for the Extranet Data Center to accommodate all Covered Subscriber Community users connecting to the Extranet Data Center.
- 6.3.5 Avue will provide, on an extended hour basis, call center support for users. If the Avue call center determines that the user issue stems from the Subscriber's network environment, Subscriber's technical staff will promptly work with their Avue counterparts to resolve the issue.
- 6.3.6 Avue will be responsible for dealing with all problems that are related to the Extranet Data Center or the Center's connectivity to the Internet.
- 6.3.7 Where the Subscriber has gone through a network problem determination process and cannot identify the location of the network problem, Avue and the Subscriber will work together to resolve it.
- 6.3.8 Avue will be responsible for monitoring network activity and availability from the Extranet Data Center to the Internet.
- 6.3.9 Avue will be responsible for reporting, to the Subscriber monthly, on the following network services:
- (a) Number of concurrent sessions
 - (b) Response time statistics (between the Data Center and the Internet)
 - (c) Internet connection utilization for the Extranet Data Center
 - (d) Service Availability Statistics
 - (e) File Transfer Volumes
- 6.4 Server Management
- 6.4.1 Avue will be responsible for maintaining the availability of the Subscribed ADS Modules. Subscriber authorized users are

those users with a user ID and password assigned by the Subscriber. Subject to the provisions of Section 9, "Performance Elements" of this Agreement, availability will be 7x24 for 365 days per year except for maintenance and backup. During a system outage, Avue will issue an information notice to users and have available online, the next system availability time.

- 6.4.2 Avue will be responsible for the provision of sufficient server capacity for the Extranet Data Center to accommodate all Covered Subscriber Community users connecting to the Extranet Data Center.
- 6.4.3 Avue will be responsible for maintaining disk mirroring or RAID5 data sets.
- 6.4.4 Avue will be responsible for maintaining system redundancy:
 - (a) Alternate network pathing within the Data Center and to the Internet;
 - (b) Alternate connectivity paths to the disk storage units.
 - (c) n+1 redundancy for power supplies within the database, application, Firewall, and authentication servers.
- 6.4.5 In the event of a major power outage at the Data Centers, Avue will supply alternate electrical power supply via uninterrupted power supply (UPS) and generator facilities.
- 6.4.6 Avue will be responsible for performing disk, CPU, and memory threshold monitoring, configurations, and tuning at the Data Centers.
- 6.4.7 Avue will be responsible for performing daily operational functions at the Data Centers.
- 6.5 Software Management. Avue will be responsible for the following Data Center functions:
 - 6.5.1 Maintaining software version/release control for the development, test, and production ADS environments
 - 6.5.2 Providing software version testing and implementation processes and procedures.
 - 6.5.3 Providing application and system-level software release upgrades.
- 6.6 System Backup and Recovery
 - 6.6.1 Avue will be responsible for providing an integrated backup strategy including daily, weekly, and monthly backups. Unless otherwise specified in this Agreement, the backup schedule will be as follows:
 - (a) Weekly full system backups
 - (b) Daily incremental backups (any items changed since the last full backup)
 - (c) Monthly full system off-site backups
 - 6.6.2 Avue will retain system backup media for the duration specified below:
 - (a) Daily data backup media will be retained for 21 days after the backup is performed. Backup media will be recycled after 21 days.
 - (b) Weekly data backup media will be retained for 10 weeks after the backup is performed. Backup media will be recycled after 10 weeks.
 - (c) Monthly data backup media will be retained for 12 months after the backup is performed. Backup media will be recycled after 12 months.
 - (d) Yearly data backup media will be retained for 3 years after the backup is performed.
 - 6.6.3 Avue will store backup media off-site for all daily, weekly, monthly, and yearly backups as per the above media-recycling schedule.
- 6.7 Automated Monitored Computer Operations Environment. Avue will be responsible for performing Computer Operations Environment monitoring on a 7 X 24 basis.

6.8 Security -

6.8.1 Avue, in cooperation with Subscriber, will be responsible for issuing user IDs, passwords and application access permissions by user id for the Subscriber's authorized users.

6.8.2 Avue will be responsible for ensuring that the SSL authentication server within the Extranet Data Center accepts only secure (SSL) traffic.

6.8.3 Avue will be responsible for enforcing restricted access based on the user IDs, passwords, and permissions created and maintained by Avue in cooperation with Subscriber.

6.8.4 Physical security: Avue will be responsible for ensuring appropriate security controls and access to the Extranet Data Centers.

6.9 24 X 7 Emergency On-Call Service

6.9.1 Avue will be responsible for responding to and resolving, on a 7 x 24-hour basis, service outages.

6.9.2 Avue will be responsible for maintaining 7 x 24-hour coverage on all critical hardware components within the Data Center.

6.10 Change Management

6.10.1 Individualized, position-specific data modifications (e.g., editing of duty descriptions, KSA's, crediting plan criteria) are the responsibility of the Subscriber. The Subscriber may use ADS-provided editing functionality to edit and change position-specific content, as needed.

6.10.2 Avue will be responsible for administering changes to the content database. The Subscriber will be responsible for initiating and registering change requests, and Avue will respond to Subscriber change requests within two business days of receipt.

6.10.3 Avue will be responsible for notifying and obtaining Subscriber cooperation on any changes to the ADS environment (e.g., hardware upgrades, operating system upgrades, Oracle release changes, etc.) that will potentially impact the Subscriber's environment.

6.11 Call Center. Avue will be responsible for maintaining a centralized telephone support service to receive, log, track, and escalate all Extranet Data Center related problems for the ADS environment on a 24 x 7 x 365 basis.

6.12 Archiving

6.12.1 Data. Subscriber shall have the right, at any time during or at the conclusion of the Subscription Period, to transmit in a searchable and readable digital form any Client Data and Government Data (each as defined in Section 5 of the MSA) to (a) other Subscriber systems (e.g., agency data warehouse); (b) third party federal systems (e.g., EmpowHR or NFC), and (c) non-governmental systems (e.g., Amazon Web Services, including its "Glacier" long-term storage capability). Transmittal shall be through an Avue-authorized data interface. All costs of data transmittal, storage, and use shall be the responsibility of Subscriber.

6.12.2 Artifact Images. In addition to the rights of Subscriber under Subsection 6.12.1, Avue will maintain and provide Subscriber access to an online read-only PDF archive of all of the relevant document images ("archival documents") associated with Subscriber's use of the Subscribed ADS Modules. Subject to the provisions of Sections 5 and 14 of the MSA, the right of archive access includes the ability to print archival documents. Avue's obligations under this subsection shall continue for five years after the subscription period ends for any reason, and at no additional charge. For purposes of this subsection 6.12.2 the archival documents include:

- (a) Regarding position classification matters, position description, performance plan, evaluation statement, and job analysis worksheet;
- (b) For recruitment and staffing matters, all staffing-related documents that are needed to support audit, review, or reconstruction of staffing actions under (1) Delegated Examining Unit (DEU) audit (whether by OPM or sanctioned audits); (2) litigation hold; and (3) similar purposes. The archival documents shall include, without limitation, vacancy announcement, questionnaire, candidate review actions, applications, referral lists, and audited certificate. Upon request and for a reasonable consulting fee, Avue shall assist the Subscriber with document review and analysis in preparation for audits;
- (c) Concerning performance management matters, all position descriptions, performance plans, appraisals and associated documentation used to support them including that submitted by employees, managers, approving officials or other individuals providing input for consideration in the appraisal.

(d) For any other human capital management matter, all appropriate documentation for the subject matter, of a kind and quality like the archival documents specified above for classification, staffing, and performance management.

6.12.3 All Avue Archive documents shall contain the following notice --

"The rights to data contained in this archive are subject to the governing provisions of the contract under which it is produced, including the Avue Digital Services® Master Subscription Agreement."

6.13 Data and Database Administration

6.13.1 Avue is responsible for the integrity of the data associated with the Subscribed ADS Modules.

6.13.2 Avue is responsible for the management of the database instances for development, test, and production.

6.13.3 The Subscriber is responsible for the creation of data input standards to achieve data consistency for the Subscriber's use in searching and analysis. The Subscriber will be responsible for the corrections to the data where data standards have not been applied (for example, vacancy announcement numbers, position description numbers, geographic location designations, organizational codes, and similar data fields).

6.13.4 Avue, in cooperation with the Subscriber, is responsible for the following:

- (a) Establish and maintain agency profiles, including user roles, agency hiring authorities and priorities, and agency referral list generation set-up.
- (b) Administer role-defined access to product functions.
- (c) Administer agency emails, including list generation and administration, notification text editing, and event routing.

6.14 Technical Environment

6.14.1 *Web Browsers:* Access to the Subscribed ADS Modules will be provided for users, connected to the Internet utilizing a supported Web browser as approved by Avue. Notwithstanding the preceding, Avue shall not be held responsible or liable for any errors or defects caused by or contained in any third-party Web browser.

6.14.2 *Security:* Security will be provided for Subscriber users, using authentication servers, Firewalls, encryption technologies, and directory services. Encryption and authentication will be provided utilizing Secure Socket Layer (SSL).

7.0 Supplemental or Incidental Services

The Subscriber may request that Avue perform supplemental or incidental services that relate to the Subscribed Services. Such services include Avue's offering of consulting and other services on an hourly basis and production of HR documents on an hourly or per-piece basis, whether under a contract also providing for subscription services or under a separate contract. Each work request for such additional services shall describe the services sought and, if applicable, the requested date of completion. All such work requests are subject to written acceptance by Avue.

8.0 Subscriber Obligations

The Subscriber shall carry out all of the Subscriber's responsibilities outlined in this Agreement, including its Attachments. Whether or not explicitly stated, the Subscriber will provide Avue with full, good faith cooperation, assistance, and information as may be requested by Avue from time to time to deploy the Subscribed Services throughout the Subscriber. For Subscribers purchasing a module that relies on payroll data, Subscriber agrees explicitly to cooperate with Avue to establish a full bi-directional interface between the Avue system and the payroll system used by Subscriber.

9.0 Level of Performance

9.1. Definitions: For purposes of this Section 9.0, the following terms will have the meanings given:

9.1.1. "**Service Availability**" means the uptime of the Extranet Data Center and the relevant applications.

9.1.2. "**Hours of Operation**" means 2060 hours per quarter calendar year, calculated as follows: 7x24 for 365 days divided by 4 quarters per year less: (a) six daily maintenance and backup as required not to exceed one hour per day between 12 AM and 1AM (EST) and (b) one weekly maintenance and backup as required not to exceed one four-hour period occurring from Saturday midnight to 4AM (EST) Sunday morning. "**Performance Standard**" means 95% of the Hours of Operation, i.e., 1957 hours per calendar quarter.

9.1.3. "**Service Accessibility**" means the ability for the Covered Subscriber Community to access the Subscribed ADS Modules from

the following locations: within the Subscriber intranet environment; from Subscriber employee homes; and through general Internet access providers. Access from these locations is subject to meeting technical and security requirements.

9.2. Performance Availability and Service Accessibility. Avue will be responsible for maintaining Service Availability and Service Accessibility at a level not less than the Performance Standard.

9.3. Service Metrics

9.3.1. Avue will be responsible for the provision of Service Availability and Service Accessibility statistics monthly, as well as providing quarterly summary reports to the Subscriber. The monthly and quarterly statistics will reflect the number of actual hours of service delivered.

9.3.2. Any deficiency in achieving the Performance Standard in a quarter year may be subject to Service Credit, as defined and provided for in Section 9.4.

9.4. Service Credit:

9.4.1. In the event that, on an aggregate basis within any given quarter of a year, Avue does not provide Service Availability and Service Accessibility for any Subscribed ADS Module at a level that is at least equal to the Performance Standard due to a failure within the Extranet Data Center, the Subscriber may deduct from the Subscription Fee one percent (1%) of the Subscription Fee for such Subscribed ADS Module, prorated with respect to such quarter, for each full one percent (1%) of the cumulative shortfall below the Performance Standard ("**Service Credit**").

9.4.2. Service Credit applied to Avue, will be subject to offset, pro rata, to the extent that Avue has provided service in excess of the Performance Standard, calculated on a rolling-average basis, during the preceding four quarters.

9.4.3. Service Credit, if any, may only be credited against the Subscriber's Subscription Fees, if any, next occurring for the affected Subscribed ADS Module(s):

9.4.4. The application of Service Credit will not apply in the event of a declared disaster where a business continuity plan is being executed, for the duration of the time required to relocate to the secondary data center. Also, the application of Service Credit shall be subject to the terms contained elsewhere in this Agreement, including without limitation Section 9.5, Section 14.0, and Section 17.2.

9.4.5. Any Service Credit determination will exclude the first quarter following the release of a new ADS module, or a revision of an existing Subscribed ADS Module that the Subscriber and Avue agree is significant.

9.5. Maximum Service Credits: Notwithstanding any other provision of this Agreement, the maximum Service Credit associated with a shortfall in Service Availability within a calendar quarter shall be five percent (5%) of the Subscription Fee for the affected Subscribed ADS Module, pro-rated for the calendar quarter.

9.6. Sole Remedy. Subscriber acknowledges and agrees that any Service Credit provided for under this Section 9 shall be the Subscriber's sole remedy if there is any shortfall regarding Service Availability and Service Accessibility during the Subscription Period. This provision does not limit the government's rights to terminate for convenience or cause under FAR 52.212-4(l) and (m).

10.0 Fees and Expenses

10.1. Enterprise Annual Subscriptions. For Enterprise Annual Subscriptions there shall be an Initialization Fee, an Annual Subscription Fee, and an Annual Extranet Fee for each ADS Module. Section 11 describes the invoicing and payment of the fees contained in Attachment 1,

10.2 Enterprise Monthly Subscriptions. For Enterprise Monthly Subscriptions, there shall be a single monthly Subscription Fee for each ADS Module that is in an amount stated in Attachment 1, and invoiced and payable consistent with Section 11-

10.3 Determination of Fees. For all Enterprise Subscriptions, the Covered Subscriber Community is determined per Section 4.0 of this Agreement.

10.4 Supplemental or Incidental Services. For any of the supplemental or incidental services described in Section 7, the Subscriber shall pay at the specified rates agreed upon between the Subscriber and Avue at the time of order acceptance. The Subscriber shall be responsible for all actual, reasonable, out-of-pocket expenses incurred by Avue in performing the order. For government Subscribers, expense reimbursement shall be consistent with allowable costs under the applicable regulations.

11.0 Acceptance, Invoicing and Payment Terms

11.1. Avue shall not be required to initiate the Subscribed Services for any Subscription Period unless there is a procurement contract in

place against which a valid purchase order for the Subscribed Services may be placed.

11.2. Subscriber's acceptance of any Subscribed ADS Module shall be deemed to occur at the time of Avue's first release of the Subscribed ADS Module for Subscriber's use which will be deemed to occur at the time when Avue provides Subscriber with its first user accounts permitting access to the Avue production system.

11.3 With respect to Enterprise Annual Subscriptions:

11.3.1 Initialization Fees shall be invoiced commencing on the date the Subscribed ADS Modules are first released to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.3.2 Annual Subscription Fees shall be invoiced as follows:

(a) If the Subscriber has not elected to take advantage of the standard pre-payment discount Avue offers its customers, the Annual Subscription Fees shall be invoiced in twelve (12) monthly installments, commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable in the same manner. Payment is due upon receipt of invoice by the Subscriber. The fact that Annual Subscription Fees are paid monthly does not relieve the Subscriber of the full year subscription obligation to which such fees relate.

(b) If the Subscriber has elected to take advantage of the standard pre-payment discount Avue offers its customers, initial year Subscription Fees are invoiced in full on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due within thirty (30) days of receipt of invoice by the Subscriber. Each ensuing subscription renewal shall be invoiced, due and payable on the first day of the new subscription period.

11.3.3 Annual Extranet Fees are invoiced in twelve (12) monthly installments, commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due within thirty (30) days of receipt of invoice by the Subscriber.

11.4 Concerning Enterprise Monthly Subscriptions, subscription fees shall be invoiced monthly commencing on the date Avue first releases the Subscribed ADS Modules to the Subscriber. Payment is due upon receipt of invoice by the Subscriber.

11.5. Fees for new ADS modules are invoiced on the first day of the Subscription Period to which the fees relate. Payment is due upon receipt of invoice by the Subscriber.

11.6 For Government subscribers, payment of all Avue fees shall be per the Prompt Payment Act.

11.7. Each invoice for fees and expenses relating to supplemental or incidental services under Section 7 is due and payable within thirty (30) days after the invoice receipt date.

11.8. Any early termination of this Agreement shall not result in a refund or reduction of the fees for that portion of the Subscription Period so terminated.

11.9 If the Avue Subscription has been purchased through an approved Avue reseller, invoicing from, and payment to, the reseller for purposes of this Agreement shall be deemed to be from and to Avue.

12.0 **Subscriber Point of Contact.**

The Subscriber's COTR or COR, as identified to Avue by Subscriber, will serve as the Subscriber's primary point of contact with Avue for all technical purposes.

13.0 **Ownership and Use of Intellectual Property**

13.1. The Subscriber acknowledges that Avue and/or its licensors own all intellectual property rights relating to the ADS Material and the Subscribed Services, including but not limited to all patents, trademarks, copyrights, trade secret, and data rights in all such materials including such rights as embodied in all hardware, software, and data components and any associated documentation, and all customizations, developments, derivative works, and outputs. The parties agree that, except as stated herein, this Agreement does not grant the Subscriber any rights to patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), data or any other rights or licenses in respect of the Subscribed Services or the ADS Materials. Upon termination of the Subscription Period and except as explicitly permitted under section 5.6, the Subscriber agrees to return any Avue intellectual property in its possession, including but not limited to ADS Material and Avue copyrighted material, within 30 days of Avue's written request.

13.2. The ADS Material embodies information that is confidential and proprietary to Avue and its licensors. Also, but not in limitation of the preceding, the Subscriber understands and agrees that the content databases of the ADS Materials include a data structure incorporating complex associations between data elements, that was created by Avue and which constitute or contain confidential

information and trade secrets which are proprietary to Avue.

- 13.3. The Subscriber acknowledges that the Subscribed Services are purchased under the name Avue Digital Services, ADS, and the various individual module names designated by Avue. Subscriber agrees that it will only use Avue Digital Services, ADS, and the applicable module names when referring to the Subscribed Services, whether for internal use or external reference, and will not re-name, or otherwise refer to the Subscribed Services. Subscriber shall not use Avue, Avue Digital Services, ADS, or other Avue intellectual property in connection with any internal or external communications, presentation or marketing material without the Avue's review and express written consent

14.0 Warranties and Disclaimers

- 14.1. *Warranty and Disclaimer.* The ADS Material, including all software and data used to provide access to Subscribed ADS Modules, are protected by copyright laws and international copyright treaties, as well as other intellectual property laws. Avue warrants that it has sufficient rights to provide access to the ADS Material in accordance with this Agreement. However, due to the complex nature of software and digital services, Avue does not warrant that the ADS Materials are completely error-free, will operate without interruption, are compatible with all equipment and software configurations, or will otherwise meet the Subscriber's needs. AVUE DOES NOT MAKE, AND HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY TRADE USAGE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, AND NONINFRINGEMENT.
- 14.2. The Subscriber assumes sole responsibility for results obtained from the use of any ADS Material and for conclusions drawn therefrom, except to the extent damage results from Avue's failure to exercise a reasonable standard of care in providing the ADS Material. Avue shall not be responsible for loss, destruction, alteration, or disclosure to any person of the Subscriber's data submitted by the Subscriber or resultant output thereof (or loss, destruction, alteration or disclosure to any person of any physical media on which such the Subscriber data or resultant output are stored), unless caused by Avue's negligence or willful misconduct. Furthermore, Avue shall have no liability for any errors or omissions in any information, instructions, or scripts provided to Avue by the Subscriber in connection with the services provided hereunder.
- 14.3. **LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUE, LOST SAVINGS, LOSS OF USE OF THE SUBSCRIBED ADS MODULES OR ANY COMPONENT OF SUBPART THEREOF, BUSINESS INTERRUPTION, OR COST OF SUBSTITUTED FACILITIES, EQUIPMENT OR SERVICES, OR OTHER ECONOMIC LOSS ARISING OUT OF BREACH BY THE OTHER PARTY OF ANY OF ITS REPRESENTATIONS, WARRANTIES OR AGREEMENTS CONTAINED IN THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§ 3729-3733. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 41 U.S.C. §§3729-3733. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE OR FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY APPLICABLE LAW.**
- 14.4. **DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD PARTIES: AVUE DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE DATA CENTER AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET OR PORTIONS THEREOF. ALTHOUGH AVUE WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, AVUE CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, AVUE DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS, INCLUDING WITHOUT LIMITATION ANY SERVICE ACCESSIBILITY AND SERVICE AVAILABILITY SHORTFALL RESULTING FROM IN WHOLE OR IN PART FROM SUCH EVENTS.**

15.0 Technical and Security Requirements

15.1 General

- 15.1.1 All Avue services provided are included in the Avue subscription, eliminating the need for Subscriber to support the services by creating, staffing, and maintaining its own IT infrastructure.
- 15.1.2 Avue shall provide user access with redundant design and unlimited access, including at least two availability zones. Avue will not restrict bandwidth to the Avue system. Avue's system shall be accessible by Subscriber users and applicants via the Internet and support multiple browsers, including Internet Explorer, Firefox, and Chrome on both PCs and mobile devices. Avue shall provide guaranteed 95% or better availability to Avue's system for all users. Avue's system shall support a secure, multi-factor method of remote authentication and authorization to perform management duties on the system.

- 15.1.3 Avue will provide 24/7/365 Tier 1, 2, and 3 Help Desk services for Subscriber users and applicants with support personnel who are U.S. citizens only.
- 15.1.4 Avue will use only cryptographic mechanisms that are FIPS 140-2 validated. Avue shall provide security mechanisms for handling data at rest and in transit in accordance with FIPS 140-2.
- 15.1.5 Avue shall support a system in accordance with the requirement for Federal agencies to manage their electronic records in accordance with 36 CFR § 1236.20 & 1236.22, including but not limited to capabilities such as those identified in NARA Bulletin 2010-05 September 08, 2010, Guidance on Managing Records in Cloud Computing Environments.

15.2 Security Alerts, Advisories, and Directives

- 15.2.1 Avue shall provide a list of its personnel, identified by name and role, with system administration, monitoring, and/or security responsibilities that are to receive security alerts, advisories, and directives. This list shall include designated Subscriber personnel, including the Subscriber SOC and the SAOP.
- 15.2.2 Avue (and/or any of its subcontractors) shall report all suspected and confirmed information security and privacy incidents to the Subscriber Security Operations Center (SOC) via email and telephone to the designated Subscriber representatives, COR, Contract Officer, SAOP (or his or her designee), and other stakeholders, including incidents involving personally identifiable information (PII), in electronic or physical form, within 1 hour of discovery. The types of information required in an incident report must include at a minimum company and point of contact information, impact classifications/threat vector, and the type of information compromised.

- 15.3 **Section 508 Compliance.** All electronic and information technology (EIT) provided by Avue shall meet the applicable accessibility standards at 36 CFR 1194 unless an agency exception to this requirement exists.

15.4 FedRAMP Security Requirements

- 15.4.1 General. The minimum requirements for low and moderate impact cloud systems are contained within the FedRAMP Cloud Computing Security Requirements Baseline. Avue and the Subscriber share responsibility to ensure compliance with security requirements through a formal process, known as Assessment and Authorization, which provides guidelines for performing the assessment.
- 15.4.2 Avue shall provide a Software as a Service ("SaaS") platform hosted in a FedRAMP-authorized cloud infrastructure based on NIST Special Publication 800-53, Revision 4. Avue shall identify all data centers that the data at rest or data backup will reside. All data centers will be guaranteed to reside within the United States of America and be authorized under FedRAMP at the time of award. Avue shall implement the controls contained within the FedRAMP Cloud Computing Security Requirements Baseline and FedRAMP Continuous Monitoring Requirements for low and moderate impact system (as defined in FIPS 199). Avue shall generally, substantially, and in good faith follow FedRAMP guidelines and Security guidance. In situations where there are no procedural guides, Avue shall use generally accepted industry best practices for IT security.
- 15.4.3 Upon 30-days prior written notice to Avue and an opportunity to cure, Subscriber may choose to cancel its Avue subscription and terminate any outstanding orders if Avue's FedRAMP provisional authorization is revoked and the deficiencies are greater than agency risk tolerance thresholds.

15.4.4 Assessment of the System

- (a) Avue shall comply with FedRAMP requirements as mandated by Federal laws and policies, including making available any documentation, physical access, and logical access needed to support this requirement. Avue shall create, maintain, and update the following documentation using FedRAMP requirements and templates, which are available at <http://fedramp.gov>:
- Privacy Impact Assessment (PIA)
 - FedRAMP Test Procedures and Results
 - Security Assessment Report (SAR)
 - System Security Plan (SSP)
 - IT System Contingency Plan (CP)
 - IT System Contingency Plan (CP) Test Results
 - Plan of Action and Milestones (POA&M)
 - Continuous Monitoring Plan (CMP)
 - FedRAMP Control Tailoring Workbook
 - Control Implementation Summary Table
 - Results of Penetration Testing
 - Software Code Review
 - Interconnection Agreements/Service Level Agreements/Memorandum of Agreements

- (b) Avue's system will be assessed by an accredited 3PAO whenever there is a significant change to the system's security posture in accordance with the FedRAMP Continuous Monitoring Plan.
- (c) The Subscriber reserves the right to perform Penetration Testing. If the Subscriber exercises this right, Avue shall allow Subscriber employees (or designated third parties) to conduct Security Assessment activities to include control reviews in accordance with FedRAMP requirements. Review activities include but are not limited to scanning operating systems, web applications, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of Subscriber information for vulnerabilities.
- (d) Any Identified gaps between required FedRAMP Security Control Baselines and continuous Monitoring controls and Avue's implementation as documented in the Security Assessment Report shall be tracked by Avue for mitigation in a Plan of Action and Milestones (POA&M) document. Depending on the severity of the gaps, the Subscriber may require them to be remediated before a provisional authorization is issued.
- (e) Avue is responsible for mitigating all security risks found during A&A and continuous monitoring activities. "All high-risk vulnerabilities must be mitigated within 30 days, and all moderate risk vulnerabilities must be mitigated within 30 days from the date vulnerabilities are formally identified. The Subscriber will determine the risk rating of vulnerabilities.

15.5 **Authorization of System.** Avue shall provide access to the Subscriber, or its designee acting as its agent, when requested, to verify Compliance with the requirements for an Information Technology security program. The Subscriber reserves the right to conduct on-site inspections. Avue shall make appropriate personnel available for interviews and provide all necessary documentation during this review.

15.6 **Reporting and Continuous Monitoring.** Maintenance of the FedRAMP Provisional Authorization will be through continuous monitoring and periodic audit of the operational controls within Avue's system, environment, and processes to determine if the security controls in the Avue system continue to be effective over time given changes that occur in the system and environment. Through continuous monitoring, Avue will submit updated security controls and supporting deliverables to the FedRAMP PMO as required by FedRAMP Requirements.

16.0 Additional Terms and Conditions

If certain "premium" features (e.g., where proprietary third-party data access requires payment of a fee) are made available to Subscriber, the Subscriber will be given written notice of all applicable terms and conditions, including charges, which are different from those stated in this Agreement ("**Additional Terms**"). Subscriber will not be given access to such "premium" features without reviewing and accepting the Additional Terms, but once accepted, Subscriber agrees to and will be obligated to comply with, all such Additional Terms as well as the terms and conditions in this Agreement. All Additional Terms once reviewed by Subscriber will be considered part of this Agreement

17.0 General

- 17.1. **Notices:** Any notice or request hereunder shall be made in writing, delivered in person to an authorized officer of the respective party, sent by first-class mail or reputable express courier (postage or charges prepaid) or transmitted by email or confirmed facsimile to the other party at its address stated at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Any notices, demands or other communications required or permitted hereunder shall be deemed given when hand delivered or transmitted by email or confirmed facsimile, on the next business day after being sent by overnight express courier (charges prepaid), or three (3) days after being deposited in the United States mail, postage prepaid.
- 17.2. **Force Majeure:** Excusable delays shall be governed by FAR 52.212-4(f).
- 17.3. **Severability:** If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 17.4. **Section Headings:** The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.
- 17.5. **Waiver:** The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.
- 17.6. **Dispute Resolution:** If a dispute regarding the interpretation or enforcement of this Agreement arises, the senior executive officers of the parties will promptly meet to seek to resolve the dispute. If the dispute is not then resolved, the parties shall have recourse to all available legal and equitable remedies in accordance with the Contract Disputes Act.
- 17.7. **Counterparts and Electronic Signatures.** The Parties may execute this Agreement and any document executed between them attached to it or arises from it, in several counterparts, all of which taken together shall constitute one single agreement. Signatures may be

made and delivered electronically. It shall not be necessary in making proof of this Agreement to produce original signature page(s) to this Agreement.

IN THE EVENT THIS AGREEMENT IS INCORPORATED INTO A GOVERNMENTAL CONTRACT AWARD, EXECUTION BY THE PARTIES IS NOT NECESSARY.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have executed this Agreement, effective as of the date first written above.

SUBSCRIBER

AVUE TECHNOLOGIES CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

Master Subscription Agreement (MSA) ATTACHMENT 1

Subscriber: [Client Agency]
Initial Covered Subscriber Community: xxxxx to xxxx FTE
Subscription Type: *Enterprise Annual Prepaid*
Initial Contract Period: __ Years, with an Base Period of ____
Years and ____ Option Year.

Name of the Subscriber: [Client Agency]

Type of Subscription (Annual/Monthly): Enterprise Annual

Covered Subscriber Community (CSC)

In contrast to traditional client-server software “usage pricing” models that determine permitted user access and price based on the number of user seats or licenses-server era, Avue uses a subscription model more appropriate for Cloud-based, Software-as-a-Service (SaaS) offerings. Specifically, permitted user access and price are determined by coverage group size rather than usage. In fact, Avue’s service allows for unlimited concurrent users that fall within a delineated group’s processes. For example, an agency’s recruitment and hiring processes involve applicants, employees, supervisors, managers, senior leaders, and even background investigators.

To eliminate any potential confusion between legacy per-seat software offerings versus Avue's subscription-based holistic SaaS model Avue has adopted the term “Covered Subscriber Community” (CSC) to refer to the delineated group covered by the subscription. The CSC includes everyone that may have or will be given access to ADS and the processes, data, information, and analysis it provides. The Avue Indigo™ offering contains certain features and functionality designed to effectively manage the agency’s extended enterprise that includes non-employees – such as contractors – that need to be part of the CSC. With Avue’s consent, the CSC may also include other agencies or components “cross-serviced” by the Subscriber’s HCM operations.

As a baseline, the CSC is equal to the number of FTE specified in the Subscriber’s authorized fiscal year budget for the year in which the subscription period begins.

For certain circumstances and modules, the Subscriber may also cover its "Contingent Workforce" which are then included as a group in the Subscription Bracket number. "Contingent Workforce" consists of individuals that perform work on a basis that does not constitute employment, such as contractors, "gig economy workers," and similar engagements.

Included Organizations for Subscription as of Effective Date:

- Subscriber: [Client Agency]
- CSC Size: [Bracket]

3. Current Module Activation Status

As part of the contract to which the Avue Master Subscription Agreement is incorporated, the Subscriber has subscribed to the entire Avue Digital Services® (ADS) offering (including modules that may be added from time to time during the contract period). As of the effective date of this Attachment 1, Master Subscription Agreement, the available Avue modules are collectively referred to as Avue Indigo™.

Avue Digital Services® Avue Indigo™ Platform Offering		
GROUP ONE: Position Mgmt & Talent Acquisition'		
<i>Modules</i>	<i>Acronym</i>	<i>Price Type</i>
Avue Operating System	AOS	C
Position Classification & Management	PCM	B
Recruitment, Retention & Staffing	RRS	B
GROUP TWO: Talent Mgmt, Development & Performance		
<i>Modules</i>	<i>Acronym</i>	<i>Price Type</i>
Resource Allocation & Management	RAM	C
Performance Optimization Module	POM	B
Enterprise Learning Management	ELM	C
Enterprise Strategic Planning	ESP	C
Advice, Coaching & Claims (EEO, ER/LR/ICM)	ACC	B
GROUP THREE: Time & Leave/Payroll/Scheduling		
<i>Modules</i>	<i>Acronym</i>	<i>Price Type</i>
Avue Time & Leave Management Module	ATL	C
Avue Workforce Scheduling Module	AWS	C
Payroll Service Processing	PSP	Transactional

Pricing Grids for Subscriber: Summary Price Tables

Pricing Grids for Subscriber: Detailed Price Tables: See Next Page

AVUE-[Client Agency] MSA ATTACHMENT 2 as of Effective Date Avue Module Descriptions

Avue Digital Services® Avue Indigo™ Platform Offering		
GROUP ONE: Position Mgmt & Talent Acquisition		
Module	Description	Price Type
Avue Operating System (AOS)	The base platform of Avue Digital Services® includes: <ul style="list-style-type: none"> • Complete "native-federal" HRIS and PAR processing capabilities at least comparable to PeopleSoft, Oracle, and SAP, but without the cost to license and maintain, or provide labor-intensive resources to support and operate "federalized" software; • Includes Federal pay-setting (all pay plans) for all PAR actions • Bi-directional data interfaces to third-party systems such as finance, time management, HRIS, or payroll systems that are not Avue; • Self-service for all users; • Data warehouse, standard and ad-hoc reporting; • Avue Command Center® with executive dashboards and associated decision support that also provides enterprise-wide visibility down to the individual business unit; • A robust database of all skills, licenses, and certifications for all federal occupations, with automated capture and tracking. 	C
Position Classification & Management (PCM)	Job classification (including automatic FLSA and Comp Level Codes), position management with dashboards, Covers 100% of all work performed in the Federal Government, including white and blue collar. Creates all positions in all types of pay plans, including pay banding, market-based pay, mixed-series, mixed-grade, career ladder, supervisory, lead, senior level, interdisciplinary, research, and trainee positions.	B
Recruitment, Retention & Staffing (RRS)	Complete end to end recruitment and staffing from announcement to fill (including USAJobs interface and all DEU), including EOD and off-boarding, specialty recruitment agency-specific web sites, climate survey, exit survey, recruitment program management & support. Automatically determines whether candidate meets basic qualifications. Automatically rates and ranks candidates, including applying Veterans' Preference and assessing and flagging applicants available through alternative hiring authorities. Automatic generation of referral list and notifications to managers that referral lists are available (online) for candidate review, further assessment, and selection. On-line reference checking and automatic generation of behaviorally-based interview guide. Complete management and facilitation of supplemental candidate assessment, including background, medical, physical, hub for all providers including candidate self-service appointment scheduling.	B
GROUP TWO: Talent Management, Development & Performance		
Module	Description	Price Type
Resource Allocation Management (RAM)	Provides for team assembly, deployment, coordination, including response to sudden or emerging situations and special needs circumstances such as taskforces, special projects, or interdisciplinary teams. Maintains inventory of key information for all employees, including detailed skills and competencies, geographic location and assigned official duty station, availability, clearances, certifications, etc. Using this module's "Incident Accountability System" (IAS), track workforce location and status during an emergency event that prompts evacuation or similar circumstances.	C
Performance Optimization (POM)	Complete end to end performance management process, from performance plan creation to monitoring to evaluation and final rating of record, includes automatic generation of plans, performance awards, PIP, etc. Online coaching for managers.	B
Enterprise Learning Management (ELM)	Provides a comprehensive, enterprise class, learning management system for employee development. Covers all aspects including course development, self-service registration, automatic IDP generation, classroom logistics, budgetary support, financial payments/chargebacks, instructor assignment, ratings. Includes interfaces to SCORM compliant content development systems, and delivery of content.	C
Enterprise Strategic Planning (ESP)	Assists line managers and staff professionals in analyzing the organization, employee demographics, competency/skill mix, payroll expenditures, and other workforce profiles to determine trends, identify labor market effects, conduct scenario planning, determine bench strength for succession planning, quantify the costs of organizational activities, and forecast the structure and needs of the organization in future years. Includes factoring in retirements, attrition, cycle time to fill positions, training costs, training capacity, and similar factors. Cost projections are provided across multiple years. Utilizes workforce behavior profiles to project key events across multiple years and the resulting impact.	C
Advice, Coaching & Claims (ACC)	Manager-centric solution for entire range of ER/LR/EEO/Injury Comp. Practical guidance to all Participants (managers, ER/LR/EEO/ICM professionals and practitioners, EEO practitioners, union representatives, investigators, mediators, and employees). Includes online coaching, agency policy lookup, situation analysis, Douglas factor analysis. Complete case management for all Participants -- routing, workflow, counseling, investigation, adjudication, case management, tracking, and archival of cases and reports at both the formal and informal stages. Automatic updates for all Participants regarding the status of cases. Automatic generation of all required reports, including EEOC MD-715, 462, and "NO FEAR". Handles virtually all FECA claims. EDI interchange with DOL and automatic generation of all forms. Includes ability to automatically generate appropriate light duty positions and other tools to increase "return to work" success.	B
GROUP THREE: Time & Leave/Payroll/Scheduling		
Module	Description	Price Type
Avue Time & Leave Management (ATL)	Automates 100% of pay rules and centralizes zero-to-gross pay functionality for even the most complex agency operations. Sophisticated features including retroactive adjustments, labor and production metrics, real-time rules processing. Unlimited number of accounts can be used. ATL maintains an attendance history by employee and provides reports and notifications of violations based on an organization's settings. Incorporates an unlimited number of warning periods, thresholds, and attendance groups while and maintaining detailed histories. ATL also includes complete leave management functionality that enables an organization to manage and track leave requested by employees	C
Avue Workforce Scheduling (AWS)	Automates schedule management for organizations with teams of employees who perform shift work. Reduces the time a manager needs to spend ensuring schedules are filled with qualified employees based on the demands for the day. Uses "bumping" to automatically fill schedules with employees based on their shift patterns, job qualifications or employee rankings. Also assists managers in performing other daily staffing requirements including booking employees off, finding replacements to meet qualification and overtime rules and performing mass changes quickly and easily. Seamlessly integrated with ATA ensuring that all time scheduled can be easily tracked against actual employee time.	C
Payroll Service Processing (PSP)	Avue Payroll Service Processing is provided by Avue in combination with ADP, one of the largest payroll and tax filing processors in the world, serving about 625,000 clients. Its primary business is providing employer services (payroll processing, tax and benefits administration services). By taking Avue's capabilities and expertise in federal government rules and regulations and combining it with ADP's state-of-the-art payroll and tax filing services, including ADP's particularly strong capabilities in UI, mobile devices, and dashboards, the Team Avue PSP offering for federal government agencies substantially surpasses any prior federal sector offering.	Transactional



Everbridge, Inc.
GSA Approved End User License Agreement

This End User License Agreement (“**Agreement**”) is entered into by and between Everbridge, Inc. (“**Everbridge**”) and an Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 4800.2H, as may be revised from time to time (“**Customer**”), effective on the date of signature by an authorized signatory on the Quote or other ordering document (“**Effective Date**”). Everbridge and Customer are each hereinafter sometimes referred to as a “**Party**” and collectively, the “**Parties**.”

1. SERVICE.

11 Orders. Everbridge shall provide Customer access to its proprietary interactive communication solutions (the “**Solutions**”) subject to the terms and conditions set forth in this Agreement and the description of services and pricing provided in the applicable quote (the “**Quote**”). If applicable, Everbridge shall provide the training and professional services set forth in the Quote. Collectively, the Solutions and professional services are referred to as the “**Services**”. Everbridge shall provide Customer with login and password information for each User (as defined below) and will configure the Solution to contact the maximum number of Contacts (as defined below) or Users, as applicable depending on the Solutions ordered. Unless otherwise provided in the applicable Quote or documentation, Services are purchased as annual subscriptions.

12 Users; Contacts. “**Users**” are individuals who are authorized by Client from time to time to use the Solutions for the purposes of sending notifications, configuring templates, reporting or managing data, serving as system administrators, or performing similar functions, and who have been supplied user identifications and passwords by Client. Users may include employees and contractors of Customer or an Included Department. “**Included Department**” means any enterprise department, office, agency, or other entity that receives a majority of its funding from the same general or enterprise fund, as applicable, as the Customer. “**Contacts**” are individuals who Customer contacts through the Solutions and/or who provides their personal contact information to Everbridge, including through an opt-in portal. If applicable to the particular Solution, the number of Users and/or Contacts that may be authorized by Customer is set forth on the Quote.

2 PAYMENT TERMS. Customer shall pay the fees set forth in the Quote (“**Pricing**”). All pricing must be consistent with the Schedule Price List. If Customer exceeds the usage levels specified in the Quote, then Everbridge may invoice Customer for any overages at rates consistent with the Schedule Price list. Professional Services must be used within 12 months from date of purchase.

3. RESPONSIBILITIES.

31 Users. Customer shall undergo the initial setup and training as set forth in the Implementation – Standard inclusion sheet provided with the Quote. The Implementation sheet provides a detailed list of the services included as part of the implementation purchased and the corresponding timelines. Customer shall be responsible for: (i) ensuring that Users maintain the confidentiality of all User login and password information; (ii) ensuring that Users use the Services in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this Agreement by any User; and (iv) all

communications by Users using the Solutions. Customer shall promptly notify Everbridge if it becomes aware of any User action or omission that would constitute a breach or violation of this Agreement.

32 Customer Data. “**Customer Data**” is all electronic data transmitted to Everbridge in connection with the use of the Solutions, including data submitted by Contacts. Customer Data provided by Customer shall be true, accurate, current and complete, and shall be in a form and format specified by Everbridge. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer represents that it has the right to authorize and hereby does authorize Everbridge and its “**Service Providers**” to collect, store and process Customer Data subject to the terms of this Agreement. “**Service Providers**” shall mean communications carriers, data centers, collocation and hosting services providers, and content and data management providers that Everbridge uses in providing the Solutions. Customer shall maintain a copy of all Customer Contact data that it provides to Everbridge. Customer acknowledges that the Solutions are a passive conduit for the transmission of Customer Data and Everbridge shall have no liability for any errors or omissions or for any defamatory, libelous, offensive or otherwise objectionable or unlawful content in any Customer Data, or for any losses, damages, claims, suits or other actions arising out of or in connection with any Customer Data sent, accessed, posted or otherwise transmitted via the Solutions.

4. TERM. This Agreement will commence on the Effective Date and will continue in full force and effect until all executed Quotes have terminated.

5. TERMINATION; SUSPENSION.

51 Termination by Either Party. [Intentionally Deleted]

52 Termination by Everbridge. [Intentionally Deleted]

53 Suspension. Everbridge may suspend, with or without notice, the Solution or any portion for (i) emergency network repairs, threats to, or actual breach of network security; or (ii) any legal, regulatory, or governmental prohibition affecting the Solution. In the event of a suspension, Everbridge shall use its best efforts to notify Customer through its Customer Portal and/or via email prior to such suspension and shall reactivate any affected portion of the Solution as soon as possible.

6. PROPRIETARY RIGHTS.

61 Grant of License. Everbridge hereby grants to Customer, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Solutions subject to the terms and conditions of this Agreement. Upon termination of this Agreement for any reason, the foregoing license shall terminate automatically and Customer shall discontinue all further use of the Solutions.

62 Restrictions. Customer shall use the Solutions solely for its internal business purposes and shall not make the Solutions available to, or use the Solutions for the benefit of, any third party except as expressly contemplated by this Agreement.

Customer shall not: (i) copy, modify, reverse engineer, de-compile, disassemble or otherwise attempt to discover or replicate the computer source code and object code provided or used by Everbridge in connection with delivery of the Solutions (the “**Software**”) or create derivative works based on the Software, the Solutions or any portion thereof; (ii) merge any of the foregoing with any third party software or services; (iii) use any Everbridge Confidential Information to create a product that competes with the Software; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any portion of the Solutions; (v) create internet “links” to or from the Solutions, or “frame” or “mirror” any content forming part of the Solutions, other than on Customer’s own intranets for its own internal business purposes; (vi) use, post, transmit or introduce any device, software or routine (including viruses, worms or other harmful code) which interferes or attempts to interfere with the operation of the Solutions; (vii) use the Solutions in violation of any applicable law or regulation; or (viii) access the Solutions for purposes of monitoring Solutions availability, performance or functionality, or for any other benchmarking or competitive purposes.

63 Reservation of Rights. Other than as expressly set forth in this Agreement, Everbridge grants to Customer no license or other rights in or to the Solutions, the Software or any other proprietary technology, material or information made available to Customer through the Solutions or otherwise in connection with this Agreement (collectively, the “**Everbridge Technology**”), and all such rights are hereby expressly reserved. Everbridge (or its licensors where applicable) owns all rights, title and interest in and to the Solutions, the Software and any Everbridge Technology, and all patent, copyright, trade secret and other intellectual property rights (“**IP Rights**”) therein, as well as (i) all feedback and other information (except for the Customer Data) provided to Everbridge by Users, Customer and Contacts, and (ii) all transactional, performance, derivative data and metadata generated in connection with the Solutions.

7. CONFIDENTIAL INFORMATION.

7.1 Definition; Protection. As used herein, “**Confidential Information**” means all information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally, electronically, in writing, or by inspection of tangible objects (including, without limitation, documents or prototypes), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, any personally identifiable Customer Data, all Everbridge Technology, and either Party’s business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose other than performance or enforcement of this Agreement without the Disclosing Party’s prior written consent, unless (but only to the extent) otherwise required by a governmental authority. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party except: (i) to the personnel of the Receiving Party or its parent, subsidiary or

affiliate organizations having a need to know; or (ii) to the personnel of the Receiving Party’s consultants and service providers having a need to know, and only then if such consultants and service providers are bound by confidentiality and non-disclosure commitments substantially similar to those contained herein. Each Party agrees to protect the Confidential Information of the other Party with the same level of care that it uses to protect its own confidential information, but in no event less than a reasonable level of care.

8. WARRANTIES; DISCLAIMER.

8.1 Everbridge Warranty. Everbridge shall use commercially reasonable efforts to provide the Services herein contemplated. To the extent professional services are provided, Everbridge shall perform them in a professional manner consistent with industry standards.

8.2 Disclaimer. NEITHER EVERBRIDGE NOR ITS LICENSORS WARRANT THAT THE SOLUTION WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL EVERBRIDGE HAVE ANY LIABILITY TO CUSTOMER, USERS, CONTACTS OR ANY THIRD PARTY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SOLUTION TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF EVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

8.3 Customer Representations and Warranties. Customer represents and warrants that during use of the Solutions, Customer shall (i) clearly and conspicuously notify Contacts of the way in which their personal information shall be used, and (ii) have primary safety and emergency response procedures including, without limitation, notifying 911 or equivalent fire, police, emergency medical and public health officials (collectively, “**First Responders**”). Customer acknowledges and agrees that Everbridge is not a First Responder, and that the Solutions does not serve as a substitute for Customer’s own emergency response plan, which in the event of an actual or potential imminent threat to person or property, shall include contacting a First Responder prior to using the Solutions. Customer represents and warrants that all notifications sent through the Solutions shall be sent by authorized Users, and that the collection, storage and processing of Customer Data, and the use of the Solutions, as provided in this Agreement, will at all times comply with (x) Customer’s own policies regarding privacy and protection of personal information; and (y) all applicable laws and regulations, including those related to processing, storage, use, disclosure, security, protection and handling of Customer Data.

9. INDEMNIFICATION.

9.1 By Customer. [Intentionally Deleted]

9.2 By Everbridge. Everbridge shall indemnify and hold Customer harmless from and against any Claim against Customer, but only to the extent it is based on a Claim that the Solution directly infringes an issued patent or other IP Right in a

country in which the Solution is provided to Customer. In the event Everbridge believes any Everbridge Technology is, or is likely to be the subject of an infringement claim, Everbridge shall have the option, at its own expense, to: (i) to procure for Customer the right to continue using the Solution; (ii) replace same with a non-infringing service; (iii) modify such Solution so that it becomes non-infringing; or (iv) refund any fees paid to Everbridge and terminate this Agreement without further liability. Everbridge shall have no liability for any Claim arising out of (w) Customer Data or other Customer supplied content, (x) use of the Solution in combination with other products, equipment, software or data not supplied by Everbridge, (y) any use, reproduction, or distribution of any release of the Solution other than the most current release made available to Customer, or (z) any modification of the Solution by any person other than Everbridge.

93 Indemnification Process. Customer shall (a) promptly give notice of the Claim to Everbridge once the Claim is known; (b) cooperate with Everbridge's efforts to defend and settle the Claim; and (c) provide Everbridge with all available information and reasonable assistance in connection with the defense of the Claim.

10. LIMITATION OF LIABILITY. Except for breaches of Section 6, neither Party shall have any liability to the other Party for any loss of use, interruption of business, lost profits, costs of substitute services, or for any other indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Notwithstanding anything in this Agreement to the contrary, in no event shall Everbridge's aggregate liability, regardless of whether any action or claim is based on warranty, contract, tort, indemnification or otherwise, exceed amounts actually paid by Customer to Everbridge hereunder during the 12 month period prior to the event giving rise to such liability. Customer understands and agrees that these liability limits reflect the allocation of risk between the Parties and are essential elements of the basis of the bargain, the absence of which would require substantially different economic terms. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the schedule contract (i.e. Price Reductions, Patent Indemnification, Liability for Injury or Damage, Price Adjustment, Failure to Provide Accurate Information).

11. MISCELLANEOUS.

11.1 Non-Solicitation. As additional protection for Everbridge's proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Customer agrees that it shall not, directly or indirectly, solicit, hire or attempt to solicit any employees of Everbridge; provided, that a general solicitation to the public for employment is not prohibited under this section.

11.2 Force Majeure; Limitations. See GSA Schedule 70 contract and individual ordering document.

11.3 Waiver; Severability. The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by

any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted and the remaining provisions shall continue in full force and effect.

11.4 Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned (including an assignment by operation of law), or otherwise transferred, in whole or in part, by Customer, and any such attempted assignment shall be void and of no effect without the advance written consent of Everbridge, which shall not be unreasonably withheld.

11.5 Governing Law. This Agreement shall be governed and construed in accordance with the federal laws of the United States of America.

11.6 Notices. Either party may give notice at any time by any of the following: letter delivered by (i) nationally recognized overnight delivery service; (ii) first class postage prepaid mail; or (iii) certified or registered mail, (certified and first class mail deemed given following 2 business days after mailing) to the other party at the address set forth below. Either Party may change its address by giving notice as provided herein. Invoices shall be sent to the Customer's contact and address following Customer's signature below.

11.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.8 Entire Agreement. [Intentionally Deleted]

11.9 Marketing. Everbridge shall obtain Customer's express written consent in order to reference Customer's name and logo as an Everbridge customer in Everbridge publications, its website, and other marketing materials.

11.10 Survival. Sections 2, 3.2, 5.2, 6, 7, 9-11 and the applicable provisions of Exhibit A shall survive the expiration or earlier termination of this Agreement.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one original document. A facsimile transmission or copy of the original shall be as effective and enforceable as the original.

11.12 Export Compliant. Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

11.13 Equal Employment Opportunity. Everbridge, Inc. is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.

EXHIBIT A
Additional Business Terms

The following additional business terms are incorporated by reference into the Agreement as applicable based on the particular products and services described in the Customer's Quote.

If Client Is Ordering Nixle® Branded Products or Community Engagement:

1. Client grants to Everbridge a non-exclusive, royalty free, worldwide and perpetual right and license (including sublicense) to (a) use, copy, display, disseminate, publish, translate, reformat and create derivative works from communications Client sends through the Solutions for public facing communications to citizens, other public groups and public facing websites, including social media (e.g., Google®, Facebook®) (collectively, "**Public Communications**"), (b) use and display Client's trademarks, service marks and logos, solely as part of the Public Communications to Contacts who have opted in to receive those Communications, and on other websites where Everbridge displays your Public Communications, as applicable, and (c) place a widget on Client's website in order to drive Contact opt-in registrations.

If Client Is Ordering Everbridge Branded Products:

1. **Data Feeds.** Notwithstanding anything to the contrary in this Agreement, to the extent that Customer has purchased or accesses Data Feeds, the sole and exclusive remedy for any failure, defect, or inability to access such Data Feed shall be to terminate the Data Feed with no further payments due. No refunds shall be granted with respect to such Data Feed. In addition, such feeds are provided solely on an "AS IS" and "AS AVAILABLE" basis and Everbridge disclaims any and all liability of any kind or nature resulting from any inaccuracies or failures with respect to such Data Feeds. "**Data Feed**" means data content licensed or provided by third parties to Everbridge and supplied to Customer in connection with the Solution (e.g., real time weather system information and warnings, 911 data, third party maps, and situational intelligence).
2. **Incident Management/IT Alerting.** For Customers purchasing the Incident Management or IT Alerting Solution, unless designated as unlimited: (a) Customers may only designate the number of Users set forth on the Quote, and such individuals shall only have the access rights pursuant to such designation and role; (b) Incident Administrators shall have the ability to build incident templates, report on incidents, and launch incident notifications; (c) Incident Operators shall only have the ability to launch or manage incidents; (d) IT Alerting Users shall have the ability to build, launch or manage incidents as well as participate in an on-call schedule to receive IT outage notifications, and (e) Customer shall be provided the number of incident templates purchased pursuant to the Quote. "**Incident Administrator**" means an individual who is authorized by Client as an organizational administrator for the Incident Management or IT Alerting Solution. "**Incident Operator**" means an individual who is authorized by Client as an operator of the Incident Management or IT Alerting Solution.

EXHIBIT B
IPAWS- CMAS/WEA Addendum

This addendum is incorporated by reference into the Agreement as applicable based on the purchase of IPAWS-CMAS/WEA services on the Quote.

1. IPAWS Authorization: Client represents and warrants to Everbridge that any employee, agents, or representatives of Client who access IPAWS-OPEN using Client's credentials provided by FEMA (each, an "IPAWS User"), are authorized by FEMA to use IPAWS-OPEN, have completed all required training, and Client has executed an IPAWS Memorandum of Agreement ("MOA") with FEMA. Client shall contact Everbridge immediately upon any change in Client or any IPAWS User's right to access IPAWS-OPEN. Client shall only access IPAWS-OPEN using its designated credentials and FEMA issued digital certificate ("Digital Certificate"). Client acknowledges and agrees that Everbridge shall not have access to its credentials and that Client assumes full responsibility for maintaining the confidentiality of any credentials issued to it.
1. Credentials: Client shall load and maintain within its Everbridge account Organization, its Digital Certificate, COG ID, and Common Name. Client authorizes and requests Everbridge to use the foregoing stored information to connect Client to IPAWS-OPEN.
2. Messaging: Client acknowledges and agrees that: (i) upon submission of messages to IPAWS-OPEN, Everbridge shall have no further liability for the distribution of such message, and that the distribution through IPAWS-OPEN, including, but not limited to, delivery through the Emergency Alert System or the Commercial Mobile Alert System, is in no way guaranteed or controlled by Everbridge; (ii) Everbridge shall not be liable as a result of any failure to receive messages distributed through IPAWS-OPEN; (iii) IPAWS may include additional features not supported through the Everbridge system, and Everbridge shall not be required to provide such additional features to Client; and (iv) Client shall be solely responsible and liable for the content of any and all messages sent through IPAWS-OPEN utilizing its access codes.
3. Term: Client acknowledges and agrees that access to IPAWS-OPEN shall be available once Client has provided Everbridge with the Digital Certificate and any other reasonably requested information to verify access to the system. Upon termination of the Agreement access to IPAWS-OPEN shall immediately terminate.



END USER AGREEMENT – GSA CUSTOMER

This End User Agreement – GSA Customer (this “**Agreement**”) is entered into by and between Pure Storage, Inc. (“**Pure**”) and the authorized GSA Schedule contract user (“**you**” or “**GSA Customer**”).

1. EVALUATION ONLY PRODUCT TERMS.

1.1. General. If GSA Customer has not yet purchased the Pure Storage Products (“**Products**”), but has obtained them for evaluation purposes (“**Evaluation Products**”), then the terms and conditions in this Section 1 shall apply and those in Section 2 do not apply. Reference Section 2 for the terms applicable to purchased Products.

1.2. Evaluation Product Delivery. Pure shall deliver the Evaluation Product to GSA Customer at the address agreed to by the parties in the applicable GSA Customer purchase orders. Risk of loss shall pass to GSA Customer upon delivery and GSA Customer shall have and maintain appropriate insurance to cover loss of or damage to the Product. Evaluation Products shall remain Pure’s sole and exclusive personal property and GSA Customer shall not encumber, sell or otherwise dispose of the Product without having received prior written authorization from Pure.

1.3. Evaluation License and Term. Subject to the terms and conditions of this Agreement (excluding its Section 2), Pure hereby provides GSA Customer the right to use the Product (including any software embedded therein) solely for the purposes of evaluating the performance and functionality of the Product and not for storage of production data. GSA Customer agrees to use and evaluate the Product (in accordance with the Product documentation made available by Pure on-line) and report on its operations to Pure, for the period of time specified by Pure in writing, or if no such period is specified then for thirty (30) days from the date of delivery to GSA Customer (the “**Evaluation Term**”).

1.4. Return of Evaluation Product. At the end of the Evaluation Term or upon earlier termination, if GSA Customer elects not to purchase the Product, then GSA Customer shall (i) promptly contact Pure regarding the return of the Product to obtain an RMA (Return Material Authorization) number, packaging instructions and shipping address; and (ii) promptly return the Product to Pure in accordance with Pure’s instructions. Products returned to Pure shall be in good condition, normal wear and tear excepted.

2. PURCHASED PRODUCTS TERMS.

2.1. General. If GSA Customer has submitted a purchase order for the Product, and such order has been accepted by Pure or its authorized reseller, then the Product will be a purchased Product and is subject to the terms and conditions of this Section 2 and those in Section 1 do not apply. If GSA Customer previously obtained the Product for evaluation and subsequently elected to purchase the Product, then the terms of Section 2 shall supersede those in Section 1, once GSA

Customer’s purchase order has been accepted by Pure or its authorized reseller.

2.2. Purchased Product Delivery and Acceptance. Pure shall use its reasonable commercial efforts to ship the Product to the address requested. Title to Products (except Software as defined in Section 2.3) and risk of loss of the Products will pass upon delivery to GSA Customer, FOB Pure’s place of shipment.

2.3. Software License. Subject to the terms and conditions of this Agreement, together with the underlying GSA schedule contract, the schedule price list, and any applicable GSA Customer purchase orders, Pure grants to GSA Customer a nontransferable, nonexclusive, royalty-free, fully paid, revocable, worldwide license (without the right to sublicense) to use and execute the software provided with or incorporated in the Product (the “**Software**”), in executable object code format only, and solely to the extent necessary to operate the Product in accordance with the Product documentation made available by Pure on-line.

2.4. Termination of Software License. When the GSA Customer is an instrumentality of the U.S. Government, recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract disputes clause (Contract Disputes Act) or under the terms of the Federal Tort Claims Act, as applicable. During any dispute under the disputes clause, Pure shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under this Agreement, and comply with any decision of the Contracting Officer.

3. PRODUCT RESTRICTIONS AND TITLE.

3.1. Restrictions. GSA Customer agrees that it will not (i) reproduce, modify, distribute, publish, rent, lease, sublicense or assign, disclose, transfer or make available to any third party any portion of the Software (or any related documentation) in any form; (ii) reverse engineer, decompile, or disassemble any portion of the Software, or otherwise attempt to decrypt, extract or derive the source code for, or any algorithms embodied within, the Software (or any parts thereof); (iii) use the Product, including, but not limited to, running the Software, in order to build a similar or competitive product or service; (iv) transfer, copy or use the Software to or on any other product or device for any purpose; or (v) publish or disclose to any third party any performance or benchmark tests or analyses or other non-public information relating to the Product, the Software or the use thereof, except as may be authorized by Pure in writing. Any future release, update, or other addition to functionality of the Software made available by Pure to GSA Customer, shall be subject to these terms and conditions. The Software is copyrighted and protected by the laws of the United States. GSA Customer shall preserve and shall not remove any copyright or other proprietary notices in the Software, its documentation and all copies thereof.

3.2. Title to Software and Evaluation Products. Pure shall retain all right, title and interest in the Software and all intellectual property rights therein, including without limitation all patent, trademark, trade name and copyright, whether registered or not registered. For Evaluation Products

that are subject to Section 1, Pure retain all right, title and interest to the entire Product. No license or other express or implied rights of any kind are granted or conveyed except for the limited internal license expressly provided above. Any rights not expressly granted by Pure in this Agreement are reserved.

4. THIRD PARTY CODE. Certain items of software code provided with the Product are subject to “open source” or “free software” licenses (“**Third Party Code**”), a list of which is available on Pure’s website. Such Third Party Code (for example, the Linux operating system) is opaquely embedded within the Product and is not directly accessible by, nor does it interface directly with, GSA Customer’s software or infrastructure, so as to avoid any open source licensing incompatibilities with GSA Customer’s intellectual property. Instead, each item of Third Party Code is licensed under the terms of the license that accompanies such Third Party Code. Nothing in this document limits GSA Customer’s rights under the applicable license.

5. PRE-RELEASE SOFTWARE AND FEEDBACK.

5.1. Pre-Release Software. Pure may periodically make available to GSA Customer a beta or other pre-release version of the Software (“**Pre-Release Software**”). Use of Pre-Release Software is subject to the terms of Section 1, if GSA Customer has an Evaluation Product, and Section 2, if GSA Customer has purchased the Product. Although Pure intends that the Pre-Release Software will be free of major errors, GSA Customer acknowledges that the Pre-Release Software (i) is not at the level of performance or compatibility of a final, generally available Software offering; (ii) may not operate correctly; and (iii) may be substantially modified prior to it being made commercially available as a Software release, GSA Customer further acknowledges that the Pre-Release Software is not to be used in a production environment or for production data. In consideration of obtaining access to and use of such Pre-Release Software, GSA Customer agrees to notify Pure of any and all problems relating to its use

5.2. Feedback. Pure may periodically request that GSA Customer provide, and GSA Customer agrees to provide to Pure, feedback regarding the use, operation, performance, and functionality of the Products, Evaluation Products and Pre-Release Software (collectively, “**Feedback**”). Such Feedback will include information about operating results, known or suspected bugs, errors or compatibility problems and user-desired features. GSA Customer hereby grants to Pure a perpetual, irrevocable, worldwide, sublicenseable, and royalty-free right to use and otherwise exploit the Feedback in any manner, and such right shall survive any expiration or termination of this Agreement. Pure shall not disclose GSA Customer’s name or the name of any GSA Customer employee to a third party in connection with any Feedback. The above with must be in compliance with The **Federal Information Security Management Act** of 2002 (“**FISMA**”, 44 U.S.C. § 3541, et seq.) Additionally, Pure may not use any data collected for any advertising purposes under any circumstances.

6. EXCLUDED USES. GSA Customer acknowledges that the Product is not designed or intended for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage (the “**Excluded Uses**”) and GSA Customer agrees not to use the Products in or for any such ExcludedUses.

7. PRODUCT WARRANTY.

7.1. Purchased Product Warranty. Products purchased by GSA Customer are warranted to perform in substantial accordance with the corresponding Pure documentation for a period of one (1) year from the date of shipment by Pure. Pure, at its option, either will repair or replace any defective Product which is returned to Pure at GSA Customer’s expense or will refund its purchase price. Replacement Products will continue to be warranted for the remainder of the applicable warranty term. Repair, replacement, or refund is the sole and exclusive remedy for breach of this warranty and Pure reserves the right for any replacement or repairs to consist, in whole or in part, of new components or refurbished components that are functionally indistinguishable from the original components. This warranty is extended to GSA Customer only and in no event to any other party. This warranty does not cover defects or damages resulting from: (i) use of Products other than in a normal and customary manner in accordance with Pure’s documentation; (ii) physical or electronic abuse or misuse, accident, or neglect; or (iii) alterations or repairs made to Products that are not authorized by Pure in writing.

7.2. No Warranty or Maintenance and Support for Evaluation Products. The warranty provided under Section 7.1 does not apply to Evaluation Products or Pre-Release Software. Pure provides Evaluation Products and Pre-Release Software for evaluation only on an “AS IS” basis, for use by GSA Customer at its own risk. Although Pure does not provide a warranty or maintenance and support for Evaluation Products or Pre-Release Software, GSA Customer should promptly notify Pure of any problems with an Evaluation Product or Pre-Release Software and Pure will use reasonable commercial efforts to assist GSA Customer in resolving such identified problems. GSA Customer agrees that any issues or bugs found in GSA Customer’s evaluation of Evaluation Products and Pre-Release Software are not guaranteed by Pure to be fixed.

7.3. Stored Data. Pure will use reasonable commercial efforts to erase all of the data contained in or stored on any Product that is returned to Pure for repair, whether or not under warranty, or at the end of the Evaluation Term, but GSA Customer acknowledges and agrees that Pure shall have no responsibility for any loss or disclosure of any data that is stored on a Product that is returned to Pure or Pure’s supplier as designated by the RMA process or pursuant to Section 2.4.

7.4. Disclaimer. THE WARRANTY IN SECTION 7.1 FOR PURCHASED PRODUCTS IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND PURE HEREBY DISCLAIM ALL OTHER WARRANTIES RELATING TO THE PRODUCTS AND RELATED SERVICES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. PURE DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 7, PURE AND ITS SUPPLIER'S PROVIDES THE PRODUCTS (INCLUDING ANY SOFTWARE) ON AN "AS IS" BASIS.

8. MAINTENANCE AND SUPPORT. During the term for which GSA Customer has ordered and paid for maintenance and support, Pure or its designated supporting resellers or distributors ("**Support Partners**") will provide the maintenance and support set forth in **Exhibit A (Maintenance and Support)**. As noted in Section 7.2, maintenance and support services are not available for evaluation Products.

9. INDEMNIFICATION. Pure will defend at its own expense any action against GSA Customer brought by a third party to the extent that the action is based upon a claim that the Product (including any Evaluation Product and Pre-Release Software) infringes any copyrights or U.S. patents issued as of the date of Pure's shipment or misappropriates any trade secrets and Pure will pay those costs and damages finally awarded against GSA Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. If the Product becomes, or in Pure's opinion is likely to become, the subject of an infringement claim, Pure may, at its option and expense, (i) procure for GSA Customer the right to continue exercising the rights licensed to GSA Customer in this Agreement; (ii) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (iii) accept return of the Product from GSA Customer and pay to GSA Customer a refund of money paid by GSA Customer for the purchase of such Product. Notwithstanding the foregoing, Pure will have no obligation under this Section or otherwise with respect to any infringement claim based upon (a) any use of the Product that is not in accordance with Pure's documentation; (b) any use of the Product in combination with other products, equipment, software, or data not supplied by Pure if such infringement would not have arisen but for such combination; (c) any use of any release of the Software other than the most current release made available to GSA Customer; or (d) any modification or alteration of the Product by any person other than Pure. This Section 9 states Pure's entire liability and GSA Customer's sole and exclusive remedy for infringement claims and action. The foregoing obligations are conditioned on GSA Customer notifying Pure promptly in writing of such action. Pure will be given an opportunity to intervene in any suit or claim filed against the Government, at its own expense, through counsel of its choosing. Nothing contained herein shall operate in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S.

10. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GSA CUSTOMER AGREES THAT PURE SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO GSA CUSTOMER, ITS GSA CUSTOMERS, OR THIRD PARTIES CAUSED BY FAILURE OF PURE TO DELIVER THE PRODUCT, FAILURE OF THE PRODUCT TO FUNCTION, OR FOR LOSS OR INACCURACY OF DATA OR COST OF

PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY. IN NO EVENT WILL PURE OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS, IN CONNECTION WITH THE USE OF THE PRODUCT OR OTHER MATERIALS PROVIDED ALONG WITH THE PRODUCT OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF PURE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PURE'S AGGREGATE CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT (I) FOR PURCHASED PRODUCTS, SHALL NOT EXCEED THE AMOUNT PAID BY GSA CUSTOMER FOR THE PRODUCT THAT GAVE RISE TO SUCH CLAIM; AND (II) FOR EVALUATION PRODUCTS AND PRERELEASE SOFTWARE, SHALL NOT EXCEED THE AMOUNT OF \$5,000.00 US DOLLARS. THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY (1) TO PERSONAL INJURY OR DEATH CAUSED BY CONTRACTOR'S NEGLIGENCE;; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

11. CONFIDENTIAL INFORMATION. "**Confidential Information**" means any nonpublic information of a party (the "**Disclosing Party**"), whether disclosed orally or in written or digital media, that is identified as "confidential" or with a similar legend at the time of such disclosure or that the receiving party (the "**Receiving Party**") knows or should have known is the confidential or proprietary information of the Disclosing Party. Information will not constitute the other party's Confidential Information if it (i) is already known by the Receiving Party without obligation of confidentiality; (ii) is independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information; (iii) is publicly known without breach of this Agreement; or (iv) is lawfully received from a third party without obligation of confidentiality. The Receiving Party shall not use or disclose any Confidential Information except as expressly authorized by this Agreement and shall protect the Disclosing Party's Confidential Information using the same degree of care that it uses with respect to its own confidential information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances. The Receiving Party shall take prompt and appropriate action to prevent unauthorized use or disclosure of the Disclosing Party's Confidential Information. If any Confidential Information must be disclosed to any third party by reason of law (including but not limited to, required disclosure under the Freedom of Information Act) or court order, accounting or regulatory requirements, the Receiving Party shall promptly notify the Disclosing Party of the order or request and permit the Disclosing Party (at its own expense) to seek an appropriate protective order. When the GSA Customer is an instrumentality of the U.S. Government, neither this Agreement, nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the Government may retain such Confidential

Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

12. PRODUCT DIAGNOSTIC REPORTING. GSA Customer acknowledges that the Product will store certain diagnostic information about the routine operations of the Product (including, without limitation, its performance, data reduction ratios, configuration data, and any hardware faults) and will periodically transmit this diagnostic information to Pure. For clarity, there is no actual user data of GSA Customer that is transmitted or provided to Pure. In addition, if Pure requests more detailed diagnostics, GSA Customer will reasonably cooperate with Pure, subject to Government security requirements, to enable the insertion of additional hard-drives into the Product so as to capture and transmit to Pure the meta-data configuration of the Product's array. Again, for clarity, no actual user data of GSA Customer is transmitted or provided to Pure in this process. GSA Customer will control Pure's physical access to the Product and no interruption of service is required to gather such detailed diagnostics. GSA Customer agrees that Pure has a perpetual, irrevocable, worldwide, sublicenseable, and royalty-free right to use this diagnostic information in any manner and that GSA Customer will not interfere with the collection or transmission of such information to Pure, subject to Government security requirements.

13. GENERAL PROVISIONS.

13.1. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States of America, without reference to conflicts of law provisions. Jurisdiction and venue shall be as provided by Federal statute (Federal Tort Claims Act, Contract Disputes Act, etc.). Venue and jurisdiction of any disputes are determined by the applicable federal statute. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.2. Notices. All notices or other communications required under this Agreement shall be in writing and shall be delivered by personal delivery, certified overnight delivery such as Federal Express, or registered mail (return receipt requested) and shall be deemed given upon personal delivery or upon confirmation of receipt. All other notices and communications may be made by email or other applicable method.

13.3. Severability; Waiver. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain valid and enforceable to the maximum extent permitted by law. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

13.4. Export. The Product, its Software and related technology are subject to U.S. export control laws. GSA Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Pure, or any

products incorporating such data, in violation of the United States export laws or regulations.

13.5. No Assignment. Assignment is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR Subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). This Agreement, and GSA Customer's rights and obligations herein, may not be assigned by GSA Customer without Pure's prior written consent, and any attempted assignment in violation of the foregoing will be null and void.

13.6. U.S. Government End Users. The Product, its software and related documentation, are "commercial items" as defined in 48 CFR 2.101 and their use is subject to the policies set forth in 48 CFR 12.211, 48 CFR 12.212 and 48 CFR 227.7202, as applicable.

13.7. Force Majeure. Pursuant to FAR 52.212-4(f) neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of Pure.

13.8. Entire Agreement; Modification. This Agreement, and the terms of the underlying GSA Schedule Contract, the Schedule Price List, or any specific, negotiated terms on any applicable GSA Customer Purchase Order, constitutes the entire Agreement between the GSA Customer and Pure and supersedes in its entirety any and all oral or written agreements previously existing between the GSA Customer and Pure with respect to the subject matter hereof including, without limitation, any Evaluation Agreement providing for evaluation of the Product. This Agreement may only be amended in a writing signed by duly authorized representatives of the parties. Additionally this Agreement shall not take precedence over the terms of the underlying GSA Schedule Contract, the Schedule Price List, or any specific, negotiated terms on any applicable GSA Customer Purchase Order.

EXHIBIT A
MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

1. SCOPE OF COVERAGE. For Purchased Products, during the term for which GSA Customer has ordered and paid for Maintenance and Support (as defined herein), Pure or its Support Partners will provide Product maintenance (“**Maintenance**”) and technical support (“**Support**”) services under this Exhibit for (a) generally available releases only (the services under this Exhibit do not apply to early access, pre-release or beta releases of the Product or its Software or any Products provided solely for evaluation purposes); and (b) those Major Releases (as defined herein) of the Software, specifically identified as still under Support. As used herein, an “**Error**” means any reproducible defect in the Product that causes the Product to not perform in all material respects in accordance with the Product documentation provided on-line by Pure.

2. SERVICES. Subject to the terms of this Maintenance and Support Exhibit, and so long as GSA Customer is in compliance with the terms and conditions of the Agreement, Pure or its Support Partners will provide the following services:

2.1 Hardware Maintenance. Pure or its Support Partners will use commercially reasonable efforts to attempt to correct any Errors in the Product’s hardware. Pure’s Hardware Maintenance services for the Products may include on-site installation of field replaceable units (FRUs) by Pure certified maintenance personnel and/or providing GSA Customer with GSA Customer replaceable units (CRUs) for GSA Customer’s own installation.

2.2 Software Support. Pure or its Support Partners will also use commercially reasonable efforts to attempt to correct any Errors in the Product’s software. Pure’s Software Support services may include bug fixes, emergency patches, workarounds, and new software releases.

(a) **Software Releases.** In order to receive Support for a given Major Release, the Product must be updated to the most recent Minor Release applicable to that Major Release. As used herein, a “**Major Release**” is any version of the Software that is generally denoted by a change in the version number to the left or right of the first decimal (i.e., #.#.1). A “**Minor Release**” is any version of the Software generally denoted by a change in the version number to the right of the second decimal (i.e., 2.3.#). Major Releases and Minor Releases are collectively referred to as “**Releases.**” Support is only

provided by Pure for the current and immediately preceding Major Release of the Software, in each case with its most recent Minor Release, unless Pure elects to provide support for additional Releases as noted on Pure’s website.

(b) **Access to Releases.** Pure will provide Releases to the Software, as such Releases are made available by Pure for general commercial release and then only to the extent compatible with the GSA Customer’s Product hardware. Any Releases of the Software provided shall be subject to the terms and conditions set forth in the Agreement, the underlying GSA Schedule Contract, the Schedule Price List, or any specific, negotiated terms on any applicable GSA Customer Purchase Order.

3. Technical Support and Service Levels. Pure or its Support Partners will provide web portal, email and telephone support to up to five designated points of contact of GSA Customer, and will acknowledge and respond to Errors in the Product, in each case in accordance with the Severity Levels defined in the Product Software & Hardware Support, Service Level Agreement set forth in Exhibit A-1 attached hereto. Additional GSA Customer points of contact for Support may be approved by Pure.

4. No Warranty. Any deliverables and services provided by Pure pursuant to this Maintenance and Support Exhibit are provided “AS IS” and without any additional warranty, express or implied. Notwithstanding the foregoing, if a Product or Product component is replaced under Maintenance and the original warranty for such Product has not yet expired, such replacement Product shall continue to be warranted for the remaining portion of the original Product warranty pursuant to Section 7.1 of the Agreement.

5. Service Limitations. The Maintenance and Support Fee does not include, nor will Pure be obligated to provide, services required as a result of: (a) any modification, reconfiguration or maintenance of the Product not performed in accordance with Pure’s instructions; (b) any use of the Product in a configuration or on a system that does not meet Pure’s minimum standards for such Product, as set forth in the applicable documentation; or (c) any errors or defects in third party software or hardware.



EXHIBIT A-1
Product Software & Hardware Support
Minimum Service Level Agreement

GSA Customer Issue Severity Level	Description	Support Acknowledgement	Hardware Issues Minimum Response	Software Issues Minimum Response
Sev 1 – Emergency	Product fails to function or crashes; Product functionality or performance severely degraded such that GSA Customer’s application(s) are rendered unusable; or Any product issue that could cause a loss of data	7x24 phone support (Sev 1 issues can be reported via web portal or email, but should be escalated via phone)	1 hour to acknowledge; Targeted Onsite Response: 4 Hours in select cities; Next business day in other cities (Example: controller failure, shelf failure, dual NVRAM failure)	1 hour to acknowledge; Engineer dedicated full time to work on issue until workaround (that lowers issue’s severity level) or patch is delivered to GSA Customer; Daily status updates
Sev 2 – Critical	Product is operable, but there is a material degradation in functionality or performance that renders GSA Customer’s application(s) substantially impaired	7x24 phone support (Sev 2 issues can be reported via web portal or email, but should be escalated via phone)	1 hour to acknowledge; Targeted Onsite Response: Next business day (Example: single NVRAM failure)	Same as Sev 1
Sev 3 – Serious	Product has significant degradation in functionality or performance; Issues that are inconvenient or could be problematic in the fact of future failures, but product is still generally operating in accordance to documentation	7x24 reporting via web support portal; 6am-6pm USA Pacific Time phone support	1 business day to acknowledge; Targeted Onsite Response: 3 business days (Example: single power supply failure)	1 business day to acknowledge; workaround (that lowers issue’s severity level) or patch delivered as soon as practicable
Sev 4 – Minor	Product or documentation issues that do not materially degrade functionality or performance; Issues that are more superficial in nature; or All feature enhancement requests	7x24 reporting via web support portal only	2 business days to acknowledge; Targeted Onsite Response: 5 business days (Examples: SSD failure)	2 business days to acknowledge; resolved as part of next major software release

Targeted Onsite Response: May include a person and/or replacement hardware.

Note: If the diagnosis is not complete by 3pm site local time for Next Business Day Onsite Response, Pure will still make every commercially reasonable effort to ship same day, but 2nd business day is then the Targeted Onsite Response.

EXHIBIT A

Microsoft Cloud Agreement US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement entered into between the Ordering Activity under GSA Schedule contracts customer who is a Community member (“**Customer**” or “**Ordering Activity**”) and the person or entity who has entered into a prime contract with the Customer (“**Contractor**”) as an addendum and governs Customer’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within **those documents (together, the “agreement”)**. It is effective on the date that the Contractor provisions the **Customer’s** Subscription. Key terms are defined in Section 9.

1. **Grants, rights and terms.**

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

a. Software. Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.

(i) **Use Rights. The Use Rights in effect when Customer orders Software will apply to Customer’s** use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

(ii) **Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

b. Online Services. Customer may use the Online Services as provided in this agreement.

- (i) **Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
- (ii) **Suspension. Microsoft may temporarily suspend use of an Online Service during Customer’s violation** of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
- (iii) **End Users.** Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
- (iv) **Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with **respect to Customer Data or to**

Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

- (v) **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-**public authentication credentials associated with Customer's use of the Online Services.**

Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.

- c. Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- a. Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.
- b. Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."
- c. Verifying compliance for Products.**
- (i) Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including, subject to the Government's reasonable security requirements, access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third-party audit. Such an audit request shall not occur more than once in a twelve month period.
- (ii) Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then Customer will, within 30 days, order sufficient licenses to cover any unlicensed use of products and Contractor will invoice Customer for additional license fees sufficient to cover the unauthorized use revealed by the audit and payment will be due 30 days after receipt of the invoice . If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

- (iii) **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a

confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification is subject to the Government's reasonable security requirements, will take place during normal business hours, and in a manner that does not unreasonably interfere with Customer's operations.

2. **Subscriptions, ordering.**

- a. **Available Subscription offers.** The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:

- (i) **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.
- (ii) **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.
- (iii) **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
- (iv) **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

b. **Ordering.**

- (i) Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under **Section 1.a and 1.b to a third party for use by that third party in Customer's internal business.** If Customer grants any rights to Affiliates or third parties with respect to **Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be responsible for any actions of such Affiliates or third parties related to their use of the Products**
- (ii) The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription

- a. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users' consent to the same.

b. Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. Warranties.

a. Limited warranty.

(i) Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

(ii) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA. The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

b. Exclusions. The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

c. Disclaimer. Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

6. Defense of third party claims.

- (i) By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.
- (ii) Customer's agreement.** Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.
- (iii) Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer's use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or

modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer's right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

- (iv) **Other terms.** Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

7. **Limitation of liability.**

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

- i. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
- ii. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- iii. **Exclusions. In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.**
- iv. **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; (2) violation of the other's intellectual property rights,

For Customers that are Federal Agencies, this Section shall not impair the Customer's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. ITAR Covered Services. This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms ***only apply if*** Customer provides express notice to Microsoft of Customer's intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.

a. Customer Prerequisites:

- (i) Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.

(ii) Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which Customer's administrator(s) will manage and configure the ITAR Covered Services.

(i) Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer's End Users' use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

(ii) Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

b. Special Terms.

(i) ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer's preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer's compliance with the ITAR will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for Customer's End Users' use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

a. Personnel. Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.

b. Use of Subcontractors. As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft's policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations.

c. Notification. The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:

(i) Customer acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Customer's control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Customer. If Customer becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Customer will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.

(ii) If, subsequent to notification of a Security Incident by Microsoft, Customer determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Customer's responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Customer determines such notification is required under applicable law or regulation or your internal policies.

(iii) If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.

f. Conflicts. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

9. IRS 1075 Covered Services. *If the Customer is subject to IRS 1075 with respect to its use of the Online Services, then this section applies but only to the IRS 1075 Covered Services, defined below, Customer buys under the Subscription*

a. Customer Prerequisites

(i) *Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.*

(ii) *Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.*

(i) *Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users' use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.*

(ii) *Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this Section 9. No other services are supported by the terms of this Section 9. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization ("Support Data"), if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing/ordering IRS 1075 Covered Services ("Billing Data"), if any, is not subject to the provisions of this Section 9. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing*

Data.

b. IRS Publication 1075 Special Terms.

(i) *IRS 1075 Covered Services.* The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation. Customer's compliance with IRS Publication 1075 will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for Customer's End Users' use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

(ii) *Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075.* Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section 9.

(iii) *Personnel Records and Training.* Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.

(iv) *Training Records.* Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.

(v) *Confidentiality Statement.* Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.

(vi) *Cloud Computing Environment Requirements.* The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft's compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.

(viii) *Use of Subcontractors.* Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft's policies. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.

Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at <http://azure.microsoft.com/en-us/support/trust-center/>, or successor locations identified by Microsoft. Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.

(ix) *Security Incident Notification.* The Security Incident handling process defined in the OST will

apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:

1. Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer's control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.
2. If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.

c. Customer Right to Inspect.

(i) *Audit by Customer.* Customer will, (i) be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft's subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer's expense, be permitted to communicate with Microsoft's independent third party auditors involved in the preparation of audit reports. Customer will use this information above to satisfy with any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are in full satisfaction of any audit that may otherwise be requested by the Customer.

(ii) *Confidentiality of Audit Materials.* Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft's audit information is afforded the highest level of confidentiality available under applicable law.

(iii) This Section 9.c is in addition to compliance information available to Customer under the OST.

10. Criminal Justice Information Services (CJIS). If the Customer is subject to CJIS with respect to its use of the Online Services, then this section applies but only to the Government CJIS Covered Services, defined below, you buy under the Subscription.

a. Customer Prerequisites

(i) Microsoft's representations as it relates to its CJIS Covered Services' compliance with the FBI Criminal Justice Information Systems ("CJIS") Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer's incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer's order with the Contractor. They are also subject to Customer's incorporation and flow down of such terms in Customer's contracts with a Covered Entity.

(ii) Please visit <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit <https://azure.microsoft.com/en-us/pricing/enterprise-agreement/>. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.

(iii) Customer can access the terms and conditions of Microsoft's adherence to the FBI CJIS

Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for

Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft's support for CJI will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer's responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.

(iv) Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer's use of the Covered Services to store or process CJI, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJI into the Covered Services.

(v) Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

b. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

11. Government Community requirements. Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

a. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.

b. Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

c. Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

d. Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

1. Government Community Cloud Services will be offered only within the United States.

2. Additional European Terms, as set forth in the Use Rights, will not apply.

3. References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

e. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

f. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

g. Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the

same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

h. Operational and Ordering Consideration for GCC High:

(i) Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

(ii) Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

(iii) The parties acknowledge that, as of the date this Agreement was executed, the Office 365 ProPlus "click-to-run" (C2R) feature is not yet available in Office 365 GCC High, notwithstanding anything to the contrary in the Use Rights. Accordingly, the following terms and conditions shall apply:

Until C2R functionality is made available, Customer may install up to two (2) local copies of Office Professional Plus for each User to whom E3 licenses are assigned, for the sole use of those assigned Users on Qualified Devices in Customer's Enterprise.

Once C2R functionality is made available (the "C2R release date," to be announced in the Office 365 Service Descriptions), Customer must cease installing additional local copies of Office Professional Plus, and shall as soon as practicable (but in no event later than 12 months following the C2R release date) replace each local copy that was installed pursuant to the preceding paragraph with a C2R-installed copy.

12. Miscellaneous.

a. Notices. You must send notices by mail, return receipt requested, to the address below.

<p>Notices should be sent to:</p> <p>Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329</p>	<p>Copies should be sent to:</p> <p>Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329</p>
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Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account

administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

b. Assignment. Neither Customer, Contractor nor Microsoft may assign this agreement either in whole or in part without the other party's prior written consent. Any prohibited assignment is void.

C. Severability. If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. Waiver. Failure to enforce any provision of this agreement will not constitute a waiver.

e. No agency. This agreement does not create an agency, partnership, or joint venture.

f. No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

g. Use of contractors. Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

h. Microsoft as an independent contractor. The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.

i. Agreement not exclusive. Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

j. Entire agreement. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

k. Survival. All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

l. U.S. export jurisdiction. Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

(v) **Force majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

(vi) **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

(vii) **Additional Terms Applicable when the Customer is a U.S. Federal Agency.**

(i) No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or

authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

(ii) If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or

incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

13. Definitions.

Any reference in this agreement to “day” will be a calendar day.

“Acceptable Use Policy” is set forth in the Online Services Terms.

“Affiliate” means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“CJ” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Customer Agreement” means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI

CJIS Policy. “Customer Data” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services. “Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“FTI” is defined as in IRS Publication 1075.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“IRS 1075 Covered Services” means Azure Government services listed as being in the scope for IRS 1075 at <http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/> or its successor

“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective January 1, 2014, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

“ITAR Covered Services” means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at <https://www.microsoft.com/en-us/TrustCenter/Compliance/itar> or its successor site.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at <https://www.microsoft.com/en-us/TrustCenter/Compliance/> or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Office 365 Service Descriptions” means, collectively and solely for this Amendment, the Service Descriptions for Office 365 High, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services and attached hereto. The Online Services Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Online Services Terms applies to Enrolled Affiliate’s order.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is attached hereto. The Product Terms in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the Product Terms applies to Enrolled Affiliate’s order.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site. The SLA in effect as of the date of the Contractor’s GSA Schedule is attached hereto for reference purposes only. See Section 1 to determine which version of the SLA applies to Enrolled Affiliate’s order.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other

similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’ jurisdiction and geographic boundaries.

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CRESTPOINT SOLUTIONS INC. END USER LICENSE AGREEMENT (EULA) EULA (03/20)

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